

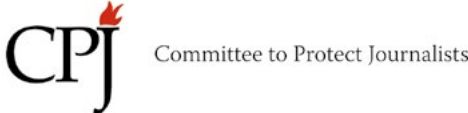


KNOW YOUR RIGHTS GUIDE FOR JOURNALISTS IN INDIA

Television journalists report from the premises of India's Parliament in New Delhi February 13, 2014. REUTERS/Adnan Abidi



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A journalist wears chain and lock around his mouth during a protest against the assault on journalists by a company's private security guards, in Mumbai, India, November 8, 2016. REUTERS/Danish Siddiqui

INTRODUCTION

Since 2015, the Committee to Protect Journalists (CPJ) has observed and tracked data to document the arrests and cases lodged against journalists in India under various legislations. Some of these include the Indian Penal Code 1860, Information Technology Act, 2000 and the Unlawful Activities (Prevention) Act, 1967. CPJ has further documented cases being lodged against journalists while reporting on the COVID-19 pandemic under the Epidemic Diseases Act, 1897. This Guide is envisioned as a resource for journalists, which summarises their rights while reporting news, in light of their role as an essential service and an important pillar of freedom of speech. It is also meant to guide journalists on penal laws that could be used against them for arrest, lawsuits or online harassment.

CPJ is grateful to lawyers from Shardul Amarchand Mangaldas & Co. for their pro bono legal support to produce this guide and to TrustLaw, the legal pro bono service of the Thomson Reuters Foundation, for facilitating the pro bono connection and supporting its design. It is intended to provide user-friendly, practical guidance for journalists and newsrooms seeking to understand their rights and remedies in India.



Journalists use the internet as they work inside a government-run media centre in Srinagar January 10, 2020. REUTERS/Danish Ismail/File Photo

TABLE OF CONTENTS

A BRIEF OVERVIEW	4
CHAPTER I: Rights of Journalists – Fundamental Concepts of Free Speech	8
CHAPTER II: Getting Booked under Law	9
CHAPTER III: Getting the Right Recourse	12
CHAPTER IV: Getting SLAPPED with Suits	15
CHAPTER V: Combatting Online Abuse	17
CHAPTER VI: COVID-19 Reporting	21



People hold placards and candles during a vigil for Gauri Lankesh, a senior Indian journalist who according to police was shot dead outside her home on Tuesday by unidentified assailants in southern city of Bengaluru, in New Delhi, India, September 6, 2017. REUTERS/Adnan Abidi

A BRIEF OVERVIEW

This Guide aims to equip journalists with a working understanding of the rights, remedies, and protection measures available under Indian laws. Here are key takeaways for you to remember:

WHAT ARE YOUR RIGHTS AS A JOURNALIST IN INDIA

- The right to free speech is a fundamental right available to all citizens of India. This includes the freedom of press, freedom of publication, circulation, and rights against pre-censorship.
- This means that you can voice criticism of the Government or the country.
- However, this freedom is not unlimited, and your speech may be restricted if it disrupts public order, incites the commission of an offence, or threatens national security.

FACING CRIMINAL ACTION AND OBTAINING REDRESS

WHERE TO START

- Check whether a police complaint has been filed against you.
- Identify which law is being used to take criminal action against you.
- Commonly used laws to implicate journalists include the Indian Penal Code, 1860 for defamation, outraging religious feelings, sedition, criminal conspiracy, public nuisance or instigating riots; Contempt of Courts Act, 1881, Information Technology Act, 2000, Unlawful Activities Prevention Act, 1967.
- Know which crimes you are being charged with (that is, which law is being used against you such as the Indian Penal Code, etc.), and request access to the complaint against you.
- Ask your lawyer to help you get the complaint quashed (Refer to Chapter III for more details).

YOUR RIGHTS ON ARREST

- Check if there is a warrant to arrest you and search or seizure of any belongings or articles through a raid- this includes access to electronic devices. Consult your lawyer if you are being compelled to disclose any such evidence.
- At the time of arrest, the police must inform you of the legal provisions of the arrest and your right to bail. A warrant is required for non-cognizable offences which are usually bailable, while it is not required for cognizable offences which are non-bailable (refer to Schedule I of the Code of Criminal Procedure).
- If arrested, you can seek bail and inform your friends and family.
- It is your fundamental right to appoint a lawyer of your choice and have him/her present during your interrogation.
- In case you do not have access to a lawyer, you may avail the free legal aid provided by respective Legal Services Authorities at the national, state or district level.
- You have the right to remain silent during an interrogation if you believe that answering a question may incriminate you.
- While making an arrest, the police officer must prepare a “memorandum of arrest” that is countersigned by you and a relative/neighbour of yours.
- Further, the police officer must provide details of your whereabouts to a person nominated by you and record the same.
- Women can only be arrested by male officers during the day; a woman police officer must be present if you are being arrested before sunrise or after sunset.
- You can seek bail in anticipation of your arrest, even if a complaint has not been filed against you.

RESPONDING TO A FIRST INFORMATION REPORT AND HOW TO GET IT QUASHED

- Quashing means to simply have the FIR nullified, struck out or rejected.
- Ask your lawyer to help file a petition seeking the quashing of the FIR filed against you.
- Courts quash FIRs that appear to have been filed without any real offence being made out, simply to trouble and defame the accused.
- Through a lawyer, you can seek to have the case against you struck out based on the FIR being filed in bad faith or for a wrongful intent. (Read more in Chapter III).

WHAT TO DO IF YOU ARE DETAINED

- If you have been arrested without a warrant, you should be presented before a judicial magistrate within 24 hours of arrest.

What if you are detained for longer than 24 hours?

