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A Right the Statute Still Refuses to Write Down

 **THE HINDU**

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POLITY**GS2**

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 The Hindu

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GS2



INTERVIEW ANGLE

"Parliament rewrote the entire criminal procedure code in 2023 and still did not give an accused a statutory right to see the FIR during investigation, leaving it to case law. Was that an oversight, a deliberate preservation of police discretion, or deference to a settled judicial scheme?"

Source: [Original editorial ↗](#)

The Hindu

 Every fact web-verified against primary sources

THE LIFT LINE

WHY THIS EDITORIAL MATTERS FOR YOUR EXAM

This is the sharpest available example of a **judge-made procedural right**, a GS2 staple, with every element examiners reward: exact section numbers old and new, a two-court **doctrinal** chain, Article 21 anchoring, and an **implementation gap with a named, checkable absence of data**. Today's companion article carries the case detail; this editorial argues the structural point.

BACKGROUND AND CONTEXT

The occasion. The Supreme Court, in late August 2026, directed the Ghaziabad Police to supply journalist **Abhishek Upadhyay** the FIR in a road-rage case he calls retaliation for his reporting, with a compliance report due in early September, protection from coercive action, and liberty to approach the Allahabad High Court. His CCTV grievance was recorded, not ordered.

The statutory asymmetry.

PROVISION	WHO IT SERVES	WHEN
BNSS s.173(2)	Informant or victim: FIR copy “forthwith, free of cost”	At registration
BNSS s.230 (old CrPC s.207)	Accused: FIR and prosecution documents, within 14 days of appearance	Only after the chargesheet

Between registration and chargesheet, where anticipatory bail and quashing live, **the code is silent about the accused**. The BNSS even improved Section 230 for victims, free copies, electronic supply, while leaving the accused’s gap exactly where the CrPC had it.

THE ANALYSIS

The edifice the judges built, brick by brick.

2010, Delhi. *Court on its Own Motion through Ajay Chaudhary*, Chief Justice **Dipak Misra** and Justice Manmohan: upload FIRs within **24 hours**; withholding only by an officer of **DCP** rank, in writing, communicated to the Area Magistrate.

2014, Himachal. *Rama Nand Rathore*, Justice Tarlok Singh Chauhan: the doctrinal key. **The FIR is a public document under Section 74 of the Indian Evidence Act, 1872**, and the accused should have it “at the earliest possible stage”.

2016, the Supreme Court. *Youth Bar Association of India*, **(2016) 9 SCC 473**, a **two-judge Bench**, Justices **Dipak Misra and C. Nagappan**, and the recurrence of Misra is the human detail worth noticing: **the doctrine travelled with the judge**. The directions: **entitlement earlier than the Section 207 stage**; upload in **24 hours**, extendable to **48**, an absolute ceiling of **72 only for geographical connectivity**; sensitive categories, **sexual offences, POCSO 2012, insurgency and terrorism, “illustrative and not exhaustive”**; withholding not below **DySP**; on refusal, a **three-officer committee** under the SP deciding **within three days**; a **magistrate’s certified copy within three days** as fallback; effective from **November 15, 2016**. Anchor: **Article 21 and Article 22(1)**, quoting *D. K. Basu*: where liberty is at stake, the person “should have the information so that he can take necessary steps to protect his liberty.”

The 2023 silence. Parliament drafted the BNSS with this entire scheme in the law reports before it. **It codified none of it**. That is not drift; a fresh code is a decision about everything it omits.

