

Legal Guidebook for Bhutanese Journalists

Journalists' Association Of Bhutan



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Introduction

The media's role in a democracy is often that of a watch dog's. More formally, it grows into the fourth estate of the government. For decades, in their efforts to educate, entertain and above all, to inform, the media industry, represented by trained journalists wrote about almost every aspect of life discernable to citizens they covered.

A free, neutral and independent media promotes good governance in a democracy. In Bhutan, that fulfills one of the key pillars of GNH (Gross National Happiness).

A democracy without a free press is almost unimaginable. From helping citizens make informed decisions in electing a government to keeping the elected government accountable to its people is ensured by a free press.

There is a reason for the freedom of press, speech, opinion and expression enshrined in the constitution as a fundamental Bhutanese right. However, that freedom to wield the authority comes with responsibilities, enshrined in the same constitution's subsequent article.

In addition to the constitutional provisions, Bhutanese journalists are guided by a list of ethical codes that help them maintain the highest professional standards in disseminating accurate information and reliable news with integrity and accountability.

Media organisations and journalists are subject to growing scrutiny from various institutions and individuals. Unlike in other parts of the world, Bhutanese journalists have not faced jail, although there have been rare cases of them being taken to court, or media houses being sued. Bhutanese journalists, therefore, need to be aware of potential pitfalls in their line of duty so as to avoid them.

This legal handbook for Bhutanese journalists the Journalists' Association of Bhutan (JAB) developed with support from UNESCO hopes to be able to prevent and protect Bhutanese journalists from legal suits through awareness on existing laws and legislations relevant to them. It also includes some of the global best practices.

This guidebook is a tool journalists in Bhutan can use to avoid any legal perils or defend themselves should they fall into one. This guide also contains few checklists for journalists and it is highly recommended for the newsrooms to incorporate these checklists into their editorial policy.

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Section

Fundamental rights

Freedom of Press

Freedom of press is guaranteed by the Constitution. It includes the radio, television and other forms of information dissemination, and encompasses other digital means of publication or broadcasting.

Article 7 of the Constitution states: *“There shall be freedom of press, radio and television and other forms of dissemination of information, including electronic”*

It basically gives journalists, writers and bloggers the right to publish or broadcast news, information and related contents without fear of retaliation and censorship provided that the information/news relayed does not break other laws such as Bhutanese laws on defamation, or laws against sedition and treason, or copyright laws among others.

A free press is a necessity for any democratic society, as it creates an environment conducive for a responsive government. A free uncensored press means reliable, legitimate information and news is relayed in a transparent manner. Such freedom implies the absence of external interference and is protected by the Constitution.

According to UNESCO, a free press always has a positive influence on poverty, governance, and can reduce violence or conflicts. It holds governments accountable and makes their actions transparent. *“The free flow of ideas is essential to societies so that people can understand one another and the sharing of knowledge and idea can advance.”*

Press freedom gives media control over what they choose to publish or broadcast. This autonomy is especially necessary when publishing news about critical government decisions and policies, which in turn will help people make informed choices relevant to those decisions and policies.

By the same token, freedom of press also gives the media the right to refuse to print or broadcast contents involving obscenity, fraud, pornography, defamation or any other content that

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promotes imminent lawless action, speech or action that violates intellectual property laws and commercials, which could potentially disrupt peace, harmony, legal proceedings and sovereignty. Journalists may also refuse to publish or broadcast contents that contravenes journalistic code of ethics.

Freedom of speech, opinion, expression

Freedom of speech, opinion and expression primarily supports the freedom of an individual to articulate and express his or her opinions, thoughts, ideas or emotions without fear of retaliation, censorship or legal sanctions.

A constitutional guarantee for Bhutanese, freedom of speech, opinion and expression allows Bhutanese to express or articulate their ideas and opinions or to seek, receive or impart information through any medium without interference or censorship from authorities.

However, freedom of speech, opinion, expression, conscience, religion or thought applies to “Bhutanese citizen” alone, while right to life, liberty and security implies to “all person,” meaning anyone residing in the country. In contrast, freedom of press in the Constitution is not limited to only the Bhutanese media, implying foreign press also having the same freedom of press in Bhutan.

Article 9 of the Constitution enshrines the principles of state policy mandating the state to discharge its duties in a fair and transparent manner to create a conducive environment for its people to live in peace and harmony. Thus, this Article, by stressing that the government will discharge its duties in a “fair and transparent manner” further strengthens the constitutional right of the freedom of press as a free press is vital ensure a fair and transparent government.

Another important clause in the Constitution impacting freedom of press, Article 9.3 states: *“The state shall endeavor to create a civil society free of oppression, discrimination and violence, based on the rule of law, protection of human rights and dignity, and*

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to ensure the fundamental rights and freedoms of people.” This clause similarly implies the importance of the freedom of press, as a civil society free of oppression, discrimination, based on the rule of law requires a strong uncensored media to keep the government accountable and to disseminate information to the people.

With rights come responsibilities, hence the fundamental rights will be observed in line with the fundamental duties enshrined in Article 8 of the Constitution.

Section 2 of the Article 8 in the Constitution also calls for Bhutanese citizens to preserve, protect and respect the environment, culture and national heritage. Fostering tolerance, mutual respect and spirit of brotherhood transcending religious, linguistic or regional diversities are a fundamental duty too. The responsibilities noted in this section can impact the freedom of press, as all members of the media must keep in mind that their reporting should not foster intolerance, or disrespect our national heritage, or abnegate any of the other responsibilities in this section of the Constitution.

While journalists can use the provisions of state policy to ensure fundamental rights and freedom, it is also their obligation to fulfill their fundamental duties as Bhutanese citizens.

Freedom of speech, expression and press are the most important human rights for journalists and are enshrined in international laws as well.

Limitations

However, freedom of press is not absolute and neither is freedom of expression, speech and opinion.

With regard to state affairs, the state may distinguish which materials are fit for public disclosure or protected. Usually, state materials are protected either due to classification of information as sensitive, as state secret, or the relevance of the information to protecting the national interest.

For instance, freedom of press along with those of expression,

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speech and opinion cannot be exercised when it concerns:

- a. The interest of the sovereignty, security, unity and integrity of the country.
- b. The interest of peace, stability and wellbeing of the country.
- c. The interest of friendly relations with foreign states.
- d. Incitements to an offence on grounds of sex, race, language and religion or region.
- e. The rights and freedom of others.
- f. The disclosure of information received in regard to the affair of the state.