- Your lawyer can hold the police accountable if you are arrested by the police and have not been presented before a magistrate within the stipulated period of 24 hours, or if you are arrested during a weekend or if the records of the police have been altered in any way that leads to a wrongful detention.

- If you are not presented before a magistrate within 24 hours of arrest, your lawyer can file a petition for a writ of habeas corpus. This means a petition requesting the court to order the police to produce the arrested person before the court.
- Such a petition can be filed directly before the High Court or the Supreme Court.
- Courts can give such order if a person has been kept in police custody for more than 24 hours without being presented before a magistrate, or arrested without committing any offence, or has been arrested with an ill intention.

The courts can question the grounds for arrest, and if it feels that no crime is made out against the arrested person, it can order his/her release.

OTHER TIPS AND RIGHTS TO BE AWARE OF

- You can seek medical examination from the court if you have faced violence in police custody.
- For bailable offences, your lawyer can file a bail application on your behalf directly with the police, without approaching the court.
- Do not refuse to share your name and address with a police officer when asked as this can be a ground for arrest. However, you cannot be detained on this ground for more than 24 hours without being presented before a magistrate.
- While reporting on any event relating to the police or interacting with the police, it is important to remember that obstruction of a police officer in the execution of their duty is a ground for arrest without warrant. This can be interpreted widely to include any non-cooperation with the police. This means if a police officer serves you a notice of appearance for interrogation, it is advisable to comply (with your lawyer present). Magistrates tend to be more inclined to grant bail if you cooperate with the police.

A television journalist reports news from the premises of the Supreme Court as it rains in New Delhi, India, July 29, 2015.
REUTERS/Anindito Mukherjee



WHAT TO DO IF YOU ARE GETTING SUED

Identify grounds for a suit

- A civil suit is most likely for civil defamation.
- A criminal case for criminal defamation- which involves an FIR and arrest.
- Get a lawyer and consider available defences (such as those against claims of defamation). In case you cannot afford a lawyer, you can consider seeking free legal assistance (Please refer to Chapter III of the Guide for more on this).

Types of civil suits

- Civil suits may cover cases of civil defamation, libel and/or injunctions restraining publication of your work.
- Often the plaintiff will want you to compensate for damages, withdraw the published work, issue a public apology, issue corrective statements or be punished for criminal defamation.
- If your assertion is truthful and made in the public interest, you are protected by the law.
- You need to discuss with your lawyer on the best method to respond.

HOW TO DEAL WITH ONLINE ABUSE

- The online abuse you could find yourself being subjected to includes threats, intimidation, cyberstalking, doxing, impersonation, trolling, cyber theft, revenge porn, defamation and spamming.
- It is the duty of the police to record your complaint and in case they refuse to do so, you can submit a written complaint by post to the Superintendent of Police.
- Use the TRFilter, which is one tool organisations can use to enhance their online safety.
- Read more in Chapter V.

HOW TO REPORT ABOUT THE COVID-19 PANDEMIC

- Rely on authentic and verified sources while reporting on the pandemic.
- Be mindful of state-specific laws which you may have to adhere to and obtain prior permission from local authorities to report on the pandemic.
- Be aware of international guidelines that have been established for reporting on COVID-19.
- Include verified sources in your reports on the pandemic.
- Beware of spreading fake news as this could lead to an arrest based on the action it instigates namely, defamation, slander, libel, causing a riot and/or threatens public safety.

Journalists hold candles and placards during a candlelight vigil against police brutalities and attacks on press freedom in Mumbai, India December 26, 2019. REUTERS/Francis Mascarenhas