The measurement void, which is Bhaumik’s quiet scoop. CCTNS, the MHA’s Crime and Criminal Tracking Network and Systems, running since 2009, connects **over 17,700 police stations** by mid-2026 counts given to Parliament. Whether FIRs actually go up within 24 hours is another matter: **no CAG performance audit, no parliamentary committee report, no ministerial reply quantifies compliance**, and the station count itself moved *down* between two 2026 replies, a reporting *artefact* that

shows how soft the numbers are. Advocate **Nipun Saxena**'s charge of routine non-compliance stands un rebutted because nothing official exists to rebut or confirm it. **A ten-year-old Supreme Court direction operates without one published compliance statistic.**

Why it matters in flesh. Upadhyay's account: a police page carrying **neither the sections invoked nor the alleged offence**, then an unrelated older FIR. Without the document, quashing and anticipatory bail are letters to an unknown address. As Saxena puts it, pre-trial remedies "cannot be effectively pursued" without the FIR; making an accused wait until charges are framed "would undermine the right to a fair trial and the principles of natural justice."

DATA AND INSTITUTIONS VAULT

PRELIMS-GRADE FACTS:

BNSS Section 173(2) gives the FIR forthwith and free of cost to the informant or victim, not the accused.

BNSS Section 230, successor to CrPC Section 207, reaches the accused only within 14 days after appearance.

Court on its Own Motion through Ajay Chaudhary, Delhi HC, December 6, 2010, created the 24-hour upload rule.

Rama Nand Rathore v State of HP (2014) held the FIR a public document under Section 74 of the Evidence Act, 1872.

Youth Bar Association of India v Union of India, (2016) 9 SCC 473, was decided on September 7, 2016.

That Bench was two judges, Dipak Misra and C. Nagappan; it is often wrongly described as three.

Upload timelines: 24 hours, extendable to 48, a 72-hour ceiling only for geographical connectivity.

Sensitive categories, sexual offences, POCSO 2012 and terrorism, are illustrative and not exhaustive.

Withholding requires an officer not below DySP; a three-officer committee must decide appeals in three days.

The right is anchored in Article 21 and Article 22(1), citing D. K. Basu.

CCTNS, run by the MHA since 2009, connected over 17,700 police stations by mid-2026.

No official audit or reply measures compliance with the 24-hour FIR upload direction.

*Two errors circulate. Youth Bar Association was a **two-judge** Bench, not three. And the Supreme Court's August 2026 order in Upadhyay's case directed supply of the **FIR only**; the CCTV-destruction grievance was **recorded, not made a direction**. Precision on both is cheap and visible to an examiner.*

THE DEBATE

Codify it. Rights dependent on case law are rights rationed by legal literacy; the police face no costed consequence for ignoring a direction no one measures; and Parliament's 2023 silence, left standing, reads as ratification of the gap.

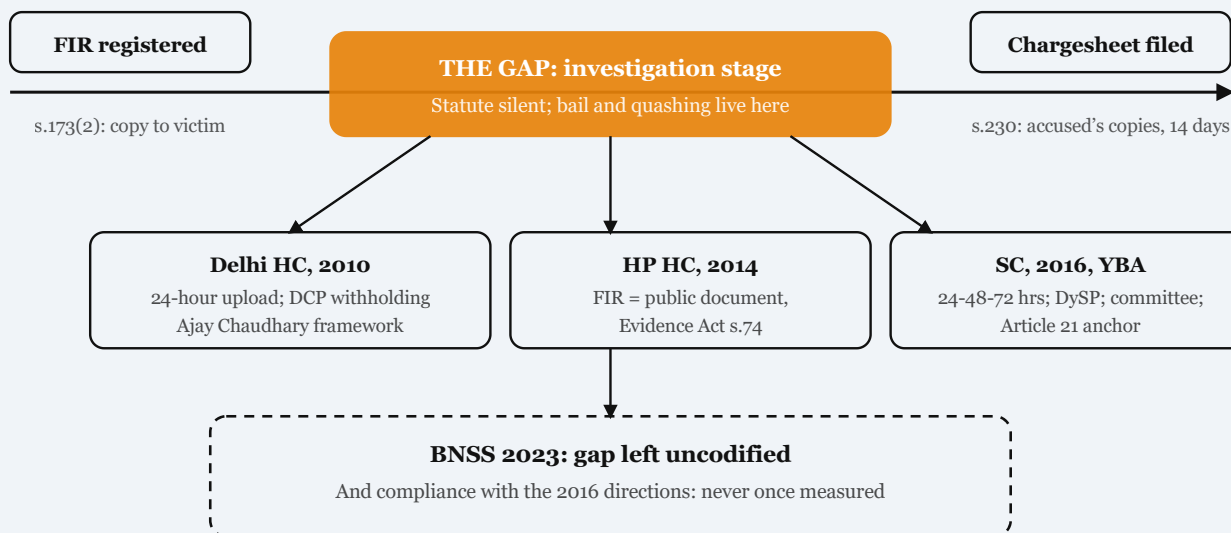
Leave it judicial. The scheme works when invoked, as this very case shows; the sensitive-offence exemption needs discretion a statute would calcify; and a codifying Parliament might narrow what the courts built, trading a generous judicial right for a stingy statutory one.

