

Preliminary Enquiries in Indian Criminal Procedure: A Doctrinal Analysis of Their Legal Status and Safeguards

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ABSTRACT

Indian criminal procedure is founded on the principle that a First Information Report (FIR) must be registered immediately upon the disclosure of a cognizable offence. This mandate, rooted in Section 154 of the Code of Criminal Procedure, 1973, reflects a commitment to prompt investigation and accountability. However, contemporary policing practices have increasingly relied on pre-arrest and pre-FIR preliminary enquiries to assess complaints before formal registration. These enquiries, though justified as safeguards against false or malicious prosecutions, operate in a legally ambiguous space, often affecting personal liberty without the procedural protections attached to arrest or formal investigation. Judicial intervention sought to reconcile this tension by reaffirming the mandatory FIR rule while permitting narrowly tailored preliminary enquiries in exceptional categories. Subsequent jurisprudence consistently emphasised that such enquiries must remain exceptional and cannot substitute FIR registration.

The enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) marks a significant doctrinal shift by statutorily recognising preliminary enquiries under Section 173(3) for offences punishable with imprisonment between three and seven years. While the provision introduces formal safeguards, its vague standards particularly concerning “prima facie” assessment and the “nature and gravity” of offences, risk expanding police discretion and normalising procedural delay.

This paper argues that pre-arrest enquiries raise serious constitutional concerns under Articles 21, 20(3), and 22 of the Constitution, as they expose individuals to coercive state power without adequate legal protections. Drawing on Indian jurisprudence and comparative insights from the United Kingdom and the United States, the paper contends that without clearer statutory safeguards, transparency requirements, and judicial oversight, the codification of preliminary enquiries may undermine the mandatory FIR regime eroding constitutional guarantees of personal liberty. the constitutional promise of personal liberty.

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Keywords: Preliminary Enquiry, FIR Registration, Article 21, BNSS 2023, Police Discretion.

INTRODUCTION

Indian criminal procedure rests on a delicate balance between effective crime control and the protection of individual liberty. The law mandates that the police register a First Information Report immediately upon receiving information disclosing a cognizable offence.² At the same time, every investigation and arrest necessarily implicates personal liberty under Article 21 of the Constitution.³ This structural tension has become increasingly visible in contemporary policing practices, particularly through the growing reliance on pre-arrest and pre-FIR enquiries.

In practice, police authorities frequently conduct informal verifications before registering an FIR or effecting an arrest and these pre-arrest enquiries often involve repeated summons, collection of “voluntary” statements, spot inspections and extended fact-checking to assess the credibility of a complaint.⁴ While such practices are justified by the police as necessary to prevent false cases and unnecessary arrests, they operate within a legally ambiguous framework. Although these practices significantly affect the rights of the accused, The Code of Criminal Procedure, 1973, does not expressly recognize pre-arrest or pre-FIR enquiries. As a result, pre-arrest enquiries have operated within a legally ambiguous space, they are neither fully prohibited nor clearly regulated.

Judicial intervention attempted to clarify this ambiguity. In *Lalita Kumari v. Government of Uttar Pradesh*, a Constitution Bench held that registration of an FIR under Section 154 CrPC is mandatory upon receipt of information disclosing a cognizable offence.⁵ The Court listed out a narrow exception permitting preliminary enquiries only in limited categories of cases such as medical negligence, corruption, family disputes, commercial transactions and cases involving unexplained delay and insisted that such enquiries be strictly time-bound. Subsequent

² Bharatiya Nagarik Suraksha Sanhita, 2023, § 173 (India).

³ Balhera, A. (2018) *A Study about First Information Report (FIR) and Its Various Aspects under Criminal Law*, 5 International Journal of Research 47–55.

⁴ Belur, J., Tilley, N., Osrin, D., Daruwalla, N., Kumar, M. & Tiwari, V. (2015) *Police Investigations: Discretion Denied Yet Undeniably Exercised*, 25(5) Policing & Society 439–462.

⁵ *Lalita Kumari v. Govt. of U.P.*, (2014) 2 SCC 1

decisions, including *Priyanka Srivastava v. State of Uttar Pradesh*,⁶ reinforced the mandatory nature of FIR registration and cautioned against routine or open-ended preliminary enquiries. Despite this jurisprudence, the practice on the ground continued to diverge from the law as declared. Police authorities frequently engaged in “fact-checking” complaints before registering FIRs, often extending these enquiries over weeks or months. When conducted prior to arrest, such enquiries frequently involved repeated summons and informal questioning, creating a de facto restraint on liberty without the procedural safeguards that accompany formal investigation or arrest.⁷ The absence of clear statutory standards enables arbitrary police discretion, undermines the mandatory FIR regime, and risks converting procedural delay into a form of punishment.

The enactment of the Bharatiya Nagarik Suraksha Sanhita, 2023 marks a significant shift in this landscape. For the first time, Parliament has explicitly recognised a limited pre-FIR enquiry under Section 173(3), thereby partially codifying what was previously governed only by judicial directions. While this statutory recognition seeks to bring clarity, it also raises fresh concerns regarding the scope of police discretion, the absence of detailed procedural safeguards, and the potential constitutional implications of legitimizing quasi-investigative powers before formal registration of an offence.