The Information, Communication and Media Act, 2018 empowers the Ministry of Information and Communication (MoIC) to draw up policies and plans related to both ICT and the media. In addition, the journalists code of ethics spells out the need for journalists to prioritise national interest and security. A journalist ought to be mindful reporting issues that might incite religious, ethnic, regional or communal conflicts. The same caution applies to journalists when covering issues that undermine the sovereignty and the integrity of the Kingdom and potential breach or compromise to its security.

Ensuring conformity to these limitations, section 10 of the Media Act grants MoIC minister the authority to issue directives to publish or remove certain news and information concerning the nation's security and sovereignty.

Section 17 of the Information, Communication and Media Act states: *"The ministry may, on the orders of the Cabinet, direct a licensee to stop transmission of certain news or information in the public interest."*

Further the media council is also responsible for monitoring any harmful, offensive, illegal or antithetical content on the internet and other ICT and media services. The idea is to protect the public and vulnerable sections of the population from undesirable influences of the media contents.

The right to freedom also needs to be seen in consonance with other rights such as privacy and equality before the law and

when it conflicts with other rights and protections, especially in cases of libel, slander, pornography, obscenity, violence, and invasion of intellectual property, among others.

In many democratic countries, in order to defend freedom of the press and information, governments are subject to “sunshine laws” or “freedom of information legislations” that are used to define the ambit of national interest and enable citizens and press to request access to government-held information. Bhutan is yet to have such a legislation, a draft of which awaits deliberation at the Parliament.

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Section

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Reportage and Law

Defamation

One of the most challenging legal ramifications a journalist could face is a defamation charge. Defamation can take the form of libel (published or broadcast communication, including information published on a website) or slander (oral communication). The two types are explained under dedicated sub-titles.

Defamatory statements in the form of libel or slander can invite legal suits if they expose a person to hatred, ridicule, or contempt, which tarnishes his/her reputation or causes harms to his/her vocation or business. For a business, a statement may be considered defamatory if it affects sales or profit.

Bhutan's penal code defines defamation as an act of *"intentional damage to the reputation of another person or a legal person by communicating false or distorted information about that person's action, motive, character, or reputation."* (Section 317, Penal code 2004)

In other words, defamation laws seek to balance competing and conflicting interests of exercising one's freedom without causing harm to others. While people should be able to speak freely without fear of litigation over issues of public and national interest, they should not be able to speak on the basis malicious intent, or to deliberately harm or ruin the lives and reputations of others by spreading lies.

Defamation suits can be either civil or criminal or both. The civil and criminal procedural code states: *"completion of a civil suit shall not preclude the plaintiff from exercising his/her right to prosecute the same defendant for crimes."*

The offence of defamation is a fourth-degree felony, if it concerns armed robbery, treason or terrorism, compensable by a minimum of one month to a maximum of three years daily minimum national wage to the aggrieved party. Else the offence is graded a petty misdemeanor and a monetary compensation in lieu of the crime is charged.

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However, the penal code of Bhutan does not construe as defamation the following acts:

- a. a bona fide expression is made in the public interest;
- b. a criticism of a literary work or product;
- c. an appeal through lawful means or in good faith for redressing a grievance;
- d. a bona fide complaint by or to any agency or authority to redress a grievance;
- e. a bona fide complaint by the defendant against one's own superior officer or about an employee serving under the officer;
- f. a formal report of a supervisor or superior officer concerning the work or performance of an employee; or
- g. the court based on relevant facts and circumstances, considers the statement made to be reasonable.

Libel

Libel occurs when a false and defamatory statement about an identifiable person is published to a third party, causing injury to the subject's reputation. A libelous statement can be the basis of a civil lawsuit, in some cases, a criminal prosecution, brought by the person or group allegedly defamed.

Courts are generally required to take the full context of a publication into account to determine a publication defamatory. However, a headline, a drawing, a cutline or a photograph by themselves can, in some cases, also be libelous.

Bhutan's penal code states: "*A defendant shall be guilty of the offence of libel, if the defendant defames another person through the means of writing, drawing, or photographing.*"

A libel lawsuit occurs when information is negligently or intentionally communicated to someone other than the person defamed through any medium, be it a newspaper or a website. Letters in newspapers that contain unsupported derogatory accusations or false statements, including advertising appearing in a publication, can be basis for libel suits against news publishers.

However, comments posted on a website usually won't

subject the news website to liability. But again, if the comments made by third party are extensively edited, prompting responses from users or incorporated into subsequent news stories, media agencies may lose this protection.

The offence of libel is a felony of the fourth degree. Compensation ranges from one month to three years of the daily minimum national wage, if the libel includes murder, armed robbery, terrorism or treason. A libel of the petty misdemeanor type with some amount of compensation.

Product libel

Journalists covering business beat and consumer products should be aware that their reports may be subject to libel as well. In the west, disparagement or tort laws authorise food producers to sue anyone who disparages a food product with information that are not backed by reliable scientific data. However, Bhutan doesn't have a tort law yet.

Criminal libel

The law is used against journalists when their reports are politically charged or they amount to treason or an offence against the state. Criminal libel laws are subject to the same requirements as civil libel law.

Infliction of emotional distress

News agencies are sometimes liable to be sued for emotional distress it may cause through its publication of embarrassing, yet truthful facts. Thus, it is important for journalists to respect and protect vulnerable sections of the society such as women, children, members of LGBTQI+, people living with HIV among many. The safest vouch is to cover their issues with informed consent.

Of and concerning principle

Defamatory words are not actionable unless they refer to someone, and it is clear that those who hear or read the statement will recognise the reference being made to. This has come to be known as the "of and concerning" test. Plaintiffs must prove that the alleged defamatory publication refers to them. There can be no liability if the statement in issue is not proven to be "of and concerning" the plaintiff.

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However, courts have the authority to decide whether an alleged statement can be reasonably understood as referring to the plaintiff, and to dismiss the case at the outset if the statement cannot be so interpreted.

Defence to defamation

Journalists have a duty to tell their readers, listeners and viewers about matters of public interest. However, there are some conditions as mentioned in the journalistic code of ethics. If a person is accused of something, he/she must be given a chance to comment or deny the accusation.

Truth

This is the only defense to defamation and it has to be backed by evidence. While it is the strongest and simplest defense, it is often difficult to practice as the burden of proof is on the journalist. It may sometimes result in courts asking to reveal confidential sources, which could be contradictory to the journalistic code of ethics.

