



Television journalists report from India's Parliament in New Delhi. REUTERS/Adnan Abidi

UNDERSTANDING DEFAMATION LAWS IN INDIA

INTRODUCTION

When applied legitimately, defamation laws are intended to protect individuals against false statements that are harmful to their reputation. Yet both civil and criminal defamation laws also have the potential to be misused to prevent open public debate. In the years leading up to the publication of this Guide, India has experienced a rise in defamation cases which arguably represents just such misuse.¹ In addition to lawsuits, journalists in India have also reported an increasing number of legal notices from companies threatening legal action in an effort to intimidate or harass journalists.²

This Guide provides journalists with a practical understanding of defamation laws and the steps they can take to mitigate defamation liability in India. We aim to empower journalists to understand their legal rights and obligations so that they can continue to report on issues of vital public interest in an informed way.

- ¹ See *Defamation, Fraud Cases on Social Media Recorded 100% Rise Last Year*, The Times of India (Jan. 7, 2022), <https://timesofindia.indiatimes.com/city/pune/defamation-fraud-cases-on-social-media-recorded-100-rise-last-year/articleshow/88744287.cms>.
- ² See *Adani Group Files Criminal Defamation Suit Against Freelance Indian Journalist Ravi Nair*, Committee to Protect Journalists (Jul. 28, 2022), <https://cpi.org/2022/07/adani-group-files-criminal-defamation-suit-against-freelance-indian-journalist-ravi-nair/>; Aayush Soni, *India: Using Legal Action to Silence Journalists*, Global Investigative Journal Network (Aug. 10, 2017), <https://gijn.org/2017/08/10/paranjay-guha-thakurta-using-legal-action-to-silence-journalists/>.



Indian journalists protest against alleged violations of press freedom in Madras. JSG/CP

1. WHAT IS DEFAMATION?

Under Indian law, a plaintiff can choose to sue for defamation as a criminal offence and/or as a civil offence. Civil liability (a part of tort) is determined by the principles of English law, but criminal liability relies upon sections 499 and 500 of the Indian Penal Code (IPC). Both can be jointly pursued. A civil claim can still be pursued even if a criminal suit for defamation is unsuccessful, and vice versa.

A. WHAT IS CRIMINAL DEFAMATION?

Section 499 of the Indian Penal Code defines criminal defamation as:

“Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.”

This offence consists of three key elements:

- (1) making or publishing any imputations concerning any person,
- (2) such imputations must have been made by words either spoken or intended to be read or by signs or by visible representations, and
- (3) that is made intentionally or with knowledge or having reason to believe that it will harm the reputation of the person concerned.

The prosecution bears the burden of proving each of these elements “beyond a reasonable doubt,” the standard applied in most criminal cases.

Element One:

Imputation means an accusation against a person, and it implies an allegation of fact and not merely an abuse. This imputation must be communicated to at least one third party other than the plaintiff and the accused. It must also be harmful to the plaintiff’s reputation, namely “directly or indirectly, in the estimation of others, lower [...] the moral or intellectual character of that person....”³ It need not be directly stated; it can take the form of an indirect innuendo. For example, “[a]n imputation in the form of an alternative or expressed ironically, may amount to defamation.”⁴

The imputation must concern a particular person or persons whose identity can be established. That person need not be a single individual; a company or an association or collection of persons can also be defamed. A deceased person can be defamed “if the imputation would harm the reputation of that person if living, and is intended to be hurtful to the feelings of his family or other near relatives”.⁵ When defamation is directed to a class of persons, the class must be well-defined. For example, derogatory comments targeted to “lawyers” as a class generally were held to be too indeterminable and unidentifiable to amount to defamation.⁶

Element Two:

To constitute defamation, an imputation must be communicated, whether spoken or written or by signs or other visible representations. For instance, the publication of a group photograph with a false caption depicting the persons in the photograph as soldiers of a “goonda war” was held to be defamatory.⁷ A statute, a caricature, and effigy, chalk marks on a wall, signs, or pictures may also constitute a libel.⁸

Element Three:

The essence of the offence of defamation is the publication of an imputation with the knowledge that it will harm the reputation of the person defamed. The complainant must show that the accused had intended or known or had reason to believe that the imputation made by him would harm the reputation of the complainant. The meaning to be attached to the word “harm” is not the ordinary sense in which it is used. “Harm” means imputation on a person’s character made and expressed to others so as to lower them in their estimation.