Accordingly, this paper examines the legal validity of pre-arrest enquiries under Indian criminal law, traces the evolution of judicial doctrine governing preliminary enquiries, and analyses how Section 173(3) of the BNSS restructures this regime. It argues that the statutory recognition of pre-FIR enquiries, without clear limits and accountability mechanisms, may institutionalize practices that were earlier treated as exceptional. The paper further contends that existing safeguards remain insufficient to prevent abuse of this quasi-investigative power.

1. HISTORICAL EVOLUTION OF PRELIMINARY ENQUIRIES

1.1. CrPC Silence and the Mandatory FIR Rule

The Code of Criminal Procedure 1973 contains no express provision permitting pre-arrest or pre-FIR enquiries. Section 154(1) CrPC mandates that every information relating to the commission of a cognizable offence “shall” be reduced to writing and registered as a First

⁶ *Priyanka Srivastava v. State of U.P.*, (2015) 2 SCC 657

⁷ *supra* note 3, at 2.

Information Report (FIR).⁸ On its face, the provision creates a rule of immediacy: once information disclosing a cognizable offence is received, the criminal law must be set in motion without delay.

Early Supreme Court jurisprudence firmly entrenched this position. In *Aleque Padamsee v. State of Maharashtra*⁹, the Court held that police are duty-bound to register an FIR whenever the facts disclosed show that a cognizable offence has been committed, irrespective of doubts about truthfulness or complexity. The Court clarified that assessing credibility is not the function of the police at the registration stage; such determinations belong to investigation and trial. Failure to register could be remedied through judicial oversight under Sections 190 and 200 CrPC. FIR registration was thus treated as the statutory starting point of the criminal process.

Over time, however, the rigidity of this approach produced practical hardship. By the early 2010s, two competing concerns had emerged as victims complained of police refusal to register FIRs even in genuine cases, while accused persons alleged harassment through false or vindictive FIRs in private disputes such as matrimonial or commercial conflicts. Acknowledging this tension, the Law Commission in its 243rd Report (2012) noted “*the law on whether the registration of FIR could be postponed for a reasonable time is in a state of uncertainty*” and awaited judicial clarification.¹⁰

Statutorily, the CrPC offered no resolution. Section 154’s mandatory language left little room for delay or informal “verification.” Preliminary enquiries thus remained a judicial creation, operating without statutory sanction. While police practice sometimes involved informal fact-checking, such steps risked being invalidated as contrary to the statutory mandate.

Judicial sensitivity to misuse nevertheless surfaced in limited contexts. In *P. Sirajuddin v. State of Madras*¹¹, the Court suggested that before publicly accusing a public servant of corruption, a discreet preliminary enquiry was desirable to protect reputation. Likewise, *State of Haryana*

⁸ Code of Criminal Procedure, 1973, § 154(1) (India).

⁹ *P. Sirajuddin v. State of Madras*, (1970) 3 SCR 931

¹⁰ Law Commission of India (2012) *243rd Report on Section 498A of the Indian Penal Code* (August 2012).

¹¹ *P. Sirajuddin v. State of Madras*, (1970) 3 SCR 931

*v. Bhajan Lal*¹² identified categories of cases where criminal proceedings amount to abuse of process, implicitly recognizing the dangers of malicious FIRs. Yet these decisions did not establish a general power to delay registration.

Importantly, a Constitution Bench in *K. Veeraswami v. Union of India*¹³ rejected the idea of a pre-FIR hearing for the accused, warning that investigators must not assume an adjudicatory role. This reinforced the principle that FIRs cannot be withheld to test the merits of allegations. By the 2000s, the mandatory FIR doctrine had hardened. In *CBI v. Tapan Kumar Singh*¹⁴ and *Ramesh Kumari v. State (NCT of Delhi)*¹⁵, the Court reiterated that once information prima facie discloses a cognizable offence, registration is compulsory, and questions of genuineness are irrelevant at that stage. Thus, prior to *Lalita Kumari*, the law remained formally clear but practically contested as FIRs were mandatory, while preliminary enquiries survived only as uneasy judicial exceptions.

1.2. Lalita Kumari and Limited Preliminary Inquiry

The Constitution Bench in *Lalita Kumari v. Government of U.P.*¹⁶ entrenched this mandatory FIR doctrine, as it held unanimously that upon receiving information disclosing a cognizable offence, the police must register an FIR. The Court did, however, carve out a narrow exception: if the complaint is ambiguous or not on its face a crime, police may undertake a “*limited preliminary inquiry*” solely to determine whether an offence is made out.¹⁷ The enquiry was meant to operate within narrow limits. Its purpose was not to assess the truthfulness of the allegations or to gather evidence, but only to determine whether the information, on its face, disclosed the commission of a cognizable offence. If it does, an FIR follows. If not, the police may close the matter, but they must record reasons in the Station Diary (General Diary entry). The guidelines were strict: any such enquiry must be conducted by an officer above the rank of Sub-Inspector; it must be *time-bound*- ideally within 7 days (extendable to at most 15 days in rare cases) with any delay and its causes fully noted and its scope was confined to checking cognizability.¹⁸ Crucially, *Lalita Kumari* listed five non-exclusive categories where

¹² State of Haryana v. Bhajan Lal, 1992 Supp. (1) SCC 335

¹³ K. Veeraswami v. Union of India, (1991) 3 SCC 655 (India).

¹⁴ CBI v. Tapan Kumar Singh, (2003) 6 SCC 175

¹⁵ Ramesh Kumari v. State (NCT of Delhi), (2006) 2 SCC 677 (India).