CHAPTER I: RIGHTS OF JOURNALISTS

FUNDAMENTAL CONCEPTS OF FREE SPEECH

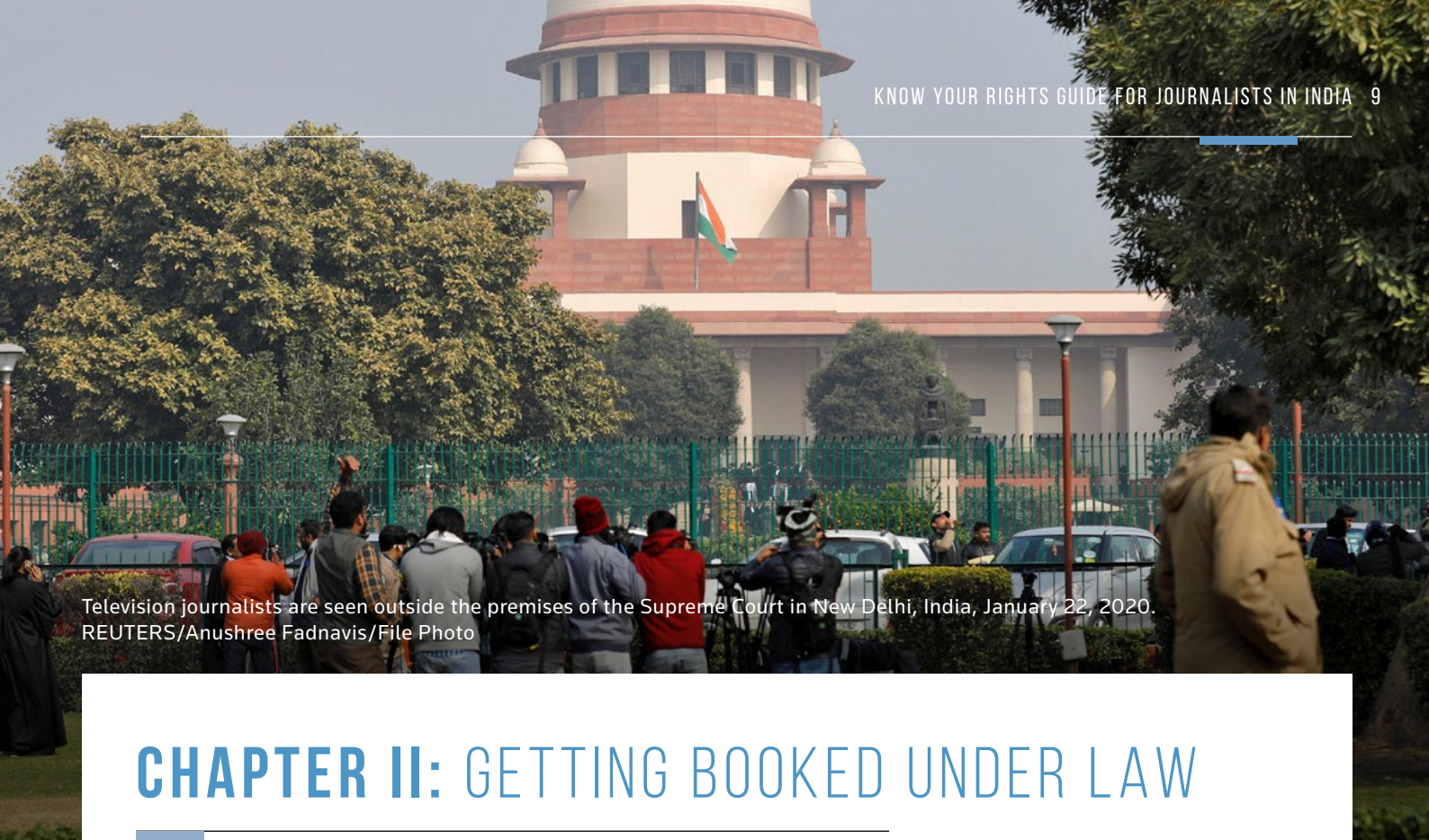
The Constitution of India guarantees the fundamental right to free speech under Article 19(1), which has been interpreted by the Supreme Court of India in *Indian Express Newspapers v. Union of India* to specifically include freedom of press. The Supreme Court has held that there cannot be any interference with the freedom of press in the name of public interest. Further, the court has also struck down limitations of publishing space in newspapers and other indirect means of exercising control over press freedom as unconstitutional. As a journalist, it is important for you to understand the freedoms you and your organisation are entitled to, under the Indian Constitution.

Freedom of speech includes freedom of publication, freedom of circulation and freedom against pre-censorship. Courts have struck down: page number and size control of newspapers, pre-approval requirements for certain kinds of news content, and limitations on advertising or commercial speech in newspapers.

The right to impart and receive information has also been held to be a critical aspect of right to free speech.

It is also important to bear in mind that these freedoms are not unrestrained, and may be restricted only to a “reasonable” extent on very limited grounds such as public order, national security, incitement to the commission of an offence, etc., as provided under Article 19(2). The “reasonableness” of such restrictions is determined by the judiciary on an examination of the facts of a given case and in light of judicial precedents that may be applicable to such facts. Some of the principles of free speech upheld by courts in this regard, which are relevant to journalists are as follows:

- Criticism of government policies constitutes a part of freedom of speech;
- Bad publicity about the country does not constitute a threat to sovereignty;
- The speech in question being restricted must be the proximate cause of the disruption to public order or incitement to offence on which ground it is being restricted, not a remote cause; and
- Constitutionally guaranteed freedoms can only be restricted when there is an imminent danger of disturbance of law, or of incitement to violence.



Television journalists are seen outside the premises of the Supreme Court in New Delhi, India, January 22, 2020. REUTERS/Anushree Fadnavis/File Photo

CHAPTER II: GETTING BOOKED UNDER LAW

In India, there are a wide variety of laws which have been used for potentially targeting journalists, including laws which arguably are intended for purposes other than regulation of journalism (such as defamation laws). It is therefore important for you to understand what crimes you are being charged with, so that you can seek appropriate recourse and remedy even if the accusations against you seem far-fetched under any given law.

The Indian Penal Code, 1860 (“IPC”) is the primary criminal law statute in India. Most cases against journalists are filed under various provisions of the IPC. The case studies in this chapter highlight instances where the most common provisions of the IPC have been invoked to penalize journalists.

<p>Criminal Defamation (Section 499) Penalty for injury caused to a person’s reputation.</p>	<p>The Home Minister Amit Shah’s son, Jay Shah, accused the editors and reporter of <i>The Wire</i>, an online news publication, of defamation for publishing an article alleging that he had made business gains unfairly. <i>The Wire</i> chose to withdraw its petition to quash the defamation case, and instead took the opportunity to justify the statements made in the article during trial.</p>
<p>Disobeying Public Servant’s Order (Section 188) Disobeying any public authorities’ orders is a punishable offence, if such disobedience can result in causing or risking annoyance, injury obstructing work, danger to health and safety or riot.</p>	<p>Om Sharma, a journalist with Hindi daily <i>Divya Himachal</i> in Himachal Pradesh, was accused of disobeying order of public servant amongst three other charges. He was accused after reporting on a roadside protest by migrant workers unable to afford food because of the COVID-19 lockdown. Three investigations were opened against him in April 2020 during the lockdown.</p>
<p>Obscenity (Section 292) Selling, exhibiting, distributing, etc. any visual, pictorial, or verbal representations or depictions which are likely to cause depravation or corruption in the mind of the viewers is a punishable offence.</p>	<p>In 2016, a journalist in Bastar was accused and arrested for obscenity, when he criticised police officers as being afraid of journalists’ freedoms on a WhatsApp group. The journalist was granted bail by the High Court of Chhattisgarh in that year.</p>