3 Indian Penal Code, Section 499.

4 Indian Penal Code, Section 499.

5 Indian Penal Code, Section 499.

6 See *Ashima Obhan & Nishtha Jaisingh*, Hasmukh Gets the Last Laugh as Delhi High Court Dismisses Injunction Plea while Distinguishing Satire from Defamation, Obhan & Associates (May 18, 2020), <https://www.obhanandassociates.com/blog/hasmukh-gets-the-last-laugh-as-delhi-high-court-dismisses-injunction-plea-while-distinguishing-satire-from-defamation/>.

7 *Chellappan Pillai v. Karanjia*, (1962) 2 CrLJ 142.

8 *Monson v. Tussauds Ltd*, (1894) 1 QB 671, 692.



CASE EXAMPLES

In *Mobashar Jawed Akbar vs. Priya Ramani (2021)*, Mr. Akbar, a journalist turned politician, filed a criminal defamation case against Ms. Ramani, a journalist who had accused Mr. Akbar of sexual harassment. Specifically, in 2017, Ms. Ramani had published an article in *The Vogue* about her experience being sexually assaulted by her boss, whom she referred to as a predator. In 2018, Ms. Ramani posted on Twitter, naming Mr. Akbar as the predator mentioned in her *Vogue* article, which triggered him to sue for defamation. In February 2021, the Hon. District Court of Delhi held that Ms. Ramani's tweets were not defamatory. Ms. Ramani had pointed to prior instances of sexual misconduct by Mr. Akbar as evidence of his poor character, and the court agreed with her that Mr. Akbar did not have a good reputation. The court also reasoned that criminal defamation should not be used as a sword against women's rights to speak up as well as their constitutional rights to life and dignity under Article 21 of the Indian Constitution. Mr. Akbar's appeal was subsequently admitted by the Delhi High Court in January 2022.

In *Vijay & Rajendra Darda v. Ravindra Ghisulal Gupta (2022)*,⁹ the Bombay High Court Nagpur Bench dismissed criminal defamation complaints against Vijay Darda and Rejendra Darda, respectively the Chairman and Editor-in-Chief of Lokmat Media Group. The Lokmat daily had covered a First Information Report (FIR) registered by the police against the complainant and his family. The court reasoned that the FIR had in fact been registered, adding that "[t]he publisher is not expected to investigate the matter and ascertain the truthfulness of the First Information Report [itself] before publishing the news item." The court further noted "the action of defamation about true and faithful reporting is unhealthy for a democratic setup."

In *Aroon Purie v. State of Nct of Delhi (2022)*,¹⁰ the Supreme Court quashed a criminal defamation case against India Today editor-in-chief Aroon Purie over a report that was published in 2007 but did not quash the case against Saurabh Shukla, the journalist who wrote the article. As to editor-in-chief Purie, the court reasoned that the complaint attributed "nothing specific" to the editor-in-chief, and thus that he could not be held liable for acts committed by the author. The court did note that an editor-in-chief could be liable if the allegations were "sufficient and specific." As to journalist Shukla, the court explained that whether Shukla's actions were justified was "a question of fact to be gone into only at the stage of trial."

9 *Vijay & Rajendra v. Gupta*, Crim. App. No. 393 (2022), High Court of Judicature at Bombay, Nagpur Bench, https://www.livelaw.in/pdf_upload/bombay-hc-lokmat-423272.pdf.

10 *Aroon Purie v. State of Nct of Delhi*, Supreme Court of India (Oct. 31, 2022), <https://indiankanoon.org/doc/5695939/>.