It is important that the courts of law are educated on the journalistic codes of conduct and ethics and then find ways to prove it based on circumstantial evidences, which could be your research, backgrounding, interview notes and recordings/clips or other credible sources of information. In order to defend against a defamation law suit, and to prove truth, reporters should always document their research, interview notes, and any and all relevant correspondence, while protecting their source.

According to the evidence Act of Bhutan, 2005: “*Evidence means all types of proof or probative matter presented and permitted by the Court at a legal proceeding by the act of the parties or required by the Court on its own through the medium of witnesses, documents inclusive of electronic records and physical evidence in relation to matters under inquiry.*”

Evidence may be direct or circumstantial and can be:

- Testimonials;
- Documentary including electronic records;
- Physical; and
- Expert opinions.

Reporters, in keeping with the Evidence Act must always remember these types of evidence are allowed in a court of law, and should thus attempt to preserve evidence of this nature to defend against potential lawsuits.

The Act also states that a party asserting the affirmation of fact must prove the existence of those facts and when any fact is within the knowledge, the burden of proving the fact falls on the person. In cases of defamation, journalists must prove the statement of fact.

The journalists code of ethics also states that a journalist shall: *Pursue the truth at all times and not publish false, inaccurate, misleading or distorted material. In particular, he/she shall clearly distinguish between fact, comment and conjecture. Where, despite due diligence in researching a story, he/she publishes an inaccurate fact, he/she shall ensure that a correction, and a suitable apology, is published as soon as possible after the inaccuracy has been brought to his/her attention. This practice can insulate journalists from being dragged to court.*

This section of the code of ethics obligates reporters not only to avoid publishing false information, but also states that reporters must not publish inaccurate, misleading or distorted facts. To avoid this, a journalist must ensure that all different parties in the story are interviewed, and he/she should not cherry pick facts to create a distorted version.

Honest comment or opinion

If a statement published was a journalist's honestly held view on an issue of public importance or interest, it can be deemed as an honest comment or opinion. This may include editorials, columns, commentary, perspectives and reviews. However, choice of words, tone and language must be used strategically while writing such pieces. Additionally, it should be clear to the reader that the journalist is offering an opinion or comment on an issue, and that it is not a news story.

Fair report

Libelous statements made by others in certain settings are conditionally privileged if the reporter accurately reports information of public interest in good faith. This privilege usually applies to

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materials from official meetings such as judicial proceedings, legislative hearings and conferences. Reports of this nature must be accurate and fair if the reporter is to invoke the fair report privilege, and it is advisable that the reporter explicitly attribute the information to the official source.

Retraction

Although a retraction is not usually considered an absolute defense to a libel claim, it may reduce the damages. However, retracting or correcting too much could be seen as an admission of falsity, which would be used against a journalist in a libel suit. Before agreeing to publish a retraction, consult a lawyer.

Reporters' checklist

1. Check sources thoroughly. The source of the information should be credible. Some sources have no direct knowledge of events, while some may have vested interest, or are paid to misrepresent facts. Some sources may disappear when summoned by the court. Double check facts and verify information. Refusal to answer or silence concerning a statement do not constitute consent.
2. Check if the article contains all sides of the story. Leave personal opinions out when verifying information or checking a story for accuracy.
3. An article's tone matters. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of fact.
4. A police or judiciary beat requires understanding of criminal and civil procedures, including terminology and judicial proceedings.
5. While editing, make sure the story does not convey the wrong information because of a hasty rewrite. Be sensitive about using words that connote dishonest behavior, immorality or other undesirable traits. A judge may order a news organisation to produce reporters' notes, drafts and recordings at a libel trial.
6. Watch for headlines and cutlines that might be defamatory even though the text explains the story.
7. Make sure news promos or teasers, used to stir audience interests, are not misleading or defamatory.
8. Avoid using generic video footage or file photos when reporting on an activity that might be considered questionable.

9. Just because someone else said it, it does not cushion a news organization from being sued for republishing it. This includes letters to the newspapers.
10. If contacted by someone threatening a libel suit, be polite, but do not admit error or fault. Talk the case over with your editor, supervisor or a lawyer immediately, and follow procedures established by your news organisation.

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Invasion of Privacy

An invasion of privacy occurs when there is an intrusion on someone's reasonable expectation to be left alone. Privacy is invaded when one intentionally intrudes physically or otherwise, upon a person's solitude or into his private area or affairs.

The law is built on the foundation of fundamental rights enshrined in the constitution which states: *"A person shall not be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence nor to unlawful attacks on the person's honour and reputation."*

Broadly, the concept of individual right to privacy contradicts with freedom of press. Laws attempt to strike a balance between the two and courts generally articulate on "reasonable expectations of privacy."

Right of privacy can be violated by any means of communication, including spoken words. This can result in intrusion, publication of private facts, or in the false light and misappropriation.

Publication of private facts such as revealing private, sensational facts about a person's sexual activity, sexuality, health or economic status can constitute an invasion of privacy. However, reporting news events that take place in public generally does not constitute invasion of privacy. Public revelations about children, particularly their medical conditions and treatment, also may subject the media to liability for invasion of privacy.

False light occurs when information is published about a person that is false or reflects the person in a false light. The information or statement published need to be defamatory to be

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actionable as false light. This type of invasion of privacy tends to occur when a writer condenses or fictionalises a story, or uses archived pictures and footages to illustrate a news story in a different context.

The use of a person's name or likeness for commercial purposes without consent is **misappropriation**.

Intrusion claims against the media often center on some aspect of the news gathering process, involving wrongful use of recording devices, cameras or other intrusive devices. Trespassing can also be a form of intrusion. Paparazzis are often charged for intrusion. Since the basis of an intrusion claim is prying into private affairs of another person, actionable claim may arise even though a news story is not published or aired.

However, if the information is derived from records such as judicial proceedings or police report, which is already in the public domain, media is not liable for reporting it. But journalists must first verify if the information extracted is actually a public record. Reporters should use caution in relying on semi-public documents like a government official's notes that do not become part of the official report.

Some countries impose certain limitation on the Public figures' right of privacy. This is quite contrary to defamation wherein public figures can claim more compensation than commoners.

Chapter 30 of the Bhutan's penal Code 2004 emphasises eavesdropping as an offence against privacy. Section 468 of the penal code states: *"A defendant shall be guilty of the offence of eavesdropping, if the defendant unlawfully engages in wiretapping, mechanical overhearing of conversation, or intercepting or accessing of an electronic communication."* The offense is graded a misdemeanor.