<p>Outraging religious feelings (Section 295A) Deliberately outraging the religious sentiments of any community by insulting the religious beliefs of that community through any written or spoken statements or other representation.</p>	<p>Journalist Siddique Kappan and others with him were arrested under the provisions of promoting communal enmity on grounds of religion, and outraging religious feelings, when they travelled to Hathras to report the aftermath of the alleged gang rape and death of a Dalit woman in 2020. Citing his right to free expression, the Supreme Court of India granted him bail, 23 months after his arrest in 2022.</p>
<p>Sedition (Section 124A) Making any spoken or written statements that can invoke feelings of hatred or contempt or disaffection towards the Indian state and government.</p>	<p>A police complaint was filed against senior journalist Vinod Dua by a Bharatiya Janata Party leader, alleging the news reports by him criticising the Indian government’s handling of the COVID crisis could instigate violence against the government.</p> <p>The Supreme Court of India quashed the case and held that “even brutal criticism of the Government would be within a journalist’s right to free speech.”</p>
<p>Statements conducting public mischief (Section 505) It is a crime to make or publish or circulate any statements or rumours which can incite</p> <ul style="list-style-type: none"> • a member of the armed forces to engage in mutiny; or • fear or alarm in the public and thus offence against the state; or • any class or community to commit a crime against another class or community; or • hatred or enmity between communities on religions, caste, and other grounds. 	<p>Freelance journalist Prashant Kanojia was arrested by the Uttar Pradesh police for a Twitter post about a woman claiming to be Chief Minister Yogi Adityanath’s lover. A police complaint was lodged against him on the grounds that he was spreading rumours and his post was “obscene.”</p> <p>While the Supreme Court of India ordered that he be released on bail, it warned that the order should not be construed as an approval of his Twitter post.</p>

Case of Vishweshwar Bhat

While the above table discusses commonly used provisions for criminal action against journalists, this case illustrates how unlikely provisions of the IPC can also be used to prosecute journalists.

A police complaint was filed against Vishweshwar Bhat, the publisher of a Kannada daily, for publishing a report that claimed Nikhil Kumaraswamy, the son of Chief Minister H.D. Kumaraswamy, had gotten into a drunken altercation with his grandfather, former prime minister H.D. Deve Gowda. Bhat was not only charged with defamation, but also with forgery and cheating, which are economic offences.

With the above illustration, bear in mind that certain other provisions of the IPC may be used against journalists too.

Criminal conspiracy (Section 120 B)

This offence relates to two or more persons agreeing to commit an illegal act or a legal act by illegal means. For instance, journalist Siddique Kappan has also been accused of participating in a larger criminal conspiracy with fellow journalists for raising funds for terrorist activities.

Endangering life or personal safety of others (Section 336)

Engaging in rash or negligent acts that could endanger the life or safety of others is also a punishable offence. This provision was used against journalists reporting on COVID-19 related news.

Negligent act likely to spread infection of a dangerous disease (Section 269)

Committing any act negligently or illegally, with the knowledge that such an act could result in the spread of infection or dangerous disease, is another provision that is being invoked during the pandemic to implicate journalists.

Public nuisance (Section 268)

Any act could amount to public nuisance injury, danger, or annoyance to the public or the people or in the exercise of any public rights.

Voluntarily obstructing public servant in discharge of his functions (Section 186)


This is another provision that has been misused against reporters who criticise any public functionaries.

Waging war against the state (Section 124A)

This offence entails participation in any insurrection against the government. Yet, it has been used against journalists reporting critically on the government.

There are certain laws apart from the IPC being used to attack journalists. Some recent incidents are highlighted below.

STATUTE	ILLUSTRATION
<p>Contempt of Courts Act, 1881 This law punishes publications that could scandalize or prejudice the viewers/readers against or lower the dignity of the judiciary in their minds.</p>	<p>The Meghalaya High Court imposed a fine of INR 200,000 under the provisions of the Contempt of Court Act on the publisher and editor of the Shillong Times, Patricia Mukhim, for publishing an article criticising judgments delivered by Justice S.R. Sen. The Supreme Court of India upheld this order by the Meghalaya High Court in this case.</p>
<p>Disaster Management Act (“DMA”), 2005 The DMA deals with natural disasters including health crises. It is an offence to make any false alarms or warnings about a disaster or its severity, as well as false claims about any relief, repair, or benefits in the times of a disaster.</p>	<p>The provisions of the DMA were invoked to respond to false news during COVID-19 and attack journalists criticising government responses to the pandemic. For instance, a police complaint was filed against journalist Ashwini Saini for his news report that highlighted the failure of the Mandi district administration in supplying rations to migrant workers stranded in the district’s Sundernagar sub-division in Himachal Pradesh.</p>
<p>Epidemic Diseases Act, 1897 This is a statute authorizing the government to make any special rules or regulations to address and prevent the outbreak of an epidemic. Violations of such rules or regulations under the EDA can warrant the same punishment as disobeying the orders of a public servant under the IPC.</p>	<p>Like the DMA, this legislation also became an additional tool in the hands of the state to penalise journalists during the pandemic. A police complaint was filed against Andrew Sam Pandian in Coimbatore for a news report alleging rampant government corruption in food distribution efforts related to the pandemic. The Judicial Magistrate Court in Coimbatore granted an order in favour of his bail, despite strong objections from the police.</p>
<p>Information Technology Act, 2000 (“IT Act”) This statute deals with cyber-crimes and sharing of information and materials through electronic means.</p>	<p>The IT Act was invoked in a case involving a journalist in Bastar, who circulated allegedly obscene material on a WhatsApp group. With digital media expanding, the provisions of the IT Act are increasingly being invoked to further penalise journalists.</p>
<p>Unlawful Activities Prevention Act, 1967 (“UAPA”) This is a stringent law for checking terrorist activities and funding for terrorism</p>	<p>Masrat Zahra, a freelance photojournalist in Jammu and Kashmir was charged under UAPA for her posts on social media, where she frequently uploaded images of her reporting. In this particular instance, Masrat shared certain photographs she had taken for a news report in December 2019 relating to a woman, whose husband was allegedly killed by the Indian Army. These images were considered “anti-national” and Masrat was accused of provoking the youth and promoting offences against public tranquillity.</p> <p>Masrat recently stated that she is unaware of the status of the case as she has not been provided access to the FIR.</p>