B. WHAT IS CIVIL DEFAMATION?

Unlike criminal defamation, which is codified by statute, civil defamation is a body of tort law that has developed largely through decisions made by judges in particular cases. The following principles are common to both civil and criminal libel:

- anyone who publishes a defamatory document concerning another person, so as to tend to bring him into hatred, contempt, or ridicule, or in any way to diminish the good opinion that other persons have of him, is guilty of publishing a defamatory libel;
- the publication need not be “malicious” in the popular sense of that word (i.e., it need not be out of spite, or as it is called, “express malice”), nor even in the legal sense. For example, if a printer accidentally omits a “not” in an article, this will suffice;
- the unlawful meaning which the document is alleged to have conveyed must be one which it was reasonably capable of conveying to ordinary people;
- everyone who circulates or authorises the circulation of a libel is regarded as publishing it. However, a person who acts as a mere intermediary without requisite intent to publish the information (e.g., one who sells/delivers pre-printed newspapers) can be shielded from liability;
- there are certain occasions when publication of material that would ordinarily be considered libel is legally protected. For example, reporting on the conduct of public officials.

The following are the key differences between civil and criminal defamation:

- sanctions for civil defamation are limited to damages (monetary compensation), whereas criminal defamation can result in imprisonment, fines, or both.
- the burden of proof in a civil defamation case is lower than that in a criminal defamation case.
- while most elements of criminal and civil defamation are the same, the intent or knowledge element need only be established for criminal defamation, not civil defamation.

D.P. Chowdhery v. K.M. Manjulata (AIR 1997 Raj 170)

This case illustrates that civil liability can arise for defamatory statements published negligently, even in the absence of intent or knowledge of resulting harm. In *D.P. Chowdhery*, a local newspaper published an article incorrectly stating that the 17-year-old plaintiff had eloped with her boyfriend. In defence, the accused newspaper employees explained that they did not know the plaintiff personally and thus had no intent to defame; moreover, they claimed that they had relied on a reliable source (a reporter who in turn received the information from a police station). The Rajasthan High Court held the employees liable because they had not verified the information, and the article consequently harmed the plaintiff’s reputation.



Employees work in a newspaper in New Delhi. REUTERS/Anindito Mukherjee

2. IN WHAT INSTANCES CAN I BE SUED AND/OR PROSECUTED FOR DEFAMATION?

The precise scope of liability in any given case is fact dependent. Defamation liability in India can extend to both spoken and written defamation. Both are punishable under criminal law as well as under civil law.

Journalists do not enjoy any special privilege. If they make assertions of facts, as opposed to comments on them, they must justify the assertions or establish that their assertions fall within one of the exceptions to defamation listed in Section 499 of the IPC (see below).

Liability can also extend beyond the author or editors of the defamatory statements to include printers and sellers of publications containing those statements, including media outlets. Specifically, Section 501 IPC provides that “whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both”. Section 502 provides the same for “whoever sells or offers for sale any printed or engraved substance containing defamatory matter, knowing that it contains such matter”.

3. WHAT ARE THE POTENTIAL CONSEQUENCES OF BEING CONVICTED OF DEFAMATION?

Criminal defamation is punishable by imprisonment for up to two years, or with a fine, or both.¹¹ The accused individual can be released on bail, pending the conclusion of their trial.

Sanctions for civil defamation are limited to damages (monetary compensation). The types of damages awarded can include, for example: nominal damages awarded when a legal right has been violated but no actual harm warranting compensation has occurred; compensatory damages awarded to compensate for actual harm suffered by the plaintiff; and exemplary/punitive damages awarded in exceptional cases to punish the defendant. The amount of damages can vary widely, ranging from INR lakhs to as much as hundreds of crores.