However, for the media, privacy laws are prescribed in the Information, Communication and Media Act mandating all media agencies to respect the right to privacy. Section 339 states: *"An ICT and Media facility or service provider and vendor shall limit the collection, use and disclosure of personal information, to that which a reasonable person would*

consider appropriate in the circumstances.”

Our laws do not protect surreptitious recordings, although news organisations frequently adopt policies regarding surreptitious use of news gathering tools such as recording or taking pictures without the consent or knowledge of the subject. This is often used in investigative reporting or when interviewees do not cooperate. This is not advised as a proper investigative reporting tactic in Bhutan as it is direct contravention to the code of ethics for journalists mentioned below.

The code of ethics for journalist states *“a journalist shall not harass, intimidate or trick any person to obtain, or attempt to obtain, information or pictures. In particular, he shall not install listening devices on anyone’s property or tape-record conversations with anyone without their consent, or enter anyone’s property surreptitiously or using a subterfuge, except in circumstances where it can clearly and objectively be demonstrated that there is an overriding public interest in doing so. The onus of demonstrating the overriding public interest shall be on the journalist.”*

Defence to invasion of privacy

If a person **consents**, there can be no invasion of privacy. However, the reporter should ascertain that the subject has consented not only to the interview, but to the publishing or airing of the interview or photographs as well. When minors or legally incompetent people are involved, the consent of a parent or guardian may be necessary.

Truth can be a defense, but only in false light cases. However, truth is not a defense to a claim based on publication of private facts.

Newsworthiness can be a defense if there is a legitimate interest of the nation and public in the story as it was reported.

The code of ethics for journalist also states that a journalist should not invade the privacy of any person without his consent and shall respect his private and family life, home, health and correspondence, except in circumstances where it can clearly and objectively be demonstrated that there was an overriding public interest in the invasion of his privacy. However, the onus of demonstrating the

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overriding public interest shall be on the journalist.

Reporter's checklist

1. If the subject of a story involves minors or a physically and mentally challenged, make sure to gain a parent's or a guardian's consent.
2. Check if the subject is currently a private or public figure, or if his or her status changed over time.
3. Where did you obtain the information from and do you have the permission to be on the premises? Is it a public or a private place?
4. Was the information sourced from a public record or a semi-public record?
5. Would publication of the information offend anyone? If so, what would be the pros and cons?
6. Are the facts verified? Is the information outdated and not obviously of current public interest, or has a current event revived its newsworthiness?
7. Is the information vital to the story?
8. Was the information obtained ethically?

Use of intellectual property

The Copyright Law grants economic and moral rights to owner of original works produced in a tangible medium of expression such as photography, books and audiovisual works among others. The work does not have to be new or highly creative to qualify as an original.

The work must be produced in a format that can be perceived, reproduced and communicated over time. Newspapers, magazines, photographs and most other forms of media, including the internet, easily satisfy these criteria.

Usually, a journalist does not always own the copyright of his or her original work. Copyright ownership can hinge on an employment relationship. Copyright ownership depends on whether the work was prepared as an employee or an independent journalist.

Bhutan's copyright Act 2001, specifies that literary and artistic works of original and intellectual creations have the copyright protection. These include:

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1. books, pamphlets, articles, computer programs and other writings;
2. speeches, lectures, addresses, sermons and other oral works;
3. dramatic, dramatico-musical works, pantomimes, choreographic works and other works created for stage productions;
4. stage productions of works mentioned in the previous item and of expressions of folklore that are apt for such productions;
5. musical works, with or without accompanying words;
6. audiovisual works;
7. works of architecture;
8. works of drawing, painting, sculpture, engraving, lithography, tapestry and other works of fine art;
9. photographic works;
10. works of applied art;
11. illustrations, maps, plans, sketches and three-dimensional works relative to geography, topography, architecture or science.
12. translations, adaptations, arrangements and other transformations of works; and
13. collections of works and collections of mere data (data bases), whether in machine readable or other form, provided that such collections are original by reason of the selection, coordination or arrangement of their contents.

However, it also states that the reproduction of a short part of a published work, in the form of quotation is permitted without the author's consent, or other owner of the copyright. The additional condition is that the reproduction is compatible with fair practice and its extent does not exceed the extent justified by the purpose. This means that the quotations should be used in the right context rightly attributed to the author and the work.

The code of ethics for journalists also mentions that a journalist should disclose the origin of information and not engage in plagiarism of other people's works. He/she should also ensure that, quotes from other published or non-published sources are clearly and fully identified.

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Limitations

Notwithstanding these provisions, the protection is not extended to any idea, procedure, system, method of operation, concept, principle, discovery or mere data, although they may be expressed, described, explained, illustrated or embodied in a work.

For that matter, any official text of a legislative, administrative or legal nature, as well as any official translations are not protected by the Act.

Not every unauthorised use of a copyrighted work is a copyright infringement. The law considers some limited liberty under “fair uses,” such as news reporting, commentary, criticism, research and teaching.

The law also stipulates that a fact is not an original work of authorship because facts owe their origin to the thing or person that makes them happen. For example, if a journalist wrote a newspaper article about a forest fire, the journalist cannot copyright the facts about the fire because those facts do not owe their origin to the journalist. Similarly, facts discovered through research, no matter how new and amazing, also do not owe their origin to the researcher.

While the reproduction of news article published in a newspaper, television or other communication channels on current economic, political or religious topic is permitted, it is also subject to source attribution.

Reproduction of political speeches, a lectures, addresses, sermons or other work of similar nature delivered in public, including speeches delivered during legal proceedings in newspapers, periodicals, broadcast channels or other communication to the public is also permitted.

Copyright infringement can be embarrassing, costly and criminal. According to the Copyright Act of Bhutan, any infringement of a right, if committed wilfully, or by gross negligence, and for profit-making purposes, shall be punishable by prison term of up to one year or a fine of up to Nu 10,00,000 or both. However, the court has the authority to fix the amount taking into account the defendant’s profits derieved from the infringement.

Reporters' checklist

1. Always seek the author's permission before using that expression of ideas or facts. For some reason, if the permission could not be sought, rephrase the ideas in your own words with some attribution to the source of the original.
2. Avoid using large segments of someone else's expression verbatim. The radio news that broadcasts stories from the local newspaper word-for-word without attributing is asking to be sued and likewise the newspaper if it does so from the television news without attribution.
3. Copy-pasting sentences, paragraphs or entire passages without source attribution is as culpable for plagiarism.

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Covering Elections

Elections are important to ensure smooth functioning of democracy. The media play an even greater role of helping the electorate reach an informed choice of government and ensuring that those elected to office fulfil their democratic responsibilities.