People attend a protest in New Delhi against the killing of Gauri Lankesh, a senior Indian journalist who, according to police, was shot dead outside her home on Tuesday by unidentified assailants in the southern city of Bengaluru, India, September 7, 2017. REUTERS/Cathal McNaughton

CHAPTER III: GETTING THE RIGHT RECOURSE

The previous chapter highlighted the different kinds of laws that are used to target journalists with criminal actions. If you find yourself being accused of any criminal offence, you have the right to obtain appropriate remedy, and to certain protections while you await proper recourse. This chapter will discuss what steps you can take if you face criminal charges in the course of your work

What is an FIR?

- You can be arrested only if a police complaint known as a First Information Report (“FIR”) has been filed against you.
- An FIR is a statement describing the occurrence of a crime, which is recorded by the police when they first come to know about such an accusation.
- It allows the police to arrest the person accused of a crime and start an investigation into the accusation.
- The police can file FIRs only for cases that relate to the commission of a ‘cognizable’ offence. The Code of Criminal Procedure, 1973 (“CrPC”) sets out the offences which are considered as cognizable and in which the police can arrest a person without warrant.
- If there is a non-cognizable offence against you, the police will have to get a warrant issued from the court to make an arrest.

What can you do if an FIR is filed against you?

- You have a right to know what crimes you have been accused of and can demand to see a copy of the FIR filed against you.
- Prior to your arrest, you can file for anticipatory bail. An anticipatory bail can ensure that the police cannot arrest you, even if there is an FIR filed against you.
- Contact your lawyer and make an application for anticipatory bail at the appropriate court, on the grounds that a false FIR is filed against you.
- You will have to accept certain terms and conditions that the court may impose on you while granting you anticipatory bail. For example, requiring you to allow the police to interrogate you, not leaving the country, etc.
- While an anticipatory bail generally extends until the end of a trial, it can also be cancelled by a court.

How to get an FIR quashed?

- Quashing means to simply have the FIR nullified or struck out.
- Ask your lawyer to help file a petition seeking the quashing of the FIR filed against you.
- Courts quash those FIRs that appear to have been filed without any real offence being made out, simply to trouble and defame the accused.
- You can seek this remedy to have the case against you struck out and show that you have been maliciously implicated in a false case.

WHEN ARRESTED: RIGHTS AND CAVEATS

- **Right to know grounds of arrest / bail:** When arrested, the police officer should inform you of all the particulars of your arrest, including the legal provisions under which you are being arrested, and your right to get bail where applicable.
- **Right to inform friends / relatives:** The law contains safeguards to ensure that your friends and family are informed of your arrest and can help you.
 - A police officer arresting you is obligated to inform you that you can inform a friend or relative of your arrest.
 - While making an arrest, the police officer must prepare a “memorandum of arrest” that is countersigned by you and a relative/neighbour of yours.
 - Further, the police officer must provide details of your whereabouts to a person nominated by you and record the same.
- **Right to your lawyer’s presence:** The Constitution of India guarantees the fundamental right of an arrestee to consult with a legal practitioner of their choosing. If arrested and interrogated by the police, you are entitled to meet an advocate of your choice during interrogation, though not throughout the interrogation. **Hence, your first course of action when interrogated, called to a police station, or arrested should be to call your lawyer and allow them to take the lead on the interactions with police.** Upon arrest, the police are required to inform you of your rights including the right to have free legal assistance, under the CrPC. In case you request such legal assistance, the police will have to intimate the nearest relevant Legal Service Authority, which deposes a lawyer for the arrested.
- **Right against self-incrimination:** It is your fundamental right to not be compelled to be a witness against yourself. The Supreme Court of India has identified this right to include the right to remain silent during your interrogation, if you believe that answering a question has a reasonable prospect of exposing you to guilt.
- **Seeing a warrant/ID:** The police officer should be identifiable with a name tag when they are arresting you. Further, the norm for arresting a person is to do so under a warrant or an order of the magistrate. You can ask to see identity proof and warrants (subject to assessment of the situation). There are limited cases when a warrant is not needed, such as when arresting a person is necessary to prevent further offence or evidence tampering, when a cognizable offence (such as obstructing a police officer in the course of his duties, etc.) is committed in the presence of a police officer, etc. Reasons for arrest without warrant must typically be recorded in writing.

Other than arrest, even search / seizure for any information requires warrants. This includes access to journalistic material through phones or laptops as a part of an investigation. In such instances, remember to seek a warrant and if you are being compelled to disclose any such evidence, consult your lawyer.