The stronger position, argued honestly. Codification with the *Youth Bar Association* text as floor, plus a statutory duty to **publish CCTNS upload-compliance data**, answers both sides: the right survives changes of bench, and the discretion survives inside a measurable frame. The real opponent of codification is not doctrine but the convenience of the unmeasured.

HOW TO THINK ABOUT THIS

When you meet any judge-made right, run this four-question audit: **Is it anchored in a constitutional article** (here, 21 and 22(1))? **Did the legislature have a chance to codify it and decline** (2023)? **Is compliance measured** (no)? **Who bears the cost of non-compliance** (the accused, never the police)? Those four answers, in that order, are a complete Mains evaluation of this topic, and the template transfers to every other direction-based right, from *D.K. Basu* custody safeguards to *Vishaka's* decade before a statute.

DIAGRAM-IN-WORDS



The orange gap is where liberty is decided. Everything protecting the accused there hangs from the three boxes below it, and the dashed box is Parliament declining to catch them.

TAKEAWAY BOX

A right that lives in the law reports and dies in the thana is not yet a right.

s.173(2) serves informant and victim; s.230 is old s.207, fourteen days post-appearance; Ajay Chaudhary (Delhi HC, 2010), Rathore (HP, 2014, FIR as public document under Evidence Act s.74), Youth Bar Association ((2016) 9 SCC 473, two judges, 24-48-72 hours, DySP, three-officer committee, three-day magistrate fallback, Article 21 and 22(1) via D.K. Basu); CCTNS under MHA since 2009, 17,700+ stations, zero published upload-compliance data.

Run the four-question audit: constitutional anchor, legislative opportunity declined, compliance unmeasured, costs on the accused. Then argue codification with the YBA scheme as statutory floor plus mandatory CCTNS compliance publication.

If you headed a district police force tomorrow, what would it take to make the 24-hour rule real in your stations, and what would you publish to prove it?

Source: A Right the Statute Still Refuses to Write Down — Ujiyari.com | Free UPSC & State PCS Editorial Analysis

• KEY ARGUMENTS AT A GLANCE

Writing in *The Hindu*, Aaratrika Bhaumik uses the Supreme Court's order in journalist Abhishek Upadhyay's case to expose a structural oddity: the right of an accused to see the FIR before the chargesheet stage exists nowhere in the BNSS, a code drafted fresh in 2023, and rests entirely on a judicial scheme built in 2010 and 2016, which functions, where it functions, on Article 21 and unenforced upload directions.



SUPPORTING

- The statutory text is one-sided by design: BNSS Section 173(2) gives the FIR forthwith and free to the informant or victim, and Section 230, the successor of CrPC 207, reaches the accused only after a chargesheet, precisely when pre-trial remedies like anticipatory bail and quashing have lost their moment.
- The judicial scheme is complete in itself: the Delhi High Court's Ajay Chaudhary framework of 2010 built the 24-hour upload rule and DCP-level withholding, Rama Nand Rathore (2014) declared the FIR a public document under Section 74 of the Evidence Act, and Youth Bar Association (2016) nationalised the package with 24-48-72 hour timelines, DySP-level withholding, a three-officer committee and a magistrate fallback, all anchored in Article 21.
- The compliance record is the scandal hiding in the explainer: CCTNS connects over 17,700 police stations, yet no CAG audit, committee report or ministerial reply measures whether FIRs are actually uploaded within 24 hours, so a decade-old direction operates without a single published compliance statistic.



