

SYIN & SERN LAW REVIEW

SHORT POST

**THE CORPORATE PLAINTIFF AND THE DOORMAT  
DEFENDANT: A DIVE INTO FRIVOLOUS LITIGATION AND THE  
SUBVERSION OF PUBLIC OPINION**

Aishwarya Alla<sup>^</sup>

ABSTRACT

*Corporate legal action against public criticism has always been an unfortunate result of India's laws against defamation, particularly in the civil sense. The country has seen a rise in frivolous litigation, popularly termed as SLAPP suits or Strategic Lawsuits Against Public Participation. This paper aims to address the consequences of those legal proceedings and analyse the effects of such on those, often journalists and media houses, that bear the brunt of corporate weight-throwing. Using specific cases and examples, the author would like to demonstrate how the simple fact that the courts do not impose any liability on the defendants named in such suits is not enough to hinder catastrophic financial and social losses that plague the defendant(s). The lack of liability also amounts to the implicit discouragement of vocal disapproval. The author would then postulate that to allay the threat to public participation in the discourse, guidelines that explicitly focus on SLAPP suits must be developed, further providing suggestions for the same.*

Keywords: SLAPP Suits, Lawsuits, Corporate Law, Civil cases.

## THE DEFICIENCIES OF DEFAMATION

Defamation refers to ‘statements made with the express aim of injuring a person(s)’ reputation in the eyes of “right-thinking”<sup>1</sup> individuals<sup>2</sup>. Since this paper refers almost exclusively to media houses as defendants, the primary focus will be on the published, permanent form of defamation, known as libel, which is an infringement of a right in and of itself; no damages must be proven to maintain an action.<sup>2</sup> There is no need to prove intention in the civil sense of defamation, unlike in criminal defamation.

There are problems with the current defamation law. The root of the issue can be traced back to the rule established by *Subramaniam Swamy v. Union of India* (2016)<sup>3</sup> that the right to free speech, as stated in Article 19<sup>4</sup> of the Constitution and the right to reputation as interpreted from Article 21<sup>5</sup> must be balanced. Current libel provisions prioritize the latter. Obscurity in defamation laws means that powerful groups are increasingly able to use the legal apparatus to intimidate and silence their critics.

## SLAPP- ED BY THE BIGWIGS; THE PERVERSIVE SILENCING OF OUR NATION’S WRITERS

SLAPP (Strategic Lawsuits Against Public Participation) is a popular term used to describe a suit filed with the primary goal of discouraging a defendant from participating in public criticism or commentary,<sup>6</sup> evidently lacking a course of action. It is worth noting that occasionally, cases that could potentially be characterised as a SLAPP suit are justifiable, protecting organisations or public figures from frivolous cases. The objective is to ensure that members of the public understand that there is a hefty price to pay for speaking out<sup>7</sup>; the looming threat of hundreds of crores in damages (often unsubstantiated and meant purely to intimidate the defendant into silence<sup>8</sup>, the financial losses involved in addressing legal notices and court proceedings and the unquantifiable mental distress litigation so often causes. In India, the primary victims of such suits tend to be media houses and writers, two entities significantly less powerful than that of the conglomerates that tend to drag them to the legal guillotine.

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<sup>1</sup> Ratanlal & Dhirajlal, *THE LAW OF TORTS* 306 (26<sup>th</sup> ed. 2010).

<sup>2</sup> *Id.* at 307.

<sup>3</sup> *Subramaniam Swamy v. Union of India*, 2016 (7) SCC 221.

<sup>4</sup> INDIA CONST. art. 19, cl. 1(a).

<sup>5</sup> INDIA CONST. art. 21.

<sup>6</sup> George W. Pring, *SLAPPS: Strategic Lawsuits against Public Participation*, 7(1) PACE ENVTL. L. REV. 1, 2 (1989).

<sup>7</sup> *Id.* at 6.

<sup>8</sup> Malcolm Katrak, *Curbing Free Speech: Strategic Lawsuits against Public Participation in India*, 7(1) C.U.L.J. 27, 35 (2018).

## **FRIVOLOUS CASES; A DEMONSTRATION OF THE PROBLEM**

There have been many cases in India that one could conceivably call SLAPP suits based on the criteria. *M/s Crop Care Federation of India v. Rajasthan Patrika Pvt. Ltd. (2009)*<sup>9</sup> was one of the first to gain traction, that involved the plaintiff alleging defamation caused by critical articles, regarding pesticide levels published in the Rajasthan Patrika and claiming damages of rupees fifty lakhs.

More recently, in 2015, the NSE filed for an injunction against Moneylife Media regarding the publication of a whistle-blower's letter that outlined certain illicit practices to the tune of rupees hundred crores<sup>10</sup>.

These two cases have a commonality; the courts in both cases acknowledged the baseless nature of the claims at hand and reprimanded the plaintiffs for stifling the freedom of the press through pointless litigation. The Bombay High Court in the latter, ordered NSE to pay a sum of rupees fifty lakhs as penalty and around rupees one lakh to the two founders of Moneylife<sup>11</sup>. There seems to be no legal damages or injury suffered by the defendants, so what appears to be the problem?