- **Rights of women:** If you are a woman, you can only be arrested by male officers during daytime. If you are arrested before sunrise or after sunset, a woman police officer must be present. You cannot be touched by anyone except a female police officer while being arrested (unless you resist arrest).
- **Time limit:** You should be presented before a judicial magistrate within 24 hours of your arrest if you are arrested without a warrant.
- **Medical recourse:** If you face any kind of violence while in police custody, you can request a court to order a medical examination.
- **Bail:** If you are arrested for a bailable offence, your lawyer can file a bail application on your behalf. In case of a bailable offence, you can directly get bail from the police upon furnishing a personal bond and do not have to approach the court. Your lawyer can file for a personal bail application, have you sign a bond, and seek your release from the police.
- In certain cases, when you are anticipating police action, you can file an anticipatory bail application.
- **Caveats:**
 - Do not refuse to share your name and address with a police officer when asked as this can be a ground for arrest. However, you cannot be detained on this ground for more than 24 hours without being presented before a magistrate.
 - While reporting on any event relating to the police or interacting with the police, it is important to remember that obstruction to a police officer in the execution of their duty is a ground for arrest without warrant. This can be interpreted widely to include any non-cooperation with the police. This means if a police officer serves you a notice of appearance for interrogation, it is advisable to comply (with your lawyer present). Magistrates are more inclined to grant bail if you cooperate with the police.

What if you are detained for longer than 24 hours?

- If the police do not produce arrested individuals before a magistrate within the stipulated time of 24 hours, or make an arrest during a weekend, or alter arrest records and documentation, a lawyer can approach the court for recourse and ensure records of wrongful detention are correctly maintained.
- If you are not produced before a magistrate within 24 hours of arrest, your lawyer can file a petition for a writ of habeas corpus. This means a petition requesting the court to order the police to produce the arrested person before the court.
- Such a petition can be filed directly before the High Court or the Supreme Court.
- Courts can give such order if a person has been kept in police custody for more than 24 hours without being produced in front of a magistrate, or arrested without committing any offence, or has been arrested with an ill intention.
- The courts can also ask questions about the grounds for arrest, and if it feels that no crime is made out against the arrested person, it can order his/her release.

ICC Cricket World Cup - India Press Conference - Edgbaston, Birmingham, Britain - June 29, 2019 India's Virat Kohli during a press conference. Action Images via Reuters/Andrew Boyers

CHAPTER IV: GETTING SLAPPED WITH SUITS

You may find yourself in situations where for any piece of reporting or opinion that you've published, you get sued. Along with a legal suit, there may or may not be any criminal charges against you. Serving notices for legal actions is a common tactic used by large corporations and powerful persons to intimidate journalists. The prospect of long-drawn court battles and exorbitant legal fees is used to bully journalists into withdrawing their public statements and silencing their voices. Often the publishing houses whose publications have carried your work are also served with similar notices and dragged into the suit along with you. Such lawsuits are called Strategic Legal Action against Public Participation (SLAPP) suits.

What do the complainants usually demand in a SLAPP suit?

- Damages, i.e., money as compensation for the injury caused to the complainants' reputation;
- Injunction, i.e., orders restraining the publication of the journalistic piece complained against;
- Withdrawing the concerned piece if already published;
- Issuing public apologies for the concerned journalistic piece;
- Issuing corrective statements clarifying the stance taken in the piece;
- Punishment for criminal defamation.

WHAT CAN YOU DO IN CASE YOU'VE RECEIVED SUCH A NOTICE?

Identify why you are being sued

- You are most likely to be sued for civil defamation where the complainant will demand from you any of the measures set out in the box on your left.
- You might also have a criminal case instituted against you, accusing you of criminal defamation. Please refer to Chapter II and Chapter III for the recourse that you have in case of criminal proceedings.

Seek legal representation

- SLAPP suits are an attack on your right to expression and you have the right to defend yourself against such unjust actions.
- Seek a lawyer to represent you and help respond to the notice that you've received.
- Remember that truthful assertions made in public interest are protected under law.
- To seek free legal assistance, in case you are unable to afford a lawyer please refer to Chapter III.

The case studies below are instances of successful defences against SLAPP suits:

M/s. Crop Care Federation of India vs Rajasthan Patrika (Pvt) Ltd

This was a civil defamation case filed by an industry-body representing insecticides and pesticides manufacturers against a local news publication, Rajasthan Patrika, and its reporters for carrying articles that discussed the environmental and health-related harms posed by the use of such chemicals in farming. The court dismissed this suit as a SLAPP suit for stifling free speech because:

- No particular person was being specifically referred to in the articles and hence there was no defamation.
- The attempt of the suit was to stifle debate on use of insecticides and pesticides.

The Indian Institute of Planning and Management vs M/s. Delhi Press Patra Prakashan

This was a defamation suit against the author, editor, publisher, and printer of the Caravan magazine, which carried stories about the IIPM's alleged fraudulent practices. The case was dismissed because the publishers could show that:

- The claims made in their articles were based on extensive research.
- The stories were not written by the reporters of the Caravan out of malice.

Defamation charges against Parnajoy Guha Thakurta

[The former editor of Economic Political Weekly](#) (EPW), Parnajoy Guha Thakurta, and his colleagues received a legal notice wherein Adani Power Ltd threatened legal action over a story published in June 2017. The story stated that Adani Power Ltd. had financially benefitted from the government's changed rules on economic zones. Sameeksha Trust, the board of EPW, decided to take down report from EPW. This prompted the resignation of Thakurta as the editor. Later, the censored article was republished by The Wire. This further invited an injunction from the Adani Group. In the year 2019, Adani withdrew its complaint against the Wire and all the other accused, except Thakurta. In January 2021, the Gujarat High Court issued an arrest warrant against Thakurta. The case is still ongoing, and Thakurta [has sought a transfer](#) of proceedings of this case to a court in Ahmedabad.



Jagisha Arora, wife of Prashant Kanojia, a journalist who was arrested for allegedly tweeting defamatory content against Uttar Pradesh’s Chief Minister Yogi Adityanath, takes part in a protest with media members in New Delhi, India June 10, 2019. REUTERS/Anushree Fadnavis

CHAPTER V: COMBATTING ONLINE ABUSE

The first step to combatting online abuse is understanding when you might be at the receiving end of such harassment. You can then consider the remedies at your disposal— be it legal recourse, or other practical actions. This chapter sets out learnings from past instances where journalists have faced online abuse and the remedies available in such instances.