4. WHAT IS THE PROCEDURE FOR INSTITUTING DEFAMATION?

A. WHO CAN COMPLAIN TO LAW ENFORCEMENT ABOUT DEFAMATION?

A defamation complaint may be filed directly with the magistrate or directly with the police. Complaints of defamation can only be lodged by an aggrieved and defamed person, unless the person is a minor or debilitated, in which case another person may file on his or her behalf.¹² This complaint can be defamation of an individual person or a collection of persons. For example, a trust can also be a "person aggrieved". In the case of defamation against an organisation, its office bearers can file the complaint.¹³

B. WHO DECIDES WHETHER TO PROSECUTE A JOURNALIST FOR CRIMINAL DEFAMATION? HOW DO THEY DECIDE ON WHETHER THEY CAN CHARGE A JOURNALIST?

If filed with the police, the officer in charge must record the details in a book authorised by the State Government and send the complaint to the magistrate. This is because criminal defamation is a non-cognizable offense under Indian law, meaning the police must receive permission from the magistrate before commencing investigations. If the magistrate finds adequate basis to proceed with the charge, he/she will issue a notice to have the accused appear before court and start proceedings. If the magistrate requires more information, he/

¹¹ Indian Penal Code, Section 500.

¹² Section 199 of the Code of Criminal Procedure, 1973; *Harsh Mendiratta v. Maharaj Singh and Ors.*, Delhi High Court, 2002 (61) DRJ 123.

¹³ *Dilip Babasaheb Londhe v. State*, 2014 CrLJ (NOC) 106 (Bom).

she can inquire personally or order others (e.g., the police) to conduct further inquiry before deciding to issue proceedings.

Next, the police will conduct investigations and collate evidence into one of two types of final reports for the magistrate. The police may file a “closure report” stating that there is no evidence to support the charge, upon which the magistrate can either close the case or order further investigation as needed. Alternatively, the police may file a “charge sheet” summarising the facts and documentary evidence that adequately support the charge in the police’s view. The magistrate may then take cognizance of the case and issue a warrant to the accused. Afterwards, trial proceedings will take place (unless the accused has pleaded guilty), resulting in a final decision of conviction or acquittal.

C. WHAT SHOULD I DO IF I AM ARRESTED AND/OR CHARGED WITH CRIMINAL DEFAMATION?

A journalist should promptly contact a defence attorney. For criminal defamation, the accused must be represented and free legal aid is available for those who cannot afford to pay for representation.¹⁴ With the attorney’s assistance, the journalist should prepare for the proceedings described above, as well as consider defences that can support an acquittal.

Under India’s Code of Criminal Procedure and the Indian Constitution, those arrested or charged with a crime have several protections, including the following:¹⁵

- Presumption of innocence;
- Right to know the grounds of arrest;
- Right to seek bail;
- Right to be taken before a magistrate without delay;
- Right to free, fair, and speedy trial;
- Right to consult a legal practitioner;
- Right of free legal aid;
- Right to be examined by a medical practitioner;
- Right to privacy and protection against unlawful searches;
- Right to be present during trial;
- Right to get copies of documents;
- Right to be present at the trial;
- Right to cross-examination;
- Right to appeal;
- Right to humane treatment in prison

¹⁴ *Rights of Accused Persons*, Legal Service India, <https://www.legalserviceindia.com/legal/article-219-rights-of-accused-persons.html>; see also *Madhav Hayawadanrao Hoskot vs State Of Maharashtra*, Supreme Court of India, 1978 AIR 1548 (establishing right to free legal services for prisoners indigent or otherwise disabled under Art. 21 of the Indian Constitution).

¹⁵ Code of Criminal Procedure Secs. 50(1), 50(3), 54, 56, 75–76, 273; Constitution Art. 22(1).

D. HOW DOES AN AGGRIEVED PARTY SUE A JOURNALIST/MEDIA OUTLET FOR CIVIL DEFAMATION? WHERE DOES AN AGGRIEVED PARTY FILE A CASE FOR DEFAMATION?