¹⁶ Lalita Kumari v. Gov't of U.P., (2014) 2 SCC 1 (India).

¹⁷ Lalita Kumari v. Gov't of U.P., (2014) 2 SCC 1 (India).

¹⁸ Lalita Kumari v. Gov't of U.P., (2014) 2 SCC 1 (India).

preliminary enquiries might apply such as matrimonial issues, commercial disputes, medical negligence, corruption, and inordinate delay in complaint but emphasized that even in those, FIR registration becomes imperative if evidence of crime emerges.¹⁹

The Court also mandated accountability by warning that officers who willfully delay FIRs despite disclosable offences would be liable to disciplinary action and if a preliminary enquiry is conducted and no offence is found, the police must record brief reasons for closure and send a copy of the closure report to the informant within one week. Justice Chauhan (concurring) crystallized the ratio: “*registration of FIR is mandatory in cognizable cases, except in a limited category of cases, where a preliminary enquiry is justified*”.²⁰ *Lalita Kumari* thus reaffirmed the mandatory FIR doctrine while introducing a narrowly tailored, judge-made safety valve within strict procedural limits.

1.3. Post-Lalita Jurisprudence

In the years following *Lalita*, the courts have clarified that even the allowed enquiries are fully discretionary. In *Priyanka Srivastava v. State of U.P.*, a three-judge Bench reaffirmed that *Lalita Kumari*'s rule is unequivocal as FIR registration is the default but “instances” may require preliminary enquiry due to “genesis and novelty of crimes” citing medical negligence as an example and it restated the five illustrative categories verbatim and the 7-day limit, stressing the enquiry's narrow purpose and procedural safeguards.²¹ It also cautioned magistrates to apply mind when directing FIR registration through Section 156(3) CrPC and even suggested requiring an affidavit with such applications to curb misuse.

In *State of Telangana v. Managipet*²², dealing with disproportionate assets investigations, the Supreme Court held that if a complaint itself clearly indicates a crime, the police need not conduct any enquiry. In other words, *Lalita* did not create a *right* to an enquiry; it remained in police hands. Likewise, in *State of Karnataka v. T.N. Sudhakar Reddy*,²³ a Constitution Bench stated plainly: “*a preliminary inquiry is not mandatory in every case*”. If senior officers have a

¹⁹ *Lalita Kumari v. Gov't of U.P.*, (2014) 2 SCC 1 (India).

²⁰ *Lalita Kumari v. Gov't of U.P.*, (2014) 2 SCC 1 (India).

²¹ *Priyanka Srivastava v. State of U.P.*, (2015) 2 SCC 657 (India).

²² *State of Telangana v. Managipet*, (2019) 19 SCC 87 (India).

²³ *State of Karnataka v. T.N. Sudhakar Reddy*, 2025 INSC 229 (India).

source report that itself discloses an offence, they may skip a separate enquiry and directly lodge the FIR.

Thus, the post-*Lalita* trend is clear: preliminary enquiries are exceptional and fact-specific, not a routine step. At the same time, officials who disregard the FIR mandate when it clearly applies may be held accountable. In effect, the mandatory FIR doctrine has been reinforced: an enquiry can only delay (never deny) the obligation to file an FIR once a cognizable offence is shown on the face of it.

In sum, the Supreme Court in *Lalita Kumari* imposed a narrow and tightly controlled niche for pre-FIR enquiries limited by category, purpose, and time. Before the BNSS, therefore, the law was: no enquiry unless falling under those special circumstances, for example, medical negligence and even then, strictly short and recorded. This “judicial genesis” of preliminary enquiry provided some due process of reason-recording (Article 21’s fairness) but it left significant scope for inconsistency, as what was considered as “commercial” or “abnormal delay” was often unclear. The core legal problem remained: the CrPC itself had no explicit rule, so these enquiries were a judicial creation in a legislative vacuum.

1.4. Statutory Recognition under the BNSS, 2023

The Bharatiya Nagarik Suraksha Sanhita (BNSS, 2023) explicitly authorizes preliminary enquiries for certain offences. Under Section 173(3), when information is received about a cognizable offence punishable by more than three years and up to seven years, the officer in-charge of the police station may, *with the prior permission of an officer not below the rank of Deputy Superintendent of Police*, considering the nature and gravity of the offence may either (a) conduct a preliminary enquiry of up to 14 days to assess whether a cognizable offence is made out, or (b) proceed immediately to register the FIR and investigate if a prima facie case emerges.²⁴

Thus, the statute codifies Preliminary Enquiries as a *statutory exception* to the immediate FIR rule. The proviso expressly states that aside from this exception, FIR registration remains mandatory whenever a cognizable offence is disclosed.²⁵ These conditions- a senior officer’s

²⁴ Bharatiya Nagarik Suraksha Sanhita, 2023, § 173(3) (India).

²⁵ *Imran Pratapgarhi v. State of Gujarat*, (2025) 3 SCC 145

sanction and an absolute 14-day limit were absent under the old regime. In effect, the BNSS tries to impose structure on what used to be informal: an inquiry cannot drag on indefinitely. The DSP's written approval (paralleling CrPC §156(3)'s requirement of sanction in certain cases) adds oversight.