What are the types of online abuse?	How has online abuse been dealt with?
<p>Threats You may be targeted with statements threatening physical and bodily harm or injury. Threats of death, physical or sexual violence, involving discriminatory comments, especially against women are often seen across social media.</p>	<p>Indian television journalist Barkha Dutt received threats of rape, sexual abuse and death from an unidentified caller for her reporting. Upon further targeting by online trolls and anonymous callers, she reported the matter to the police. The matter was taken up by the Delhi cyber-crime cell who were able to identify and arrest the perpetrators.</p>
<p>Intimidation Using intimidating behaviour such as stalking, trolling, defamation, etc., online to threaten you. Intimidation may often be used to halt journalists in their investigation or reportage.</p>	<p>Rana Ayyub, an independent investigative journalist was targeted online with hateful videos, tweets and a disinformation campaign. Since then, several journalist advocacy groups, press bodies, and even United Nations human rights experts expressed their support, calling for information on the measures taken by the Indian Government to investigate, identify and prosecute the alleged threats against her life and safety.</p>
<p>Cyberstalking Cyberstalking overlaps with threat and intimidation. This includes behaviour involving unsolicited contact, spamming, repeated harassment via social media, posting obscenities or morphed pictures.</p>	<p>Female journalists in Hyderabad have shared their stories of cyberstalking and how they receive calls and messages from unknown persons seeking information or making unsolicited advances. Some of the journalists discuss how blocking such persons helped them, while others choose not to do so, as they did not want to lose sources of information that may be helpful for their coverage. A remedy that one of the journalists found effective was to threaten them with police action.</p>

<p>Doxing This entails the unauthorized leaking of personal information, including contact details online. Doxing generally leads to a mass-scale harassment which can be threatening of one's personal safety because of such exposure.</p>	<p>In Saket Gokhale & Anr. Vs Union of India a former journalist's contact details from his Right to Information application were inadvertently made public on the website of the Government of India. He was subsequently subjected to severe harassment, as a result of which, the Bombay High Court in this case directed the Indian Ministry of Information and Broadcasting which was responsible for the leak, to conduct an enquiry within three months and take suitable disciplinary action against the information leak.</p>
<p>Online Impersonation As a journalist, you may become the victim of online impersonation if you have been exposed to an online presence masquerading under someone else's name, usually a well-known person or a fake account on social media.</p>	<p>Senior journalist Nidhi Razdan became the victim of online impersonation when she received fraudulent job offer for a teaching position at the Harvard University through a series of emails involving forged documents. She took up the matter with the police against the unknown user for cognizable offences including forgery, cheating, identity fraud and impersonation; and this investigation is underway. This matter also received widespread coverage from the investigative piece published by the journalists at the New York Times.</p>
<p>Trolling One of the most common forms of cyber-attacks, trolling involves hateful attacks through hostile or offensive comments, messages, emails or any other means across an online community.</p>	<p>Although there has been a plethora of instances of journalists being victim to online trolling, some instances may be part of an organised attempt at targeting any critique of the Government. Based on the allegations of an anonymous Twitter user claiming to be an employee of the ruling party's IT cell, a team at The Wire investigated the matter which revealed that an app Tek Fog was being used by social media operatives affiliated with the ruling party of the Government, to take over inactive accounts on encrypted messaging platforms. The features of the app allowed them to send hateful messages or direct trolling campaigns against journalists critical of the party. The Editors Guild of India, a prominent journalists' body sought that a probe be conducted by the Supreme Court and direct urgent action towards dismantling this ecosystem.</p>

You may also find yourself subject to certain other types of online abuse such as:

- Cyber theft involving the theft of your personal information,
- Revenge porn or non-consensual distribution of intimate or sexual images taken with or without your consent,
- Sending you distressing material including morphed images of you or pornography,
- Defamation and disinformation campaigns, or
- Spamming.

HOW TO SEEK RECOURSE AGAINST ONLINE HARASSMENT?

- **Approach Local Law Enforcement Agencies.** You can consider approaching the local police to file an FIR (*Please refer to [Chapter III](#) for more details on an FIR*).

Remember, it is the duty of the police to record your complaint and in case they refuse to do so, you can send a written complaint by post to the Superintendent of Police. Additionally, in certain states, for example, [Delhi Police's official website](#) has an option to lodge a complaint online. In case the authorities are not helpful or are dismissive of your complaint, consult your lawyer regarding the laws that may protect you.

Provided below, is a list of commonly used provisions of the law that you could rely on while filing an FIR, in case of incidents of online abuse as described above

Indian Penal Code	
Stalking (Section 354D)	Any person monitoring a woman based on her use of the internet, email or any form of electronic communication would be considered to have committed the offence of stalking.
Criminal intimidation (Section 503)	Criminal intimidation involves the threat to cause injury to a person, property or reputation. The threat of injury here need not be limited to you, but could also be to anyone of interest to you.
Criminal intimidation by an anonymous communication (Section 507)	Criminal intimidation by anonymous communication or by a person who conceals his/her name or abode is a punishable offence.
Information Technology Act	
Punishment for publishing or transmitting obscene material in electronic form (Section 67)	Any content with obscene material that is published or transmitted (to read, see or hear) in electronic form, is an offence.
Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form (Section 67A)	Publication or transmission of material containing any sexually explicit act or conduct through electronic form is also punishable.