A civil suit begins with the plaintiff filing a complaint that includes the name of the court and the parties as well as the nature of the suit, among other details. The plaintiff can be an individual or an organisation, such as a company. Following the filing of a complaint, a hearing takes place. If the court believes the complaint has merit, it will send notice to the defendants. Within seven days from this date of notice, the plaintiff must submit required documents (e.g., two copies of the complaint) along with a process fee to the court.

Thereafter, the defendant submits a written statement, in response to which the plaintiff files what is called a 'replication'. Other documents may also be filed at the parties' option. Based on these submissions, the court frames the issues that will set the stage for subsequent proceedings. Parties are then summoned, witnesses are examined/cross-examined, and eventually a final hearing takes place at which each side presents its arguments, resulting in a final order issued either on or after the date of the final hearing.

E. WHAT SHOULD I DO IF I AM SERVED WITH A CIVIL DEFAMATION SUIT? WHAT OPTIONS DO I HAVE IF I AM FOUND GUILTY? CAN I APPEAL?

A journalist should first consider contacting an attorney. Alternatively, a journalist may represent themselves as a "party in person," generally after receiving approval from a committee that reviews the competency of the individual to assist the court. As part of their litigation strategy, the journalist should consider raising the defences described below. If a journalist is found guilty, they have three main options: appeal, reference, or review. An appeal refers to having the case reconsidered by a higher court. In civil suits, either the plaintiff or the defendant can file for appeal. The appeal can turn on questions of fact, law, or both.

Reference involves a lower court referring the case to the High Court to have a substantial question of law resolved. The suit must be pending at the time of the referral, and likewise the question to be resolved must arise while the suit is ongoing. Once the higher court issues an opinion, the lower court may take it into account in passing its own decree.

Review involves having the case reheard in the same court that issued the original decision. Grounds for filing of review include the discovery of new facts since the judgment, errors in the record, and misinterpretation by the court.



REUTERS/Shailish Andrade

5. WHAT ARE THE DEFENCES AVAILABLE?

A. HOW CAN I DEFEND MYSELF IF I AM CHARGED WITH CRIMINAL DEFAMATION?

Section 499 of the IPC lists ten exceptions to defamation—i.e., circumstances under which a statement is not defamatory.¹⁶

- **Truth for the public good:** A statement is not defamatory if it is both true and made or published for the public good. Whether the statement is in the public interest is a question of fact. In *Chaman Lal v. State*¹⁷, the Supreme Court emphasised certain factors in determining whether an imputation was made in good faith—namely, (i) the circumstances under which the imputation was made, (ii) whether there was any malice, (iii) whether the accused inquired into the facts before making the imputation; (iv) whether the accused acted with sufficient care and caution; and (v) whether there is a preponderance of probability that the accused acted in good faith.
- **Opinion regarding the conduct or character of a public worker:** An opinion is not defamatory when made in good faith regarding the conduct or character of a public worker in relation to the performance of his/her public duties. In order for a comment to be fair:
 - it must be based on facts truly stated;
 - it must not impute corrupt or dishonourable motives to the person whose conduct or work is criticised except in so far as such imputations are warranted by the facts;

¹⁶ See Indian Penal Code, Section 499.

¹⁷ AIR 1970 SC 1372.

- it must be the honest expression of the writer's real opinion made in good faith; and
- it must be for the public good.

The question to be considered in such cases is, would any fair person, however prejudiced they might be, or however exaggerated their views may be, have made the criticism.¹⁸

- **Opinion regarding the conduct or character of any person in relation to a public matter:** An opinion is not defamatory when made in good faith regarding the conduct or character of any person in relation to a public matter. A journalist would be within this exception if they express in good faith an opinion about an individual's conduct when, for example, petitioning government on a public question, forming or joining a society which invites public support, or voting or canvassing for a particular candidate.
- **Publication of court proceeding reports:** Publication of a substantially true report of court proceedings or the results of such proceedings is not defamatory.
- **Opinion regarding a judicial decision or the conduct of witnesses/other parties:** An opinion is not defamatory when made in good faith regarding the merits of a judicial decision or the conduct of a witness/other involved parties in relation to the judicial proceeding. For example:

A says, "I think Z's evidence at that trial was so contradictory that he must be stupid or dishonest." A would be within the exception because the opinion relates to Z's conduct as a witness.