Article 23 of the Constitution states: *"The general will of the people shall be the basis of government and it shall be expressed through periodic elections."*

In the following Article, the Constitution also states that the Election Commission will be responsible for "free and fair" elections, which is near impossible without the media reports verifying that it does.

Therefore, the Election Act requires the Election Commission of Bhutan (ECB) to "facilitate coverage of elections by the media" in accordance with the rules and regulations designed for the media on election coverage.

The media have the responsibility to educate the electorate in exercising their rights to vote. By reporting on the development of an election campaign, it provides a platform for political parties and candidates to reach out to voters. It facilitates debates among political parties and their candidates, which allows voters to gauge the better candidate or the party.

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Media also reports the results, monitors vote counting, scrutinises the electoral process, including the conduct of elections, to ensure fairness.

Since the media can shape public opinion, they are susceptible to external influences, threats and possible misuse.

The Election Act 2008 states that all registered parties shall enjoy equitable time on cable television network and other electronic media to display or propagate any election materials or to address the public.

The media's responsibility is to engage candidates and political parties in healthy debates and in exchange of ideas, while discouraging mudslinging. Asking the right questions and giving both sides equal opportunity to respond has been one of the requirements by the election officials in attempt to allow for equal airtime and space for political parties and their candidates in the media.

The Constitution calls for free and fair elections and a need for electoral laws to ensure this. The electoral law, in turn tasks the ECB to facilitate media coverage to ensure transparency and fairness. However, the electoral law gives the powers to ECB to come up with rules and regulation to monitor media coverage. Although it may seem to restrict press freedom, it also holds the media accountable.

Law Vs Rules

In case of discrepancies between the law and rules, Journalists should be aware that a rule is a set of guidelines to regulate a practice of an activity whereas a law, on the other hand is a system of rules that help govern people. Laws have legal consequences but rules do not and, therefore, violation of rules have predetermined cost. For example, one cannot take a person to court in violation of service rule of a company unless the act of doing so violates a law. But the person violating the rule may have a penalty imposed which is determined by the service rule like suspension. However, for a journalist or a new agency to overlook the rules and regulation may miscarry its reputation. It is, therefore, important for the journalist to understand these rules while covering elections.

The Media Arbitrator

During the course of elections, the ECB usually appoints a public official as the Media Arbitrator responsible for the administration of rules and provisions of the Election Act that deal with political campaign broadcasts and advertising. He/she is responsible for allocation of campaign broadcasting time and space in print media and resolving disputes among broadcasters, political parties and candidates.

The Media Arbitrator receives complaints and other communications on election coverage in newspapers, radio and television stations and also those related to social media posts. Based on the nature of the news materials, weighed against media's election coverage rules and regulation, it issues appropriate public statements. The Media Arbitrator gathers all relevant documentation including correspondences, articles, scripts, audiotapes, videotapes or other materials in contention for consideration. The arbitrator also has the responsibility to review all relevant materials and other information to determine complaints against non-adherence to the election coverage code of conduct or non-compliance with election coverage guidelines or to justify an investigation.

The Primary responsibility of the Media Arbitrator are to monitor:

- All information programmes, such as the main news of the day, current affairs programmes and news flashes;
- All advertising blogs, announcements, short messaging system, and paging service;
- All Social Media contents of or about the Political Parties, Candidates, or their representatives, and the media agencies, including their discussion forums;
- Radio, television and cable network commercials, spots, etc.; and
- Special election programmes in which representatives of Political Parties and candidates participate at the invitation of the radio/TV station, for the presentation of their political programme to the public.

The Media Arbitrator also has the following responsibilities:

- Undertake an investigation and submit his/her findings and conclusions regarding any investigation to the Commission for appropriate action in the case of complaints

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which are grave in nature. (For the complaints which are not grave in nature, the Media Arbitrator shall take appropriate action)

- At the end of each election, assess the performance of the media in his/her report and submit any recommendation to the Commission.
- Oversee that there is a level playing field in terms of advertisement and no individual or group draws advantage through propaganda of Royal Patronage, Religion, Religious Personalities or resort to personal attacks or hate speeches.
- Receive, investigate and or arbitrate all media-related disputes in the first instance or may report cases to the Election Commission, as provided under the Media Coverage of Election Rules and Regulations 2015

During the course of election period, an election official, including the Media Arbitrator, are tasked to co-opt the services of the media regulatory authorities of the government, including BICMA, Department of Information and Media or an internet service provider (ISP) whenever necessary.

The ECB can also appoint public official(s) to monitor social media posts and assist the media arbitrator. Thus, the rules and regulation relating to social media is also put in place.

Social media rules

In line with the Election Act, the Election Commission of Bhutan has come up with social media rules, which can be applied to news organisations having social media pages as well as bloggers and vloggers.

For a media agency to report on elections in Bhutan, audio-visual or print are mandated to subscribe to the media undertaking form, which requires:

- A media house, in case of user generated content, to not give a misleading account of the weight of opinion.
- Any site prompting debate on the election to be actively hosted and properly moderated to encourage a wide range of views.
- Any site to be alert to the danger of distortion caused by organised campaigning and where necessary, put a board

into pre-moderation or read-only mode.

- A non-news website to direct users who want to discuss the election in forums, message boards and blog comments, to a site or board which will be moderated before being published.
- No online votes attempting to quantify support for a Party, Candidate or policy issue shall be conducted during an election period.
- A journalist and moderator to make fine judgment to effectively moderate and differentiate between remarks that constitute robust debate and personal abuse.
- As a general rule of thumb that if an information is not fit to be broadcast on radio or TV, it shall not be online.
- A Media online news site to list links to every Party site available, provided that it does not give strong grounds for concern that this breaches its editorial policy or the Electoral Laws e.g. defamation, incitement to racial hatred, regionalism etc..
- A news-online shall not link to the sites of individual Candidate or Party unless it is willing to host for all contesting contestants.
- Any speeches carried in full should be selected on news value, while bearing in mind that due impartiality requires that an appropriate range of speeches are carried.
- A conversation via social media to follow the conventions of polite discourse. Therefore, comments shall not be posted if it contains, vulgar, obscene or abusive language or images; personal attacks, unsupported accusations, defamation or threats of any kind. Offensive terms targeted at groups or persons of a specific ethnicity, race or sexual orientation; or campaign materials promoting or opposing a party or candidate in an election for political office are also discouraged.

