



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

## KNOW YOUR RIGHTS GUIDE FOR JOURNALISTS IN INDIA (BRIEF OVERVIEW)

This is a brief overview of the large format report titled, *Know Your Rights Guide for Journalists in India (the Guide)*. It provides guidance to equip journalists with a working understanding of the rights, remedies, and protection measures that are available under Indian law. Please note, you should refer to the *Guide* for in depth information on the guidance provided here. Here are key takeaways 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 you can voice criticism of the Government or the country.
- However, this freedom is not unlimited, and your speech may be reasonably 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 etc., 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.

### YOUR RIGHTS ON ARREST

- Check if there is a warrant to arrest you and search or seizure of your 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 and your right to bail.
- 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.
- Any person at the time of arrest is entitled to meet an advocate of their 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.
- 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

### How to get a First Information Report<sup>1</sup> (FIR) quashed or struck out?

- 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.

## 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 them 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.

<sup>1</sup> First Information Report (FIR), or the first information of a cognizable offence to the officer in charge of a police station, is covered under Section 154 of the Code of Criminal Procedure, 1973 (CrPC). It refers to oral information on the conduct of a cognizable offence that is provided to the police at the earliest possible moment. An FIR is an essential document for both parties (prosecution and defence). It serves as the case's initial foundation.

- 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.

## WHAT TO DO IF YOU ARE GETTING SUED

### Identify the 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).
- Refer to Chapter IV of the Guide for dealing with such suits.

### 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.

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.

- International Federation of Journalists [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.](#)
- Use the TRFilter, which is one tool organisations can use to enhance their online safety

### Laws that protect journalists

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

#### 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 to 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)**

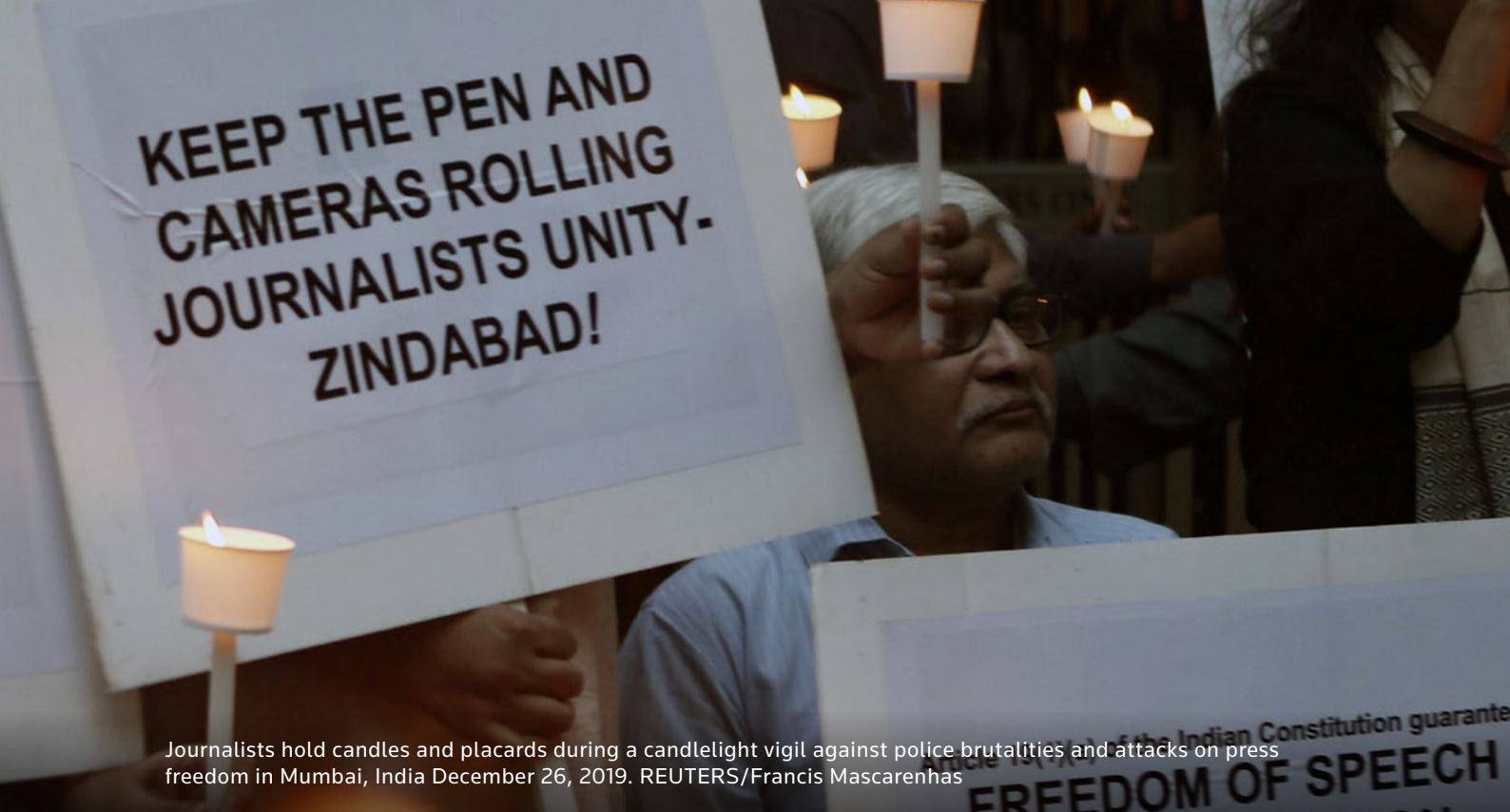
Any content of obscene nature that is published or transmitted (to read, see or hear) in electronic form, is an offence.

##### **Punishment for publishing or transmitting of material containing sexually explicit act, etc., in electronic form (Section 67A)**

Publication or transmission of material containing any sexual act or conduct through electronic form is also punishable

## 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.



KEEP THE PEN AND  
CAMERAS ROLLING  
JOURNALISTS UNITY-  
ZINDABAD!

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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/>