By contrast, A says, "I do not believe what Z asserted at that trial because I know him to be a dishonest man." A would not be within the exception because the opinion is not founded on Z's conduct at trial. However, A's opinion would not necessarily constitute defamation—it would still need to meet the requirements set forth under Section 1(a) to give rise to liability.

- **Opinion regarding a public performance:** An opinion is not defamatory when made in good faith regarding the merits of a public performance or the character of the person in relation to his/her public performance. Authors, public speakers, actors, and singers are examples of people who give public performances. For example:

A says, "Z's book is foolish and indecent; Z must be a foolish and indecent man." A would be within the exception because the opinion bears on Z's character in relation to Z's book.

By contrast, A says, "I am not surprised that Z's book is foolish and indecent, for he is a foolish and indecent man." Then A would not be within the exception.

- **Censure by one having lawful authority:** Censure is not defamatory when made in good faith by a person having lawful authority over another (arising by law or contract) in relation to a matter within the scope of that authority. This exception would apply when a judge censures the conduct of a witness or an officer of the court, when a parent censures a child, when a teacher censures a student, etc.
- **Accusation made in good faith to one having lawful authority:** For example, X would be within this exception if he in good faith accuses Z (a defendant) before a magistrate, if he complains of Z (a child)'s conduct to Z's father, etc.

18 *Khare v. Massani*, (1943) Nag 347.

- **Accusation made in good faith to protect one's interests or that of another:** For example,

A (a store owner) says to B (an employee), "Do not sell anything to Z unless he pays you cash, for I have no faith in his honesty." A would be within the exception because the accusation was made to protect A's own interests. A (a magistrate) remarks negatively on a litigant's character in a report sent to his/her superior. A would be within the exception, assuming the remark was made in good faith and for the public good.

- **Warning conveyed for the good of another or the public good.**

B. HOW CAN I DEFEND MYSELF IF I AM CHARGED WITH CIVIL DEFAMATION?

Truth can be raised as a defence to civil defamation if the statement is factually correct. The defendant bears the burden of establishing this defence. Additionally, privileges can be invoked as a defence in certain situations. There are two types of privileges: absolute and qualified.¹⁹

- **Absolute privilege** means that the person making the statement has the absolute right to make that statement at that time and is accordingly immune from a defamation lawsuit. It does not matter whether the statement is true or what the person's intentions were when making the statement. Absolute privilege attaches, for example, to proceedings of the parliament, judiciary, military, and the state.
- By contrast, intention does matter for **qualified privilege**. Qualified privilege generally applies only when the person makes a statement in good faith (without malice) and in order to fulfil a duty or some other positive purpose, such as furthering public interest, self-protection, etc. Qualified privilege is not absolute because a showing of malice can defeat the privilege.

Relatedly, fair comment can be raised as a defence for comments/opinions (not facts) concerning a matter of public interest that are made fairly and honestly. While not a defence, it is also worth noting that an apology can be submitted in evidence to try to mitigate damages.

¹⁹ See *Ashok Kumar v. Radha Kishan*, Delhi High Court (Sep. 1, 1982), <https://indiankanoon.org/doc/1316802/>.

PRACTICAL STEPS JOURNALISTS CAN TAKE TO MITIGATE THE RISK OF DEFAMATION LIABILITY IN THEIR WORK

Summary

It is worth remembering that truth is a complete defence to a defamation action. There may be other limitations on publishing information, but to the extent that the information is and can be proved to be true, a defamation action will not be successful. A good rule of thumb is to only report what you are confident you can prove.

A rigorous focus on fair and accurate reporting at each stage, and verifying the truth of the matters reported will put you in the best possible position if faced with legal threats or claims. The suggestions below are intended to help you to think about practical means of achieving this. There are also other defences to a defamation claim which may be available to you depending on the jurisdiction, some of which are mentioned below.