- **Cyber-Crime Investigation Cells.** Set up under the Central Bureau of Investigation and headed by the Superintendent of Police, these bodies have the power to investigate offences under the IT Act and other crimes involving technology. Complaints made to the local police involving cybercrimes are generally forwarded to the respective [cyber -crime cell](#). You can skip filing an FIR with the police and directly approach the cybercrime cell for addressing your online harassment concerns. You can write to the cyber-crime cell, detailing the incident and attaching relevant information as well as your contact information. In Delhi, a special website, <http://www.cybercelldelhi.in/>, for reporting cyber-crime incidents online has been launched, which also provides information on various cybercrimes.
- **National Cyber Crime Reporting Portal.** The portal, an initiative of the Government of India facilitates complaints relating to cyber-crimes to be made online at <https://cybercrime.gov.in/>. The portal gives special focus to cyber-crimes against women and children.

- **Complaining to the Grievance Officer of Intermediaries.** The law requires online intermediaries such as social media websites and applications to formulate and publish for their users, a set of community guidelines which explain the categories of permissible and prohibited content that they may post. Intermediaries also need to appoint and publish the contact information of a Grievance Officer who acknowledges and addresses the concerns of users. If you are being subjected to online abuse, you can complain to the Grievance Officer and request for the harassing content to be taken down, or for acting against the user posting such content.
- **Peer-to-peer Support.** [Amassing the support of fellow journalists online](#) is not only an effective strategy to hasten any possible response from law enforcement agencies, but it also spreads awareness and creates a support hub for those in a similar position. Bodies like the Coalition Against Online Violence, Reporters Without Borders, the United Nations, as observed in the case of journalist Rana Ayyub, have managed to attract widespread attention to cases of online harassment against journalists. It also motivates scholarship and participation in these issues of digital era for journalists; uptake in [research studies](#) helps establish evidence that may be used to further revolutionise the safety of journalists.

Online abuse of journalists is a national and global concern. You may find relief in the various guides designed to arm journalists with relevant information:

- Committee to Protect Journalists' information on [Resources for protecting against online abuse](#).
- The International News Safety Institute, Thomson Reuters Foundation and UNESCO's [Online Attacks Against Journalists: Know Your Rights](#) guide.
- IFJ's [Byte Back: A Journalists' Guide to Combat Cyber Harassment in South Asia](#).
- Reporters Without Borders' [Online Harassment of Journalists: Attack of the trolls](#).
- Interacting with your trolls or online adversaries is not always advisable; but if you choose to do so, you can rely on PEN America's [Guidelines for Safely Practicing Counter-speech](#).



A television journalist sets his camera inside the premises of the Supreme Court in New Delhi February 18, 2014. REUTERS/Anindito Mukherjee

CHAPTER VI: COVID-19 REPORTING

India has also seen a host of restrictions imposed on reporting news related to the COVID-19 pandemic. Based on advisories, guidelines, and orders issued by the Indian Central and State governments, this chapter sets out certain guidelines for reporting on the COVID-19 pandemic. **Please note that the legal situation in this regard is evolving and the guidance below is based on the legal situation as of 7 October 2022.**

GENERAL GUIDELINES:

- Rely on authentic sources for information on the pandemic. There are government bulletins that report daily numbers for positive cases and deaths due to the coronavirus. The Supreme Court in a judgment in March 2020 has directed reference to such sources for reporting, although no concrete prohibitions have been introduced to prevent journalists from referring to other authoritative sources.
- Include verified sources in your reports on the pandemic. Promoting non-traditional/unverified information that poses a threat to public health can be punishable under the Epidemic Diseases Act (“EDA”), Disaster Management Act (DMA) and Indian Penal Code (IPC). Do not post news which may be a “false alarm” and cause “panic” as this is criminalized under DMA.
- Note that arrests have been made for spreading fake news under the EDA which gives wide powers to the government.
- Online news media outlets should initiate awareness about misinformation and remove/disable any misinformation relating to coronavirus from their platforms. The management of media houses is responsible for ensuring health and safety of reporters and staff.
- You may need to obtain permission for publishing information regarding COVID-19 pursuant to certain state-specific laws. For instance, states such as [Delhi](#) require any organisation/institution/person to obtain prior permission from the state government for using any print/electronic media for information on COVID-19.

Certain international organisations have also released specific sets of guidelines on COVID Reporting for journalists such as

- [UNICEF's safety guidelines for journalists reporting on COVID-19](#) for health and safety precautions,
- [WHO's COVID-19 Informative Guide for Journalists](#) with directions on reporting pandemic-related information, and
- the [CPJ Safety Advisory: Covering the coronavirus pandemic](#) with information on staying safe in the field.

You may also refer to these resources for additional guidance on precautions to be taken while reporting news related to the ongoing pandemic.

ABOUT US

COMMITTEE TO PROTECT JOURNALISTS

The Committee to Protect Journalists (CPJ) is an independent, non-profit organisation that promotes press freedom worldwide. We defend the right of journalists to report the news safely and without fear of reprisal. Every year, hundreds of journalists are attacked, imprisoned, or killed. For more than 40 years, CPJ has been there to defend them and fight for press freedom. With a team of more than 50 experts based around the world, CPJ documents and denounces press freedom violations, meets with heads of state and high-ranking officials, spearheads or advises on diplomatic efforts, and works with other organisations to ensure that justice prevails when journalists are jailed or murdered. CPJ also provides comprehensive, life-saving support to journalists around the world through up-to-date safety information and rapid response assistance. For more information about CPJ and the support available to journalists, please visit www.cpj.org

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To access the Know Your Rights Guide for Journalists in India, please visit the Resources section on <https://www.trust.org/trustlaw/> and <https://cpj.org/>



Television journalists report from the premises of India's Parliament in New Delhi February 13, 2014. REUTERS/Adnan Abidi