1.5. Shift from CrPC

The enactment of Section 173(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 marks a doctrinal shift in Indian criminal procedure. For the first time, Parliament has expressly recognized a pre-FIR enquiry in statutory form, however, only for a limited class of offences. Under CrPC, preliminary enquiry existed only as a judicial exception carved out in *Lalita Kumari*; under the BNSS, it becomes a codified procedural option.

Section 173(3) partially aligns with *Lalita Kumari* by permitting limited preliminary scrutiny before FIR registration, but it departs sharply in design. Instead of relying on illustrative categories such as corruption, matrimonial disputes, or medical negligence, the BNSS adopts a punishment-based filter. Only offences punishable with imprisonment between three and seven years qualify for preliminary enquiry. Offences punishable below three years or above seven years fall outside this regime and continue to attract mandatory FIR registration under Section 173(1). This reclassification is significant: corruption offences, which *Lalita Kumari* explicitly treated as suitable for preliminary enquiry, are often punishable with seven years or more and are therefore excluded from Section 173(3)'s scope.²⁶

The BNSS also introduces procedural safeguards absent from *Lalita Kumari*. Most notably, it imposes a statutory 14-day time limit for completing the enquiry and requires approval from a senior police officer (of DSP rank or above).²⁷ Commentators have welcomed this as an improvement in clarity, replacing *Lalita Kumari*'s flexible seven-day guideline with a firm legislative deadline.²⁸ In theory, these features enhance accountability and reduce the risk of indefinite delay.

²⁶ *Lalita Kumari v. Government of U.P.*, (2014) 2 SCC 1

²⁷ Bharatiya Nagarik Suraksha Sanhita, 2023, §173(3).

²⁸ Lexology (n.d.) *Conceptual Challenges in BNSS §173(3)*, Lexology, available at: <https://www.lexology.com/library/detail.aspx?g=f9da2de7-d32a-4d5b-8a82-ba219c331c89>

However, Section 173(3) also introduces new ambiguities. The provision allows enquiry where, “considering the nature and gravity of the offence,” no prima facie case appears to be made out. Neither “prima facie” nor “nature and gravity” is defined. In *Imran Pratapgarhi v. State of Gujarat* (2025), the Supreme Court confirmed that police may invoke Section 173(3) to make this initial assessment, but it did not clarify the evidentiary threshold required to conclude that no prima facie offence exists.²⁹ This silence potentially enlarges police discretion beyond what *Lalita Kumari* permitted, allowing FIR refusal on grounds not previously recognised.

Critics argue that Section 173(3) risks becoming a “legal cloak” for delay. While *Lalita Kumari* mandates immediate FIR registration for cognizable offences, allowing only narrow, time-bound exceptions, §173(3) permits a 14-day enquiry for offences punishable between three and seven years. This shift risks normalizing delay, enabling misuse of police discretion, and undermining complainants’ rights to timely justice. Before BNSS, postponing FIR registration outside *Lalita Kumari*’s narrow categories was arguably illegal; now, police may justify postponement as a statutory prima facie enquiry even where the offence is clearly cognizable and others defend the provision as a pragmatic compromise, noting that codification brings transparency, uniformity, and enforceable limits where earlier practice operated in a grey zone.³⁰

In *Imran Pratapgarhi v. State of Gujarat* (2025), the Court emphasized that Section 173(3) is a narrow exception: if an offence outside the 3–7 year limit is disclosed, Section 173(1) (a requires FIR registration and it made clear that §173(3) is “without prejudice” to the general FIR rule, that police *may* hold a preliminary enquiry only where the statute allows it.³¹ The Court further insisted that the DSP sanction and timeline must be strictly followed, aligning with *Lalita*’s insistence on seniority and promptness.

Similarly, *State of Karnataka v. T.N. Sudhakar Reddy* (2025) held that “a preliminary inquiry is not mandatory in every case” and If a senior officer has a detailed source report clearly disclosing an offence, he may bypass any enquiry and register an FIR immediately.³² The

²⁹ *Imran Pratapgarhi v. State of Gujarat*, (2025) 3 SCC 145

³⁰ *supra* note 27, at 8.

³¹ *Imran Pratapgarhi v. State of Gujarat*, (2025) 3 SCC 145

³² *State of Karnataka v. T.N. Sudhakar Reddy*, 2025 INSC 229

Bench essentially said that *Lalita* did not create a right to PE; if a cognizable offence is already plain, delay is unjustified. These rulings reinforce that BNSS PEs are discretionary and exceptional: they do not allow police to *avoid* FIRs when the law clearly mandates one.

In sum, Section 173(3) brings preliminary enquiry out of the shadows and into the statute book. It replaces a judge-made exception with a legislatively sanctioned procedure, adding structure and oversight. Yet its open-ended language also creates fresh tensions with the mandatory FIR rule under Section 173(1). Whether the provision strengthens procedural fairness or normalizes delay will ultimately depend on how rigorously its safeguards are enforced and how courts interpret “prima facie” scrutiny in future cases.

2. CONSTITUTIONAL IMPLICATIONS AND LEGAL SAFEGUARDS

Pre-arrest or pre-FIR enquiries, by blurring the line between information and formal investigation, raise fundamental constitutional questions. Key among these are the guarantees of personal liberty (Article 21), equality (Article 14), and protection against self-incrimination (Article 20(3)). The increasing reliance on pre-arrest and pre-FIR enquiries raises serious constitutional questions concerning personal liberty, procedural fairness, and protection against self-incrimination. While such enquiries are often justified as tools for filtering frivolous complaints and preventing unnecessary arrests, their informal and extra-statutory character exposes individuals to coercive state power without the procedural safeguards that accompany formal investigation or arrest. This section examines the constitutional implications of pre-arrest enquiries under Articles 21, 20(3), and 22 of the Constitution of India, and evaluates the adequacy of existing legal safeguards in preventing their misuse.