Gathering Information

- Gather information early - as time passes and memories fade, information and sources can become less reliable.
- Use confidential sources with caution – if you are reliant solely on information from a confidential source in respect of certain allegations or statements in your reporting, be aware proving the truth may be more difficult.
- Do not make promises to confidential sources that are not within your power to keep.
- Be careful with legal advice. In particular, do not claim a (false) legal fact in order to get information from a source.
- Nondisclosure agreements are permissible and effective to protect journalists from disclosing their source. If you do not conclude such an agreement – expressly or impliedly – you are not contractually (although you may be ethically) obligated to protect sources and maintain confidentiality.
- If you anticipate needing releases, obtain them early.
- Use public records to your advantage. You can use them to verify information you received from other sources.
- If you choose to utilise audio or visual recording, always pause to consider whether you can record without permission, or whether permission is required. When in doubt, ask for consent.
- When putting something in writing, know that should you be sued, you may be required to disclose sources and means of obtaining information.
- Keep a good record of your notes, meetings, etc.
- Research carefully. Verify sources and double-check your facts to ensure accuracy. Generally, you may only adopt communications from authorities and recognized agencies without further verification where you clearly attribute the source of the information.

Drafting and Vetting the Article

- Familiarise yourself with defamation law in the countries you're working (see above). Be aware that there may be more restrictive laws in some countries – for example in some countries it is easier for a company to bring a defamation challenge than in others.
- Familiarise yourself and comply with your news organisation's ethics guidelines and policies.
- Use credible sources to verify the accuracy of any potentially defamatory statements.
- Ask yourself whether there are any statements directed to identifiable individual(s) or companies that could be reputationally damaging. Confirm accuracy, and if doubt remains, weigh the benefits of keeping the statement in versus taking it out.
- Make your reliance on trustworthy and non-confidential sources transparent (for example, by hyperlinking to or otherwise disclosing the relevant reports or public records).
- A cornerstone of responsible journalism is seeking comment from the subject(s) of the reporting you intend to publish, in particular where you intend to make allegations about them or their conduct – you should clearly put the substance of allegations to the subject in advance and invite their response.
- Ensure, especially where you are engaging in investigative reporting, the subjects of your reporting have sufficient time to respond and have enough information to respond adequately. You should not show them a draft of your intended reporting but you should be prepared to share the substance of the intended publication.
- Reflect the comment /response in the article (you may use your editorial discretion in doing so). Even noting "no comment" or source "did not respond to requests for information" will go a long way in showcasing the steps the journalist took to report factual information.
- Be precise with your language and the meaning you intend to convey. Avoid any ambiguity, over-exaggerations or speculations. To the extent that you've made any assumptions, disclose them clearly as such.
- Always reproduce quotations correctly and attribute them clearly.
- Consider exculpatory circumstances and avoid one-sided reporting. Reporting should be balanced and not create a distorted picture of reality.
- Do not spread mere rumours, whether about public or private matters. Report only when a minimum body of evidence is available and feel comfortable with saying you don't know, where applicable.
- Consider how litigious and risky the subjects of your reporting are, and plan accordingly. If it is someone with a history of litigious activity toward the press, engage your news organisation's legal/compliance team early.
- Consider whether you are making an assertion of fact or a potentially protected opinion. There must be sufficient evidence for a statement of fact. If there is any uncertainty or doubt, consider formulating it as an expression of opinion (based on true facts) or presenting it as an assumption.
- Beware of republication liability. If you take information from another medium for your reporting, you assume responsibility for its content. Always do your own research.

- Consider whether any available defences to defamation – for example truth, public interest reporting, qualified or absolute privilege, fair and accurate reports of certain proceedings – apply.
- There are several defences to a defamation action other than truth / justification, some of which may be particularly applicable to journalists – for example in some countries there is defence for reporting in the public interest. There may also be defences available where an article expresses an opinion and are written in public interest. However, these defences are not fool-proof and will usually involve satisfying a number of requirements. If you intend to rely on a defence, consult your legal team or research precedent to ensure that the defence is likely to be available.