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The social media rules also forbid users to publish, broadcast or transmit any information that is of the nature of election campaign supporting or opposing a candidate or a party 48 hours before poll and until the close of polls. This is also referred as Blackout Period or no-campaign period. These restrictions apply to Internet advertising even if it is claimed to be “free”. However, an Internet advertising published before and not altered during the 48-hour no-campaign-period can remain posted as long as no further electronic distribution of that advertisement is carried out.

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Genuine news reporting, including interviews, commentaries, or other works prepared for and published by any newspaper, magazine, or other periodic publication in any medium, on or about a contesting candidate and/or party's campaign is not treated as political advertising. It just has to be balanced without favoring either sides.

An online poll in support or opposition to any one political party or its candidates are disallowed during the election period.

Media coverage rules and regulations

The media does not merely depict the political environment; it is the political environment itself as it shapes the perceptions that form the reality on which political actions are based. Therefore, its regulation is essential to enhance active and informed participation of citizens in elections.

This rule also mandates the media agency to sign an undertaking to cover elections. As per the rules, the period of broadcast and publication of permissible election campaign activities may start on the last date of submission of letter of Intent or filing the nominations until the end of 48 hours before poll day.

Below are some dos and don'ts prescribed by the rules and regulation of the media exercise, in its coverage and reporting, including on any social media platforms during election campaigns:

- Be independent and free of any control and direction of the government, political parties, candidates, individuals, groups, or organizations representing or promoting special interests of any political party;
- Refrain from publishing or broadcasting any matter with the potential or likelihood of promoting or inciting discord, bias or contempt, cause public disorder, pose or become a threat to the national security;
- Refrain from ridiculing, stigmatizing or demonizing people on any grounds;
- Not omit relevant facts and points of view while reporting major issues of public interest as it may mislead and misinform the public;
- Avoid distortion of reality so that the public is not misled

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and misinformed; and

- Not publish or broadcast any report, which, by its content, carries a clear risk of inciting discord or political disorder without having the accuracy and authenticity of the report confirmed by independent sources.

The media in the exercise of its constitutional right of “*freedom of press, radio, television and other forms of dissemination of information,*” and in recognition of its consequential social responsibility to the society should endeavour to:

- Provide a truthful, comprehensive, accurate, balanced and fair account of events;
- Serve as a forum for the exchange of public comment, opinion, discussion and criticism in a balanced and reasonable manner;
- Offer an accurate picture of the candidates and parties contesting in elections and of the society in general; and
- Present and clarify, as far as possible, the goals and values of the Candidates and Parties contesting in elections.

Fair, balanced and accurate reporting is what media and journalists strive for. During the elections, the rules and regulations demands fair and impartial reporting that does not omit facts of major importance or significance and refrain from publishing rumours or unsubstantiated statements that mislead or deceive the reader, listener or viewer.

Editorial judgement must be exercised in consideration of public safety, and to refuse any material provided by parties, candidates or their representatives that could lead to public disorder or harm the national security.

In case of rejection, the media must immediately inform the concerned political party and intimate the Media Arbitrator the reasons for rejection.

Media will be prohibited from covering any activity by political parties and candidates during the period between campaign closure and the closure of poll. However, counting centres should be open to permitted media functionaries to witness and observe

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the counting procedures provided it does not obstruct or interfere with the process or make public statements or online post on estimated poll result before the official announcements of results.

The rules on media coverage also restrict the media from transmitting any details regarding counting at the office of Returning Officer prior to the announcement of result by the concerned Returning Officer. To ensure that, the rules allows security personnels to ensure that no communication or recording gadgets or mobile phones are allowed in the counting centers, except for the election officials authorised for official purposes.

No media agency, media functionaries or individuals are allowed to release survey reports of public opinion on an election to the general public prior to closure of the poll. This includes forecast or prediction relating to the probable result of an election based on the information provided by or obtained from voters or observers.

Reporters' checklist

1. Did I obtain an accreditation from ECB? Or did my organisation sign the undertaking?
2. Did I provide equal opportunity to all the candidates or parties?
3. Did I cross-check facts or is it based on what candidates or parties claim?
4. Is the story, in anyway provoking one party to defame or harm another physically and emotionally?
5. Are there elements of possible defamation or libel statements?
6. Is the party or candidate trying to influence or manipulate my reporting? Do I have all the responses on the record?
7. Did I leave my opinion, choice and preference out of the story?
8. If I have expressed an opinion, is it clear that it is an opinion not an unbiased news story?
9. When you make a post on social media, in your personal capacity, always put a disclaimer that views expressed do not represent the news organisation you work for. But this too can be tricky if your post makes it clear that you support a particular party or candidate.

10. On the poll day, ensure that you carry your accreditation cards, camera and devices, batteries charged for the big day. Remind yourself to treat all officials on duty with respect and dignity? Do not interrupt their work, as elections are equally stressful for them.
11. Did I follow all rules? Often, reporters face with the urge of sneaking mobile phones into the vote counting centres. The pressure from the editors to get the results out first is quite stressful but violation of rules can turn out to be more embarrassing and damaging on your reputation.

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Confidentiality of Sources

Reporters rely on confidential sources for inside information that exposes government corruption or corporate fraud. But if the source violates a law in leaking the information to the press, the reporter can be summoned by the court and asked to reveal the sources.

Confidential sources provide information to journalists provided their identities are protected at all cost. Many anonymous sources are comfortable sharing information based on reporter's privilege – the right to refuse disclosure of sources and information in court.

However, there are no shield laws in Bhutan assuring the protection of anonymous sources. More than half the states in USA have adopted shield laws protecting this privilege. In some jurisdictions, courts have upheld the concept of confidentiality of sources as a constitutional right. Bhutan does not have one.

In Bhutan the journalists code of ethics states: *“A journalist shall ordinarily protect the confidentiality of his sources. He may, however, **reveal the identity of a source** where he has obtained the consent of the source or **where the law requires him to do so.**”*

This clause can prove detrimental to journalists and the work they do. The court or any law or for that matter, law implementing agencies can loosely use this against a journalist. The

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clause indirectly implies that a journalist should bear the consequences of protecting his/her sources irrespective of whether it is in the public or national interest.

As such, if a journalist is asked by the court to reveal a confidential source, there are no laws protecting a journalist from denying the court such information. A potential consequence is the journalist being fined or even getting a short stint in prison if the judge decides to issue a contempt of court order against the journalist.

In other countries, the shield law, on the basis of public interest grants reporters the right to refuse to reveal sources and confidential information. Freelancers and bloggers are often not included in the definition of a journalist and, therefore, are not granted the privilege in some countries.