2.1 Article 21 – Personal Liberty

Article 21 guarantees that no person shall be deprived of their life or personal liberty except according to procedure established by law.³³ Judicial interpretation has consistently expanded the scope of this protection to include not merely physical restraint but also freedom from arbitrary and coercive state action. In *Maneka Gandhi v. Union of India*, the Supreme Court held that any procedure depriving personal liberty must be “just, fair and reasonable,” thereby importing substantive due process into Indian constitutional law.³⁴

³³ India Const. art. 21.

³⁴ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

Pre-arrest enquiries, though not formally recognised as “investigation” or “arrest”, often involve repeated summons, informal questioning, and implicit threats of coercive action. Such practices can significantly restrict an individual’s liberty, compelling compliance without the procedural guarantees attached to arrest under Sections 41 and 41A of the CrPC or their equivalents under the BNSS. The absence of formal custody does not negate the reality of coercion, particularly where individuals are subjected to prolonged questioning or reputational pressure.³⁵

In *D.K. Basu v. State of West Bengal*, the Court acknowledged the vulnerability of individuals to police abuse even prior to formal arrest and laid down detailed safeguards governing detention and interrogation.³⁶ Although these guidelines were framed in the context of custodial arrest, their underlying rationale preventing abuse of police power and protecting human dignity applies equally to pre-arrest enquiries that function as de facto restraints on liberty.

The BNSS, 2023, by statutorily recognising preliminary enquiries under Section 173(3), attempts to regulate this stage through requirements such as senior officer approval and a 14-day time limit. However, mere temporal limits do not address qualitative aspects of liberty infringement, such as psychological pressure, social stigma, and compelled participation. If preliminary enquiries become a routine mechanism for delaying FIR registration, they risk violating Article 21 by transforming procedural delay into a form of punishment without judicial oversight.³⁷

2.2. Article 20(3) – Protection Against Self-Incrimination

Article 20(3) provides that no person accused of an offence shall be compelled to be a witness against themselves. This protection extends to police questioning and applies from the moment a person becomes an “accused,” irrespective of whether formal charges have been filed.

In *Nandini Satpathy v. P.L. Dani*, the Supreme Court held that the right against self-incrimination includes the right to silence during police interrogation and applies even at the

³⁵ Kelkar, R.V. (2018) *Lectures on Criminal Procedure*, 6th ed., Eastern Book Company, pp. 146–148.

³⁶ *D.K. Basu v. State of West Bengal*, (1997) 1 SCC 416.

³⁷ Law Commission of India (2001) *177th Report on Law of Arrest*, paras 3.2–3.6, Government of India.

pre-trial stage and emphasised that coercive questioning either physical or psychological undermines constitutional guarantees.³⁸

Pre-arrest enquiries often blur the line between “informal interaction” and custodial interrogation. Individuals summoned during such enquiries may not be informed of their right to silence or their right to consult a lawyer. Statements obtained at this stage, while not formally recorded under Section 161 CrPC (or Section 180 BNSS), may still influence investigative decisions or be used indirectly to build a case.

In *Charansingh v. State of Maharashtra*, the Court observed that statements made during preliminary enquiries do not carry the same evidentiary status as statements recorded during formal investigation.³⁹ However, this distinction does not eliminate the constitutional concern, as the coercive environment itself can violate Article 20(3), even if the statements are not admissible in evidence.

The lack of explicit statutory safeguards—such as mandatory intimation of the right to silence and access to legal counsel creates a real risk that individuals may be compelled to provide incriminating information during pre-arrest enquiries.⁴⁰

2.3. Arrest Safeguards as Indirect Limits on Pre-Arrest Enquiries

While the Constitution does not expressly regulate pre-arrest enquiries, judicially developed arrest safeguards indirectly constrain their scope. In *Joginder Kumar v. State of U.P.*, the Supreme Court held that arrest must be justified by necessity and not used mechanically.⁴¹

This principle was strengthened in *Arnesh Kumar v. State of Bihar*, where the Court mandated compliance with Section 41A CrPC and discouraged unnecessary arrests in offences punishable with imprisonment up to seven years.⁴² Similarly, in *Satender Kumar Antil v. CBI*, the Court emphasised that personal liberty must not be sacrificed for procedural convenience.⁴³

³⁸ Nandini Satpathy v. P.L. Dani, (1978) 2 SCC 424.

³⁹ Charansingh v. State of Maharashtra, (2021) 5 SCC 469.

⁴⁰ Pillai, K.N. Chandrasekharan (2022) *R.V. Kelkar's Criminal Procedure*, 7th ed., Eastern Book Company, pp. 221–223.

⁴¹ Joginder Kumar v. State of U.P., (1994) 4 SCC 260.

⁴² Arnesh Kumar v. State of Bihar, (2014) 8 SCC 273.

⁴³ Satender Kumar Antil v. CBI, (2022) 10 SCC 51.