One must note that in such cases, the intention is never actually to seek compensation for an injury to the plaintiff; it is to harass the defendant by purposefully making the legal process as difficult as possible and imposing undue financial hardship on the defendants. Merely filing a legal notice has become a weapon. The aim is to have a "chilling effect"<sup>12</sup> on the recipients of such legal notices. For example, the director of IIPM filed a 50-crore defamation suit against the defendant for running an article outlining Director Arindam Chaudhari's questionable practices that lead him to his fortune. The plaintiff filed several lawsuits in multiple jurisdictions with insufficient reasoning.<sup>13</sup> The goal here is to trap the defendant in a legal battle until they yield by way of issuing public apologies, rescinding their pieces, or resigning from their post-all-together as in the case of Paranjay Guha Thakurta, the former editor of Economic and Political Weekly<sup>14</sup>. This all goes to show that SLAPP suits have consequences wider than damages paid and reputations sullied.

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<sup>9</sup> Crop. Care Federation of India v. Rajasthan Patrika (Pvt.) Ltd. and Ors. MANU/DE/3251/2009.

<sup>10</sup> National Stock Exchange of India Limited vs. Moneywise Media Private Limited and Ors. (2015) SCC Online Bom. 4790

<sup>11</sup> *Id.* at 10.

<sup>12</sup> Katak, *supra* note 9.

<sup>13</sup> Mahesh Peri, *How We Defeated IIPM's Campaign to Silence the Truth With Defamation Laws*, HUFFINGTON POST, Sept. 27, 2016 URL: <https://www.huffingtonpost.in/mahesh-peri/how-we-defeated-iipms-campaign-to-silence-the-truth-with-defama-a-21479940/>.

<sup>14</sup> Staff Reporter, *Paranjay Guha Thakurta Quits as EPW Editor*, THE HINDU, JULY 19, 2017 URL: <https://www.thehindu.com/news/national/paranjay-guha-thakurta-quits-as-epw-editor/article19302912.ece>.

## THE PATH TO CLARITY: SUGGESTIONS AND SOLUTIONS

Some may argue that a defendant named in such a wrongful suit may counter-sue under malicious prosecution. Put briefly, malicious prosecution is a kind of intentional tort, consisting of the pursual of legal action with no justifiable cause which is then dismissed in favour of the victim of the alleged tort. To successfully argue a case for malicious prosecution, it must be proven that malice against the defendant was a primary reason as to why proceedings were carried out, followed by the termination of proceedings favoring the plaintiff.<sup>15</sup> However, in these cases, the defendant/s named are so embroiled in legal turmoil that lengthening that process is counter-intuitive. For example, in the aforementioned IIPM case against the Caravan, seven years had passed (2011-2018) before the Delhi High Court passed an *ex-parte* order allowing for the re-publication of the initial cover story against Chaudhery<sup>16</sup>. It has also been observed that proceedings often do not occur at all or do not place any legal sanction upon the defendant<sup>17</sup>. Hence, the suit is outside the purview of malicious prosecution.

The first step to solve this problem is to develop a legally accepted definition of a SLAPP suit into the Indian legal framework and recognizing that the current procedure fails to address the consequences of such cases. Further, there must be the introduction of targeted legislation perhaps in the form of a special motion, inspired by Californian legislation that has introduced a motion that arises from infringement upon an “*act in furtherance of person’s right of petition or free speech under the United States or California Constitution in connection with a public issue.*”<sup>18</sup> While courts do impose fines on plaintiffs, where malicious litigation is found, this fine imposition must be codified and followed as a strict precedence. Before the filing of any legal notice or claim, the plaintiff must show the damage to reputation and display a cause of action, without which, they will be subjected to a hefty penalty.<sup>19</sup> Finally, there should be indemnification clauses<sup>20</sup> protecting against liability incurred by anything published under the course of employment at the media house, assuming the defence and bearing the cost of such.

## A DENOUEMENT

This paper has established many severe consequences of SLAPP suits and how they often escape the ambit of current law. These suits, and many other frivolous litigation that actively works to silence critics, has no place in India, and also the world’s largest democracy. Journalists must be allowed to do their jobs in peace, unhindered by corporate powerhouses

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<sup>15</sup> Ratanlal & Dhirajlal, *THE LAW OF TORTS* 380 (26<sup>th</sup> ed. 2010).

<sup>16</sup> The Caravan Editors and Publishers, *Delhi High Court Vacates Injunction Against The Caravan’s IIPM Cover Story; The Magazine Re-Publishes It*, *THE CARAVAN*, FEBRUARY 21, 2018 URL: <https://caravanmagazine.in/vantage/delhi-high-court-vacates-injunction-caravans-iipm-cover-story>.

<sup>17</sup> Malcolm Katrak, *Curbing Free Speech: Strategic Lawsuits against Public Participation in India*, 7(1) C.U.L.J. 30, 41 (2018).

<sup>18</sup> CAL. CIV. PROC. CODE § 425.16 (West 2004 & Supp. 2006).

<sup>19</sup> *supra* note 16.

<sup>20</sup> John R. Collins & Denis Dugan, *Indemnification Contracts - Some Suggested Problems and Possible Solutions*, 50 MARQ. L. REV. 77, 86 (1966).