Under these circumstances, journalists should try to provide other evidence to prove that the information supplied by the confidential sources are indeed a matter of fact and in the public interest. Such evidence could include verification of facts by other credible sources, or verification of facts by public records.

Reporters' checklist

1. Is/are my source(s) credible? Is he/she and the information shared reliable?
2. Background check – Does the source have any conflict of interest or do you sense any vested interest.
3. Is the information of interest to the public or newsworthy?
4. Can I get away even if I don't reveal my source(s)? Do I have other evidence to prove the information, revealed by your source(s), been found to be true.
5. What are the consequences of revealing the identity of my source on his/her physical, emotional, professional and economic wellbeing?
6. Who else, besides the court, can I reveal the identity of my source?
7. Consult a lawyer if situation demands you to reveal the identity of your source.

Section

3

**Access to
information**

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Right to information

Right to information is one of the fundamental rights enshrined in the Constitution. It states: “*a Bhutanese citizen shall have the right to information.*” However, in absence of a Right to Information Act, interpretation of this provision is quite vague as far as access to information by the media is concerned. However, this right to information must be balanced with the constitutional right to privacy mentioned previously.

Although reporters can gain useful insights into operations of government and public institutions by examining records, right to information doesn't mean that reporters can walk into any offices and demand files, records and other information. It is an obligation on reporters to seek information in a courteous and respectful manner. Reporters must explain the context in which the information will be used. Always be specific and know what you need when asking for certain data, record, document or any other information. The custodians of records and information may provide you with only the information you requested.

Although many newsmakers or sources will honor oral requests, making your request in writing is the best way to trigger your statutory rights. This also helps the holder of the record better understand what you want and give your request serious consideration.

However, it can be presumed that most information on government and public institutions websites or social media pages are public information, unless specifically exempted. The restriction on the rights prescribed by the Constitution (mentioned in Section 1) should also, by default, apply to right to information. Use of sensitive information, if obtained through fair means, can be best justified by public interest, newsworthiness and national interest.

Besides the Constitutional restrictions on rights, there are number of exemptions on right to information imposed in other countries and also adopted by many newsrooms. These are:

- **Personal privacy:** Specific exemptions for personnel, medical and similar files.

- **Law enforcement and investigative files:** permits information to be withheld only when some specified harm to the investigation or an individual involved would result from disclosure.
- **Commercially valuable information:** These exemptions usually protect companies from disclosing commercially sensitive or trade secrets.
- **Pre-decisional documents:** These exemptions facilitate government officials to openly debate and discuss before reaching a final decision, which may or may not be made public.
- **National security:** These exemptions are intended to protect from disclosing those documents that if released could potentially harm security interests.
- Other common exceptions cover information relating to government acquisition of real estate, civil service examinations and answer keys, student records and prison records.

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Access to places

Be it a crime scene, official meeting or an event, the first thing on the minds of reporters is to gain access to the venue. There are no laws that gives journalists greater right of access to property and places than that enjoyed by the general public, unless there is a special invitation.

It can be generally understood that public properties are open to reporters. The same cannot be said about private properties and private affairs. Entering a private property without permission can lead to trespassing and intrusion of privacy.

There also exists public property, where access is limited to authorised persons only such as prisons and military establishments.

At some high-level events, media agencies and reporters have to obtain accreditation cards to be able to report on the event. This also comes with certain restrictions regarding the places you can enter or not.

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Although the government agencies may not limit or deny media access to public forums, they may impose reasonable time, place and manner restrictions. Therefore, the media's ability to inform the public is diminished when the right to gather news is impeded.

Access to election polling station

Both the electoral law and rules and regulations on media coverage mentions that the Election Commission of Bhutan will facilitate movement and provide access to media to places of elections. Therefore, reporters are usually allowed to enter the polling station for few minutes or so to take pictures and observe the process. However, reporters should refrain from eavesdropping on voters, particularly when ballots are being cast.

Access to prisons and prisoners

If the media only enjoys the same rights as the public, then they are entitled to visit places that are generally approved for the public. One such place is the prisons.

Chapter 14 of the prison Act 2009 states: "...While approval of all personal visitors of the prisoner shall be granted by superintendent/officer commanding/officer in charge of the prison, **all other visitor shall be approved by the Additional chief of Police.**" This clearly implies that journalists can have access inside the prison if due process is followed.

During prison visits, an individual is required to produce identity card, fill out the visitor form and declare personal belongings at the reception. All conversations are held in the presence of a guard. All letters and mails sent out of the prison, according to the Prison Act, are subject to scrutiny by the prison authority.

Access to private property

Reporters need permission to enter a private property from its owner to gather news or information or to attend an event, without which, it is considered trespassing or unlawful entry into a private property that is punishable by law.

Private property that are open to the public, such as shopping malls, however, are treated public, although, in some instances, courts may issue order to restrict entry.

Even for the police to search private property, the civil and criminal procedural code of Bhutan requires the authority to seek permission of the owner. This permission does not allow landlords to act on behalf of tenants. Since there is no specific law on journalists' right of access to places, the same principle can be implied. However, when it comes to access to private offices, a prior permission may be sought from the management.

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Reporters' checklist

- Carry your credentials at all times. Do not trespass on private property or marked with a police line.
- Do not take anything from a crime scene — it carries a charge of theft.
- If you are denied access to a news event venue, determine whether the place is a public space (such as a street or park), or a private property. Access to a public space, at a public activity cannot be denied but a private activity at a public space can be denied.
- Find out who has denied access to you and the grounds for denial.
- If the property is publicly owned and the restriction appears to be discriminatory, consider approaching the senior management of the property.
- If the property is privately owned, and the restriction was imposed by someone other than the owner, it may be invalid.
- If you are ordered to leave by the property owner, do so and contact your editor.
- If the authority concerned have press relations guidelines, find out what they say.

Access to courts and court proceedings

The Constitution mandates the state to provide justice through a fair, transparent and expeditious process. It is on this principle that courtrooms have been open to the public and anyone who wants to attend a trial.

Media plays an important role in promoting access to justice, which is again a constitutional right of every citizen, thereby, enhancing and maintaining public confidence in the judiciary. In line with the Constitution, the civil and criminal procedure

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code 2001 states: *“all persons are equal before the law and are entitled to equal and effective protection of the law without discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”*

The media is entitled to publish accounts of most court proceedings but it must ensure that its reporting is premised on the proceedings. The media must also ensure that their reports do not influence the court proceeding and as far as possible leave its opinion and analysis after the judgement is passed.