In *Siddharth v. State of Uttar Pradesh*, the Court clarified that arrest is not mandatory merely because a charge sheet has been filed.⁴⁴

These decisions reflect a constitutional ethos that prioritises liberty over mechanical enforcement. However, they also create an unintended incentive for the police to rely on pre-arrest enquiries as an alternative means of exerting control without triggering formal arrest safeguards. When arrest becomes procedurally burdensome, informal enquiries may become the preferred tool for extracting information or exerting pressure.

Thus, while arrest jurisprudence protects individuals from arbitrary custody, it does not adequately regulate the grey zone of pre-arrest interaction. Without parallel safeguards governing preliminary enquiries, the constitutional promise of liberty risks being undermined through informal policing practices.⁴⁵

2.4 Article 22 and the Right to Information

Article 22(1) guarantees that a person who is arrested shall be informed of the grounds of arrest and shall have the right to consult and be defended by a legal practitioner. Although these rights formally attach only upon arrest, their underlying purpose is to ensure transparency and accountability in the exercise of police power.

In the context of pre-arrest enquiries, individuals are often summoned without clear disclosure of the allegations against them. This lack of transparency creates informational asymmetry and heightens the risk of coercion.

In *Mihir Rajesh Shah v. State of Maharashtra* (2025), the Supreme Court held that when an arrest follows a preliminary enquiry, the findings of such enquiry must be communicated to the accused.⁴⁶ This requirement strengthens procedural fairness by enabling meaningful exercise of rights under Articles 21 and 22.

⁴⁴ *Siddharth v. State of Uttar Pradesh*, (2021) 1 SCC 676.

⁴⁵ Baxi, Upendra (1982) *The Crisis of the Indian Legal System*, p. 23-25.

⁴⁶ *Mihir Rajesh Shah v. State of Maharashtra*, (2025) INSC 1288

However, this safeguard operates only at the terminal stage of arrest and does not regulate the conduct of the enquiry itself. Without statutory obligations to disclose the basis of the enquiry, pre-arrest processes remain opaque and susceptible to abuse.

2.5. Adequacy of Existing Safeguards

The constitutional safeguards applicable to arrest and investigation were developed in response to the coercive nature of formal custody. Pre-arrest enquiries, by contrast, occupy an informal space that often escapes rigorous legal scrutiny. While judicial decisions have emphasized restraint, proportionality, and transparency, these principles have not been translated into enforceable procedural rights at the preliminary enquiry stage.

Section 173(3) of the BNSS introduces time limits and hierarchical approval for preliminary enquiries. However, it does not mandate the presence of counsel, inform individuals of their right to silence, or require disclosure of allegations. Nor does it provide remedies for abuse, such as exclusion of improperly obtained statements or departmental accountability.

From a constitutional perspective, the current framework falls short of ensuring that pre-arrest enquiries conform to the standards of fairness, reasonableness, and non-arbitrariness demanded by Articles 14 and 21.⁴⁷

Pre-arrest enquiries represent a legally ambiguous but practically powerful phase of the criminal process. While intended to prevent unnecessary FIRs and arrests, they often operate without the constitutional safeguards that protect individuals from arbitrary state action. Judicial jurisprudence under Articles 21, 20(3), and 22 highlights the importance of liberty, transparency, and protection against coercion, but these principles have not been fully operationalized in the context of preliminary enquiries.

The statutory recognition of such enquiries under the BNSS, 2023, offers an opportunity for regulatory clarity. However, unless accompanied by robust procedural safeguards—such as the right to counsel, clear disclosure of allegations, and protection against self-incrimination—pre-arrest enquiries risk becoming constitutionally suspect. Judicial vigilance will therefore remain

⁴⁷ Bhatia, Gautam (2019) *The Transformative Constitution: A Radical Biography in Nine Acts*, HarperCollins India, pp. 312–315.

essential to ensure that the balance between effective policing and personal liberty is not tilted irreversibly in favour of unchecked state discretion.

3. COMPARATIVE INSIGHTS

Comparing pre-arrest enquiry frameworks in other common law jurisdictions like the UK and US offers valuable perspectives for assessing India's evolving system, particularly with the advent of the Bharatiya Nyaya Sanhita (BNSS) as both the UK and US criminal justice systems, having historical ties to India's legal framework, provide contrasting approaches to police powers and citizen safeguards before formal arrest or charges are laid.⁴⁸

3.1. United Kingdom: Police and Criminal Evidence Act (PACE)

In the United Kingdom, the Police and Criminal Evidence Act (PACE) 1984, along with its Codes of Practice, establishes a comprehensive statutory framework governing police powers, including stop and search, detention, and interrogation.⁴⁹ PACE is considered the most significant piece of legislation related to policing in England and Wales, outlining police powers concerning individual citizens and it provides a structured approach to pre-arrest interactions, emphasizing transparency and accountability, often requiring detailed records and clear justifications for police actions.⁵⁰ The legislation dictates specific procedures for questioning, searches, and the rights of individuals in police custody, aiming to balance effective policing with individual liberties.⁵¹ While police discretion is an inherent and inevitable characteristic of policing, PACE sets clear boundaries to ensure its exercise upholds principles of procedural justice.