After Publication

- Stay informed of any developments in the subject matter that might change, call into question, or shed new light on the published information. Originally permissible reporting may generally be kept in the online archive. You typically have no active duty to investigate or update the reporting. Only if an affected party raises a qualified complaint about the reporting, you may be required to add supplementary information or take reasonable precautions to prevent the reports from being found in search engines in name-related search queries (“right to be forgotten”).
- Consider whether to keep your notes and relevant communications and, if so, for how long – knowing the limitation period for defamation claims in the relevant jurisdiction may assist.
- Be willing to correct or retract your mistakes and issue an apology to the extent necessary for the justification/truth defence. You may be required to correct factual allegations that have subsequently proven to be incorrect and have a lasting effect on the personal rights of the person concerned. This is usually done via a supplement/correction in the next issue or on the website.

Please note that journalists must also remain cognisant of emerging trends in other areas of the law that place their wellbeing at risk, or which could create legal risk – such as applicable privacy laws.

ABOUT US

The Legal Network for Journalists at Risk (LNJAR)

The [Legal Network for Journalists at Risk](#) (LNJAR) was founded by the Committee to Protect Journalists, Media Defence and the Thomson Reuters Foundation to meet the growing need for legal support among independent journalists and media outlets. The LNJAR is a network of expert member organisations who have come together to create a single access-point to an ecosystem of legal support. Journalists facing legal attacks can contact any one of the member organisations individually, or [email the Network directly](#). LNJAR members will work together to combine the different support available, tailoring its response to each case. This ensures that member organisations make the best possible use of limited resources and avoid duplication when providing legal support. To strengthen the legal environment for media freedom, member organisations will also collaborate on capacity building initiatives and advocacy.

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.

Media Defence

Media Defence provides legal help to journalists, citizen journalists and independent media across the world, in the belief that a free press is essential in realising the right to freedom of expression. We support journalists who hold power to account by working to ensure the legal protection and defence of journalists and independent media so they can report on issues of public interest. We do this by providing assistance to journalists, citizen journalists and independent media through an emergency defence fund, by taking strategic cases to challenge unjust laws and protect freedom of expression, and through developing a worldwide network of partners and specialists to provide legal defence, which we support through grant making, training and information sharing. Since our founding in 2008, we have supported over 1,300 cases, helping hundreds of journalists in 117 countries. Our work has helped prevent over 350 years of detention for media workers and avoided over \$700m in damages. We have supported 40 partners and, thanks to our train-the-trainer program, have fostered specialist media defence expertise in over 300 lawyers.

Thomson Reuters Foundation

The Thomson Reuters Foundation is the corporate foundation of Thomson Reuters, the global news and information services company. The organization works to advance media freedom, raise awareness of human rights issues, and foster more inclusive economies. Through news, media development, free legal assistance, and convening initiatives, the Foundation combines its unique services to drive systemic change. Its mission is to inspire collective leadership, empowering people to shape free, fair, and informed societies. TrustLaw is the Thomson Reuters Foundation's global pro bono legal programme, connecting high-impact NGOs and social enterprises working to create social and environmental change with the best law firms and corporate legal teams to provide them with free legal assistance in order to produce ground-breaking legal research and offer innovative training courses worldwide.



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This Guide is offered for information purposes only. It is not legal advice. Readers are urged to seek advice from qualified legal counsel in relation to their specific circumstances. We intend the Guide's contents to be correct and up to date at the time of publication, but we do not guarantee their accuracy or completeness, particularly as circumstances may change after publication. The Committee to Protect Journalists, Media Defence and the Thomson Reuters Foundation, accept no liability or responsibility for actions taken or not taken or any losses arising from reliance on this report or any inaccuracies herein.