However, in some cases, the court may prohibit journalists and media coverage of a court proceeding. That usually happens when courts need to preserve trial fairness or the integrity of court proceedings; to safeguard the privacy or safety of a victim or witness; or to protect the identity of a child or youth.

The civil and criminal procedure code also states that every person is entitled to a fair and public trial by an independent and impartial court in any proceeding. The court may **in its discretion exclude the press and the public** from all or any part of the trial or other proceedings only if there is a compelling need to do so in the interest of:

- a. public order;
- b. national security;
- c. the privacy of the parties;
- d. protecting the privacy of a juvenile; and
- e. in any other situation, if in the opinion of the Court publicity would seriously prejudice the interests of justice.

Commonly called a gag order, the court can issue a prior restraint that prohibit parties, lawyers, prosecutors, witnesses, law enforcement officials, jurors and others from talking to the press. Such orders are sought by one party in a case, although judges may issue gag orders on their own initiative. These are necessary to protect a person’s right to free trial and fair administration of justice.

The civil and criminal procedure code also has a clause on confidentiality, which states that *“professional secrecy and*

confidentiality concerning the case and court deliberation shall bind the court and all of its officers.” It further states that the court and its officers shall not discuss, publicise or testify on the case, court deliberations or related matters. This is why interviewing a judge or court staff may not be appropriate during the course of proceedings. Judges speak through comments made in open court or through written decisions. Reporters must rely on the official case proceedings as their primary information source. However, seeking clarifications on the deliberation may be explored if journalists do not understand them. But the code also tasks the courts to make the judgement accessible in the public domain.

The court record and judgment shall serve as the complete testimony of the case and the court deliberations. Most documents are available through the judiciary website. However, the media can also access hard copies after the proceedings on request. It is also important for journalists to obey and maintain court decorum such as entering into off limit areas. Following are some decorum usually observed.

- Attend court suitably and formally dressed with your Rachu and Kabney.
- Where possible, sit on spaces reserved for the media, or where members of public sit.
- Do not eat or drink in the courtroom.
- Stand when a judge enters or leaves the court, calls you or allows you to speak.
- If members of the media wish to enter or leave a courtroom while a trial is on, do so quietly. If they cannot leave without causing a disturbance they should not leave until there is an adjournment. Do not leave during closings or a summing-up. This is the best time to capture the essence of the case.
- Ensure that mobile phones are silent or switched off. Do not speak unless you are asked to.
- Follow the judge’s order at other times.
- Recording devices and cameras are not permitted inside courtrooms.

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Court Proceedings

Reporters do not need a law degree to cover the judiciary, but it

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is essential to understand and be able to simplify legal jargons and procedures for readers or viewers.

As per the civil and criminal procedure, the court proceedings are premised around a few key steps.

- First a preliminary hearing is conducted to enable the court to entertain challenges and clarify legal issues and procedure.
- This is followed by opening statements of each party to present their versions of facts.
- The rebuttal allows the parties to refute or disprove allegations.
- The court then grants opportunity to present evidences, including the right to subpoena witnesses.
- If necessary, the court may hear and take an independent testimony of party to the case. Parties are entitled to cross-examine opposing witnesses.
- After submission of evidence and hearing accounts of witnesses, the court may conduct judicial investigation, if necessary.
- The closing argument gives opportunity to the parties or their jabmis (legal representatives) to summarise the case and evidence.
- The court then adjourns and deliberates on the case at hand, following which, the judgement is passed.
- In a criminal trial, courts conduct a preliminary hearing of a case within 10 days of registering with the court. Based on its review, the court determine whether sufficient cause exists to proceed with a criminal prosecution and if so, whether the suspect(s) should be detained or released on bail in accordance with this code.
- The court, before the preliminary hearing, may authorise the detention of the accused for an additional period not exceeding 49 days if satisfied that adequate grounds exist for doing so, or 108 days if investigation relates to a heinous crime.
- However, any person arrested and detained with/without warrant shall be produced before a court within 24 hours of the arrest exclusive of the time necessary for the journey from the place of arrest and government holidays.
- If the defendant accepts a plea of guilty or Nolo Contendere, meaning that the defendant do wish to contest, his/

her right to a trial is waived. But, in the case of juvenile, his/her parents/member of family/legal guardian/jabmi may make a plea of guilty or Nolo Contendere only in the best interest of the juvenile.

- A court also has the power to bail and bond based on severity of charges, past records and likelihood of flight and threat to society.
- Civil and criminal procedure also states: *“Where a defendant is indigent or the charge is not a serious threat to public safety, a court may release the defendant without posting a bond based on a promise to return and other conditions set by the court.”*

Contempt of Court

A person showing disrespect to the court during court proceedings may be subjected to civil or criminal sanction in accordance with the laws of contempt.

According to civil and criminal procedure, contempt of court may be considered for following actions:

1. Interfering with a case, either orally or in writing;
2. Failing to comply appropriately to the judicial order;
3. Otherwise obstructing the course of justice;
4. Failure to adhere to hearing schedule;
5. Non-compliance with judicial orders;
6. Where a person summoned fails to appear or present evidence at the order of the court, he/she may be found in contempt of court and may be subjected to civil or criminal sanction;
7. Absence without leave; or
8. Once the hearing of a case has begun, if the litigant or other person summoned by the court takes leave of absence without the permission of the court, he or she may be subjected to civil or criminal sanction for contempt.

Sub-Judice

Sub-judice or under judgement literally means that a case or matter is under trial or being considered by a judge or court. Cases are considered sub-judice once legal proceedings become active.

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Publication of material on cases that are sub-judice may result in judge citing a journalist with contempt of court. The publication or the news report may create substantial risk that the course of justice in the relevant proceedings would be seriously impeded or prejudiced. It can be also construed as undue interference in administration of justice.

Even within the courts a defendant cannot be put to trial while the same charges are being prosecuted in other courts in Bhutan. However, he/she can be tried in different courts for separate offence.

While covering court proceedings, journalists must note that a person charged with a penal offence has the right to be presumed innocent until proven guilty. This is clearly mentioned in the Constitution. Further, the civil and criminal procedure also states: *“where guilt beyond reasonable doubt has not been established to the court’s satisfaction for the charge, the defendant shall be acquitted and released...”*

In the wake of the “naming and shaming” practice adopted by the Royal Bhutan Police and other institutions like the Anti-Corruption Commission, it may be noted that any individual or defendant is innocent until proven guilty. It is advisable for media practitioners to cross-check facts before copy-pasting or sharing the information as it is. This will prevent journalists from being sued.

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