

First Information Report(Sec .154) and Complaint (Sec. 200)

COMPLAINT	FIR
1. Complaint is defined under section 2(d) of CrPC.	1. FIR is given under Section 154 of CrPC.
2. It is an allegation which is made orally or in writing to a magistrate.	2. FIR is given to an officer in charge of a police station.
3. A complaint may relate to a cognizable offence or non-cognizable offence.	3. FIR is related to a cognizable offence.
4. A magistrate takes cognizance of an offence on a complaint made to him. But he can not do so in FIR.	4. In FIR magistrate takes cognizance on report of police officer under section 190(1)(b).
5. Complaint does not include the report of police officer.	5. The FIR of an offence may be given by anybody including police officer.

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, 1974 AIR 1936, 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.

Difference between an FIR & a Police Complaint

<i>Difference between Complaint & FIR</i>	
Complaint before Magistrate	First Information Report (FIR)
<ul style="list-style-type: none">• An allegation before the magistrate• Only an aggrieved can file• The court can take cognisance• Magistrate alone can take cognisance	<ul style="list-style-type: none">• Allegation before a police• Can be given by any person• Police officer to take cognisance & start investigation• Magistrate has no authority to take cognisance

1. The difference between a first information report and a police complaint is that an FIR relates to the cognizable offence whereas a police complaint can be filed for both non-cognizable and cognizable class of offences.
2. A complaint is to be given to a magistrate either orally or in writing, whereas the first information report is lodged at the police station nearby the place of commission of crime.
3. According to s. 2(d) Cr.P.C., a complaint is the allegation of fact which constitutes a complaint. Further, a complainant and a first informant need not be the same person.
4. Indian laws do not provide any strict format for a complaint, and thus an affidavit or a petition may also amount to a complaint in the court of law

5. The general rule is that any person having knowledge of the commission of an offence can file a complaint, even though the concerned person is not personally interested or affected by the offence, except in cases of offences relating to marriage, defamation etc.
6. When an informant approaches the police authorities relating the information about the commission of a cognizable offence it is called filing a complaint. This 'first information' in the form of a complaint when registered as prayed for by the informant u/s. 154 Cr.P.C., it constitutes 'FIR' which should on the face of it and in the light of subsequent events disclose the information within the meaning of this section.

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.[32] 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, (2014) 2 SCC 1 case, has held that the Police must register FIR where the complaint discloses a cognizable offence.

Conclusion

Hence, the FIR is a formal registration of a cognizable offence (in cognizable offences police can arrest without any warrant), in writing, either by a victim, an eyewitness or even by the accused himself if he confesses his offence. It is usually done by the concerned police station in whose jurisdiction the offence was committed but can be done at other places in different circumstances and then transferred back to the concerned police station. It bears a unique number. A criminal complaint is technically a complaint before a judicial magistrate, in writing, regarding a non cognizable offence for which an FIR cannot be written technically. For example, criminal defamation u/s 499 IPC. A criminal complaint is the correct procedure. Only court has power to take cognizance and issue arrest warrants, if needed.

Also, it is quite possible that a police complaint can also be converted into FIR, if the investigation proves to be a serious matter.

IN THE COURT OF JUDICIAL MAGISTRATE

COMPLAINT NO.OF 2020

U/S 12 OF DOMESTIC VIOLENCE ACT

P/S

IN THE MATTER OF :-

Smt. X W/o Late Sh. Y

Complainant R/o.....

Versus

Sh. Z S/o

Respondent R/o

COMPLAINT UNDER SECTION 12 OF THE PROTECTION OF WOMEN FROM

DOMESTIC VIOLENCE ACT, 2005

Sir,

It is most respectfully submitted as under:-

1. That the Respondent is the father- in- law of the Complainant who is harassing and torturing the Petitioner by illegal act of violence in order to throw her out of the matrimonial home.
2. That the Petitioner was married to Late Sh. Y onas per Hindu rites and ceremonies and thereafter started living in the matrimonial home as a joint family along with the Respondent and that out of the wedlock following two children were born who are in the care and custody of the complainant. The husband of the complainant died ondue to illness

S.No.	Name of Children	Relation	Age	Status
1	Master A	Son	8	Studying in class IV
2	Baby B	Daughter	5	Studying in class I

3. That before his death Sh. Y engaged in the manufacturing and trading of Auto parts and was having factory at rented accommodation atand was running as sole proprietor by the name and style of M/s..... and was also running a shop on ground floor.
4. That after the death of the husband of the Complainant on ...the Respondent has misappropriated the machines, tools raw materials etc. lying in the factory of the husband of the complainant and has also trespassed into the shop, belonging to husband of the complainant.
5. That the shop of the husband and Complainant has been taken over by the Respondent who doesn't allow the complainant to enter the same and to run the same.
6. That the Respondent is economically harassing the complainant as he has taken over the shop and doesn't pay any amount to the complainant who has no money and has no earnings at all and is dependent upon the shop of her husband for maintenance
7. That not only this, the Respondent maltreats the complainant in one way or the other and abuses her in filthy language and want her to vacate the second floor of the property so that they may trespass in to the same.
8. That the Respondent threatens the Complainant with the dire consequences on not vacating the second floor of the property.
9. That hence Complainant is left with no other alternative but to file the instant complaint under Section 12 of Protection of Women from Domestic Violence Act as complainant.
10. That the complainant has domestic relationship with the Respondent as Respondent was living with the complainant before the death of her husband.
11. That the deeds and misdeeds of the Respondent are affecting the health and safety of the complainant as well as her two children as after the death of her, the Respondent wants the children to stop going to the school and be sent to an orphanage.
12. That the complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 is being filed as such by the aggrieved person.
13. That it is prayed that the Hon'ble court may take cognizance of the complaint and pass all/ any of the orders, as deemed necessary in the circumstances of the case.
14. Orders prayed for are:
 - I. Protection Order under Section 18 directing Respondent to stay away from Complainant and not to interfere in her possession of the ground floor, second floor of the property in any manner whatsoever
 - II. Residence Order under Section 19 directing the Respondent to restrain from dispossessing the Complainant from the second and the third floor of property no. (specifically shown in red in site plan enclosed) and to

restraint from interfering in the possession of the Complainant on the ground floor of the property including the shop in property no.

III. Monetary Relief under Section 20 directing the Respondent to pay the following expenses as monetary relief

- a. Food, clothes, medications and other basic necessities- Rs 15000 p.m.
- b. School fees and related expenses – Rs 10000 p.m.
amounting to total of Rs 25,000 p.m.

IV. Compensation under Section 22 for causing mental agony and physical suffering by the complainant as deemed fit by this Hon'ble Court.

PRAYER

It is, therefore, most respectfully, prayed that this Hon'ble Court be pleased to grant the relief(s) claimed herein and pass such orders as this Hon'ble Court may deem fit and proper under the given facts and circumstances of the case for protecting the Complainant from domestic violence.

Complainant

Through

Advocate

VERIFICATION

Verified at University Road Udaipur on this day ofthat the contents of the paras 1 to of the above complaint are true and correct to my knowledge and nothing material has been concealed there from .

Complainant

- *To be accompanied by an affidavit*