COUNTER

The counter-view defends the status quo: judicial directions have proved adaptable across sensitive-offence categories in a way a rigid statutory clause might not, the sensitive-case exemption requires case-by-case discretion that legislation would freeze, and codification could invite Parliament to write the right narrower than the courts built it.



WAY FORWARD

Bhaumik's material points one way: codify the Youth Bar Association scheme into the BNSS with its timelines and safeguards intact, mandate publication of upload-compliance statistics through CCTNS, and let the sensitive-offence exemption remain discretionary within the

statutory frame, so that a liberty protection stops depending on whether a particular accused can reach the Supreme Court.


MAINS ANSWER FRAMEWORK
QUESTION

The accused's right of early access to the FIR rests on judicial directions rather than statute. Trace this architecture from the Delhi High Court (2010) to Youth Bar Association (2016), evaluate its compliance record, and argue for or against codification in the BNSS. (250 words)

INTRODUCTION

When the Supreme Court directed the Ghaziabad Police in late August 2026 to give journalist Abhishek Upadhyay a copy of the FIR against him, it enforced a right that appears in no statute. Aaratrika Bhaumik's explainer in The Hindu maps that oddity: India rewrote its criminal procedure code in 2023 and left the accused's access to the FIR where the judges had put it.

BODY

The statutory scheme is deliberately asymmetric. BNSS Section 173(2) entitles the informant or victim to a copy of the FIR forthwith and free of cost; the accused is absent from the provision.

Section 230, corresponding to the old Section 207 CrPC, supplies the accused with the FIR and prosecution documents within fourteen days of appearance, but only after the chargesheet, which is after the investigation, which is after the stage at which anticipatory bail or quashing under Section 528 could have protected liberty. Into that gap the courts built a complete edifice.

The Delhi High Court in Court on its Own Motion through Ajay Chaudhary (2010), authored by Chief Justice Dipak Misra, directed FIR uploads within 24 hours, withholding only by a DCP's written, reasoned order. The Himachal Pradesh High Court in Rama Nand Rathore (2014) supplied the doctrinal footing, the FIR is a public document under Section 74 of the Evidence Act, and its author is entitled to it at the earliest possible stage.

Youth Bar Association of India (2016), a two-judge Bench of Justices Dipak Misra and C. Nagappan, nationalised the scheme: an accused is entitled to the FIR earlier than the Section 207 stage; uploads within 24 hours, extendable to 48, to a maximum of 72 only for geographical connectivity; sensitive categories, sexual offences, POCSO, terrorism, illustrative and not exhaustive; withholding by an officer not below DySP; appeal to a three-officer committee constituted by the SP, deciding in three days; a magistrate's certified copy within three days as fallback; the whole grounded in Articles 21 and 22(1) via D.K. Basu. Two facts complete the picture.

Parliament, enacting the BNSS in 2023 with the whole scheme before it, codified none of it. And compliance is unmeasured: CCTNS reaches over 17,700 stations, yet no audit, parliamentary report or ministerial reply quantifies whether the 24-hour rule is honoured, a silence advocate Nipun Saxena's complaint of routine non-compliance fills only anecdotally.

CONCLUSION

A right that exists because Dipak Misra sat in two courts six years apart, and persists because nobody measures its violation, is a right on judicial life support. The case for codification is not that judges built it

badly, they built it well, but that a liberty protection should not require the accused to know case law the police can ignore without consequence.

The BNSS's silence was a choice; the next amendment can be a better one.

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