

Block 2 | Legal frameworks: what are the different types of law that are relevant to online harassment?

Introduction: This video aims to provide an introduction to the legal landscape as it relates to online harassment. In particular, it will seek to provide journalists with an understanding of the different legal regimes that might play a role in safeguarding or protecting journalists against online abuse.

- **Why is the law important to this issue?** To understand the ways in which the law can help vindicate the rights of journalists where they have been subject to harassment or abuse, we must start by reflecting on what the law is and the role it plays in our society. There is rich philosophical literature on what the nature of law is and how it relates to other systems of norms. That is beyond the scope of this series, but this video will try to give you an idea of what it does and why it is relevant to the problem of the online abuse of journalists.
- The term "**law**" denotes a system of rules, usually made by governments and accepted by a country or community, that is used to order the way in which society behaves. In short, it seeks to regulate the world around us. It does this, primarily, by giving individuals and entities rights and obligations.
- A **right** is a legal norm about what is allowed of a person (i.e. what are they free to do) or what is owed to a person (i.e. what they are entitled to). An **obligation** is something that individuals and entities are forced to do. Human beings are agents in this system, which means that (ultimately) humans are expected to control and change their behaviour according to these rights/obligations and understand the consequences of their acts or omissions in this regard.
- This may all seem pretty obvious, but already we can see how a system that is designed to regulate how we (as a society) expect people to act or be treated is very relevant to a conversation on online abuse. This legal theory, however, can only be used to help journalists if they know where to find and how to enforce relevant rights and obligations.
- **Systems of Law:** In this video, we will provide an overview of where these rights and obligations come from, and where we can enforce them. The next two videos will go deeper into these systems of law and will provide an overview of the legal norms that are most relevant to journalists who are experiencing online harassment or abuse. First, let's take a step back and look at the different legal frameworks that are relevant to this conversation.

- **Domestic Law:** the laws that exist within a particular nation, that govern events, transactions, and persons within or having a connection to that nation;
- **Transnational Law:** laws that regulate actions/events that extend across national borders.
- **Supranational Law:** a body made up of member nations that has powers that its members do not have because they handed over those powers to it (the EU is an example of this).
- **International Law:** law between nations, which stem from agreements, embodied in a treaty, or customs that are recognised by all nations.

The videos will focus on domestic and international legal systems, as they are the most likely to be relevant when discussing legal remedies for online harassment.

- **Domestic Law:** First thing to highlight is that different countries (or jurisdictions) can have very different systems of law in and of themselves. Why is this important? Depending on where you are based or where you have been harmed by online abuse/harassment, you may have to look in different places to find out what legal remedies are available to you. The different systems at domestic level consist of:
 - **Civil law systems:** although two civil law systems can look very different from each other, they tend to have comprehensive and regularly updated legal codes. Case law is of less importance in these jurisdictions. That means, when looking for a legal response to something like online harassment, you will primarily look at the relevant codes to find the specific rules that are applicable in relation to such conduct.
 - **Common law systems:** common law systems also have codes, usually called statutes or legislation, that can set out relevant legal rules. However, these systems rely much more heavily on case law (or precedent). This means that it may be necessary to conduct research of case law developments to fully understand what rights you have and their scope when you have been subject to online harassment or abuse. These systems also tend to be more adversarial; this basically means that when you pursue a legal complaint you will be expected to find and present evidence that supports your case.
 - **Customary law systems:** these are based on patterns of behaviour (or customs) that have come to be accepted as legal requirements or rules of conduct within a



particular country. The laws of customary legal systems are usually unwritten and are often dispensed by elders, passed down through generations. This system of law is usually mixed with others. For example, in Canada, customary aboriginal law has a constitutional foundation which means it can be influential in some circumstances.

- **Religious legal systems:** systems where the law emanates from texts or traditions within a given religious tradition.
- **Mixed legal systems:** legal systems where two or more of the above legal systems work together.
- Domestic systems of law can be further split into different causes of action, which will be considered in more detail in the fourth video. For now, it is worth noting that domestic systems tend to have different bodies of law.
- First there is the **criminal law**, this is a system that punishes individuals for conduct that is viewed as particularly serious or harmful to society.
- Second there is **private law or tort** (as it is referred to in common law jurisdictions), this is a system that gives you the right to take action against another person/entity for certain actions that have caused you harm or loss.
- Third, there is **constitutional law**, through which you can take action against government entities that have violated your rights as contained in the national constitution. These are the three primary bodies of law that will be relevant to the discussion of online harassment.
- **International Law:** The primary source of international law is the international conventions and treaties that a nation has signed up to and agreed to be bound by. For example, the International Covenant on Civil and Political Rights has been signed up to by over 170 countries around the world. When thinking about how international law might help you, as a journalist, defend yourself against or seek remedies for online abuse/harassment, it is worth noting that although international law sets out individual rights, it sets out legal duties and responsibilities for states. In other words, it is not something that you can enforce against an individual or institution who is harassing you. Nonetheless, you can use it as a means to put legal pressure on a state to take measures to protect you against online abuse/harassment or remedy their failure to protect you in this regard.
- **Fora** - Different systems of law also have different bodies that are responsible for enforcing the rights and obligations that make up the law. This job is usually left to the courts,

however sometimes cases can be taken to regulators and other institutions before or in alternative to taking a case to court. The courts are tasked with the job of interpreting and applying the relevant laws to disputes and cases that come before them. Which court you take a legal claim to will depend on the options available to you under domestic procedural laws, as well as the type of action you are taking. Most countries will have separate courts for criminal, private and constitutional matters. Court systems include multiple layers of appeal, with the court of last resort being the apex court (usually referred to as a Supreme Court). There are other courts that can hear disputes at international level, however it is usually the case that your matter should be heard first by your domestic courts before you can take your case to an international or regional court.

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