3.2. United States: Probable Cause and Miranda Warnings

The United States criminal procedure is deeply rooted in the Fourth, Fifth, and Sixth Amendments of its Constitution, particularly emphasizing "probable cause" for searches, seizures, and arrests.⁵² The requirement of probable cause means that police must have a reasonable belief, based on facts, that a crime has been committed or is being committed, before

⁴⁸ Halder, D. (2020) *Stop, Search, Frisk and Detain: A Comparative Analysis of Police Power Between India, UK and US*, Social Science Research Network (SSRN).

⁴⁹ Police and Criminal Evidence Act 1984, c. 60 (UK),

⁵⁰ Corteen, K. & Turner, J. (2023) *Police and Criminal Evidence Act 1984*, Policy Press eBooks

⁵¹ Radburn, M., Tallent, D., Kyprianides, A., Stott, C. & Savigar-Shaw, L. (2021) *Procedural Justice as a Reward to the Compliant: An Ethnography of Police–Citizen Interaction in Police Custody*, Policing & Society.

⁵² Harris, A. (2020) *CRM 322: Law of Criminal Procedure*, LibGuides, Saint Leo University.

they can effect an arrest or conduct a search. This standard is a critical safeguard against arbitrary police action. Furthermore, the landmark Supreme Court decision in *Miranda v. Arizona*⁵³ established the requirement for "Miranda warnings," informing individuals of their right to remain silent and their right to an attorney during custodial interrogation. This ensures that any statements made by suspects are voluntary and not coerced, directly addressing self-incrimination concerns.⁵⁴ While the US system allows for some pre-arrest investigation, any questioning that becomes custodial triggers these significant constitutional safeguards, defining the limits of informal enquiries.⁵⁵ The vast body of US criminal procedure law, focusing on Supreme Court cases and statutory rules, provides a robust framework for its criminal justice system.

3.3. Lessons for BNSS Implementation

The comparative analysis highlights that both the UK and US systems provide clearer legal parameters and stronger safeguards for pre-arrest interactions compared to the historical ambiguity in India, which the BNSS now seeks to address. The statutory clarity of PACE in the UK and the constitutional probable cause and *Miranda* requirements in the US offer models for defining the scope, duration, and procedural obligations of preliminary enquiries. As India implements Section 173(3) of the BNSS, integrating more explicit procedural safeguards, such as clear rules for summons, strict adherence to time limits, and explicit advisories regarding the right to silence during preliminary enquiries, could further strengthen constitutional protections under Articles 20(3) and 21. This could help mitigate the risk of legitimizing delays and preventing the "process as punishment" scenario that informal pre-arrest enquiries can create.

4. CRITICAL CHALLENGES AND REFORM IMPERATIVES

Despite the judicial safeguards articulated in *Lalita Kumari v. Government of Uttar Pradesh* and the statutory codification of preliminary enquiries (PEs) under Section 173(3) of the *Bharatiya Nagarik Suraksha Sanhita, 2023* (BNSS), significant practical and constitutional concerns persist. A central problem is the lack of transparency in how PEs are conducted. Many police stations fail to formally record informal enquiries or communicate outcomes to

⁵³ *Miranda v. Arizona*, 384 U.S. 436 (1966).

⁵⁴ *Miranda v. Arizona*, 384 U.S. 436 (1966).

⁵⁵ Slobogin, C. (2020) *Advanced Introduction to U.S. Criminal Procedure*, Edward Elgar Publishing.

complainants, despite the Supreme Court's direction that all information and decisions must be entered in the General Diary.⁵⁶ This opacity allows enquiries to be conducted "off the books," leaving no documentary trail for judicial or public scrutiny. Closely linked is the potential for abuse of discretion. The vague "prima facie" standard permits subjective rejection of complaints, disproportionately affecting marginalized groups such as women, minorities, and the poor.⁵⁷ Politically sensitive or inconvenient cases may be deliberately stalled, and the absence of meaningful penalties for non-compliance weakens the deterrent effect of the 14-day limit prescribed by BNSS.⁵⁸

Another major concern is the deterioration of evidence caused by delayed FIR registration. Forensic traces, digital data, and witness recollections can fade quickly, compromising the integrity of investigations. Prolonged informal enquiries may distort the chain of evidence and prejudice both prosecution and defence.⁵⁹ Repeated summonses during PEs can amount to "process as punishment," subjecting individuals to reputational harm and psychological pressure without the procedural safeguards of arrest.

Implementation of Section 173(3) also suffers from uneven enforcement across States. While some police forces comply with senior officer approval and timelines, others manipulate offence classifications to justify PEs. The absence of a mandatory national reporting mechanism makes oversight difficult. Victims, too, are adversely affected as delays in FIR registration undermine their access to justice, erode public confidence in law enforcement, and leave them uninformed about the progress of their complaints.⁶⁰ Compounding these issues is widespread lack of awareness among citizens about their rights during PEs. Unlike arrestees, persons summoned for enquiries are not formally informed of their right to silence or legal counsel, creating an informational asymmetry that facilitates coercion.⁶¹

To address these systemic flaws, a multi-pronged reform strategy is essential. First, mandatory record-keeping should be enforced through electronic enquiry logs documenting timelines, officer identities, and investigative steps. This would promote accountability and enable

⁵⁶ Lalita Kumari v. Gov't of Uttar Pradesh, (2014) 2 SCC 1.

⁵⁷ Law Commission of India (1996) *154th Report on the Code of Criminal Procedure*.

⁵⁸ Bharatiya Nagarik Suraksha Sanhita, 2023, § 173(3) (India).

⁵⁹ Ashworth, Andrew & Redmayne, Mike (2019) *The Criminal Process*, 5th ed., Oxford: Oxford University Press.

⁶⁰ Ramesh Kumari v. State (NCT of Delhi), (2006) 2 SCC 677.

⁶¹ Nandini Satpathy v. P.L. Dani, (1978) 2 SCC 424.

judicial review of PE legality.⁶² Second, audio-visual recording of all formal questioning during PEs should be introduced to prevent coercion and fabrication, aligning Indian practice with international standards on custodial safeguards.⁶³

Third, access to legal counsel must be guaranteed at the PE stage. While Section 41D CrPC allows consultation with a lawyer after arrest, a similar statutory right should extend to individuals summoned during PEs.⁶⁴ Informing suspects that participation is voluntary would strengthen compliance with Articles 20(3) and 21 of the Constitution. Fourth, the 14-day time limit should be treated as mandatory, not directory. Courts should exclude evidence obtained through unjustified delays, and departmental action should follow violations, as envisioned in *Lalita Kumari*.⁶⁵

Fifth, judicial oversight should be strengthened. Requiring police to notify magistrates when invoking Section 173(3), or when enquiries exceed a specified duration, would introduce external supervision and curb arbitrary discretion.⁶⁶ Sixth, transparency toward complainants must be ensured. Closure reports with reasons should be communicated to informants if FIRs are not registered, reinforcing accountability and public trust.⁶⁷

Finally, training and institutional guidelines are necessary. Police manuals should incorporate BNSS safeguards, and legal literacy programs should educate citizens about their rights during PEs.⁶⁸ Without such reforms, the formalization of preliminary enquiries risks normalizing procedural delay and informal coercion, undermining the constitutional promise of liberty. The guiding principle must remain that PEs are exceptional tools for screening frivolous complaints not substitutes for prompt FIR registration and judicial oversight.

5. CONCLUSION

Preliminary enquiries in Indian criminal procedure have evolved from a narrow, judge-made exception into a statutorily recognised mechanism under Section 173(3) of the Bharatiya

⁶² National Crime Records Bureau, *Crime in India Report 2023*.

⁶³ United Nations Office on Drugs and Crime (2011) *Handbook on Police Accountability, Oversight and Integrity*.

⁶⁴ Code of Criminal Procedure, 1973, § 41D (India).

⁶⁵ *Lalita Kumari v. Gov't of Uttar Pradesh*, (2014) 2 SCC 1.

⁶⁶ *Bhajan Lal v. State of Haryana*, 1992 Supp (1) SCC 335.

⁶⁷ *Mihir Rajesh Shah v. State of Maharashtra*, 2025 INSC 1288

⁶⁸ Bureau of Police Research and Development (2023) *Model Police Manual*.

Nagarik Suraksha Sanhita, 2023. While this shift seeks to bring clarity and structure to an otherwise ambiguous practice, it simultaneously raises serious constitutional and procedural concerns. Historically, the Supreme Court in *Lalita Kumari v. Government of Uttar Pradesh* reaffirmed the mandatory nature of FIR registration, permitting preliminary enquiries only in limited and exceptional circumstances, subject to strict timelines and accountability safeguards.⁶⁹ Subsequent jurisprudence consistently emphasized that such enquiries must never become a routine substitute for FIR registration.⁷⁰

The BNSS departs from this judicial framework by introducing a punishment-based threshold for preliminary enquiries, thereby altering the doctrinal foundation laid down in *Lalita Kumari*. Although the statutory 14-day time limit and senior officer approval offer a degree of procedural discipline, the provision's vague standards such as "*prima facie*" assessment and "*nature and gravity*" of the offence risk expanding police discretion without corresponding safeguards.⁷¹ This creates a real danger of institutionalising delay, allowing informal enquiries to function as a form of "process as punishment," particularly in politically sensitive or socially contentious cases.

From a constitutional perspective, pre-arrest enquiries implicate Articles 21, 20(3), and 22 by exposing individuals to coercive state power without the procedural protections attached to arrest or formal investigation. Judicial safeguards developed in cases such as *D.K. Basu*, *Joginder Kumar*, and *Arnesh Kumar* underscore that liberty cannot be compromised for administrative convenience. Yet, these protections remain largely inapplicable at the preliminary enquiry stage, creating a regulatory vacuum where informal coercion can thrive. Comparative experiences from the United Kingdom and the United States demonstrate that effective policing can coexist with robust safeguards through clear statutory limits, transparency requirements, and rights advisories. India's current framework, however, lacks equivalent procedural clarity for pre-arrest interactions.

Ultimately, while Section 173(3) of the BNSS represents an attempt to regulate preliminary enquiries, its success will depend on rigorous judicial enforcement, mandatory transparency, and the incorporation of constitutional safeguards such as the right to counsel and protection

⁶⁹ *Lalita Kumari v. Gov't of U.P.*, (2014) 2 SCC 1.

⁷⁰ *Priyanka Srivastava v. State of U.P.*, (2015) 6 SCC 287; *State of Telangana v. Managipet*, (2019) 19 SCC 87.

⁷¹ *Bharatiya Nagarik Suraksha Sanhita*, 2023, § 173(3).

against self-incrimination. Without such reforms, the codification of preliminary enquiries risks diluting the mandatory FIR regime and eroding the constitutional promise of personal liberty.

