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FALSE CASE AND VEXATIOUS LITIGATION AND ITS IMPACTS IN THE SOCIO-LEGAL PERSPECTIVE IN INDIA: PROBLEMS & SOLUTIONS

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"Falsehood has an infinity of combination, but truth has only one mode of being."

-Jean- Jacques Rousseau

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ABSTRACT

Instant article discusses about the bitter phenomena of filing of the false criminal case and vexatious civil litigation before the subordinate courts in India with some ulterior motive and malicious intention by the unscrupulous complainant/plaintiff against the innocent accused/defendant making him or her prey of their some unlawful interest without any legal justification. The article also highlights the causes and adverse impacts of such a mischievous tendency in the perspective of socio-legal fabric of India and thereby also highlights the available laws and judicial decisions of the higher courts in India in these respects for the prevention of such a dishonest act of falsification. Lastly, the article puts some suggestions to curve and control such type of malicious practices by making appropriate laws and adopting some commensurate policies by the concerned stakeholders in this regards including providing adequate compensatory measures to the victim of such a falsehood.

I. Introduction:

We have sometimes and somewhere heard about the news of conducting of the false or fake encounter by the police personals to the wanted criminals in electronic and print media. However, it is an astonishing fact or bitter truth which is worthy to mention here that there are also numerous false or fake encounter of criminal cases and civil litigations which are falsely and vexatiously filed before the different subordinate courts or district judiciary

in India. By dint of such a kind of act of falsification numerous innocent persons and gentleman are encountered and preyed by some desperate and greedy people of litigative nature with no others justifiable motive or grounds but only to harass him or her mentally, physically and economically and thereby with a malicious intention of a false claim. This is very unfortunate event and equivalent to the illegal act of police encounter of innocent persons. In the context of jural parlance, it can be said that this is an act of abuse of a legal and judicial proceedings or which is a wrongful civil or criminal proceeding instituted for an illegal purpose without any probable cause. Thus, the false case or vexatious litigation filed before the subordinate court in India can be termed as a case or a suit which has been filed maliciously with no genuine cause of action. Moreover, such a mischievous act on the part of complainant is against the cardinal principle of tortuous liability *i. e.* “*ubi jus ibi remedium*” or where there is a violation of a legal right, there must be a legal remedy for it and also against the cardinal principle of criminal proceedings *i. e.* “*let the hundred criminals be set free but not even single innocent be punished*”. These cardinal principals of both the civil and criminal proceeding are commensurate in these circumstances as because here the plaintiff asks for a remedy against the defendant without any infringement of legal right on his part and an innocent goes behind the bar without any guilt on his part. Therefore, a false case or a vexatious litigation is filed and instituted before the subordinate courts in India by an unscrupulous complainant or plaintiff/petitioner against an innocent respondent/defendant with some personal grudge/malice or for some unlawful gains.

II. Meaning and concept of false case or vexatious litigation:

The meaning and concept of false case or vexatious litigation has been given in Wikipedia, the free encyclopedia as- “*A false accusation is a claim or allegation of wrongdoing that is untrue and/or otherwise unsupported by facts. False accusations are also known as groundless accusations or unfounded accusations or false allegations or false claims.*”

They can occur in any of the following contexts:

- (i) Informally in everyday life;
- (ii) Quasi-judicially; &
- (iii) Judicially

It is pertinent to mention here and as mentioned above almost all the false cases or vexatious litigations are filed by the unscrupulous complainants or litigants before the subordinate court in India are filed 'maliciously' or with 'malice'. Thus, here firstly it is necessary to give the actual meaning and concept of the term 'malice' what it exactly means. In this respect the Hon'ble Supreme Court of India in the famous case of *West Bengal State Electricity Board v. Dilip Kumar Ray*,¹ has magnificently explained the meaning of the term 'malice' basing upon the various sources. Which are as- “*Malice means in law wrongful intention. It includes any intent which the law deems wrongful, and which therefore serves as a ground of liability. Any act done with such an intent is, in the language of the law, malicious, and this legal usage has etymology in its favour.*” The Hon'ble Court furthermore lays down as- “*Malice*” in its legal sense means, malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse, or

for want of reasonable or probable cause. Malice, in ordinary common parlance, means ill-will against a person and in legal sense, a wrongful act done intentionally, without just cause or reason.

Thus, in the legal terminology and in judicial proceeding this malicious or cantankerous act on the part of a frustrated complainant or plaintiff to harass an innocent accused or defendant is called “malicious prosecution”. Again the Hon'ble Supreme Court in the same judicial decision has given a very wide and comprehensive definitions of the term “malicious prosecution” as-

“A prosecution begun in malice, without probable cause to believe that it can succeed and which finally ends in failure.” “A prosecution instituted wilfully and purposely, to gain some advantage to the prosecutor or thorough mere wantonness or carelessness, if it be at the same time wrong and unlawful within the knowledge of the actor, and without probable cause.” The term “malicious prosecution” imports a causeless as well as an ill- intended prosecution.

‘MALICIOUS PROSECUTION’ is a prosecution on some charge of crime which is wilful, wanton, or reckless, or against the prosecutor's sense of duty and right, or for ends he knows or is bound to know are wrong and against the dictates of public policy.

The Hon'ble Apex Court furthermore in the same judicial decision went on observing in the words as-*In malicious prosecution there are two essential elements, namely, that no probable cause existed for instituting the prosecution or suit complained of, and that such prosecution or suit terminated in some way favorably to the defendant therein.*

- 1. The institution of a criminal or civil proceeding for an improper purpose and without probable cause.*
- 2. The cause of action resulting from the institution of such a proceeding.*

Thus, by the virtue of the instant observation of the Hon'ble Supreme Court in the present judicial decision it is hereby also established that an innocent can be maliciously prosecuted in both the civil and criminal cases or proceeding. Besides than these, the term “malicious prosecution” has also been defined in the book of distinguished jurist Dr. R. K. Bangia as- *“a judicial proceeding instituted by one person against another, from wrongful or improper motive and without probable cause to sustain it.”*

Furthermore, basing upon the observation of the Hon'ble Supreme Court in the above case of *West Bengal State Electricity Board v. Dilip Kumar Ray*,² Dr. Bangia has magnificently explained that there are two essential ingredients for constituting an offense of malicious prosecution viz.

- (i) there is no probable cause existed for instituting the prosecution or suit complained of; and (ii) there is termination of such prosecution or suit in some way in favour of the defendant therein.³

III. Causes behind the filing of false cases or vexatious litigations:-

Though, causes or purposes behind the filing of the false case or vexatious litigations has been theoretically discussed and included by the Hon'ble Supreme Court in the above judicial decision while defining the term “malicious prosecution” in its jural sense and applications. However, in practically there are others various causes or reasons behind the filing of a false case or vexatious litigation before the subordinate court in India in its ground reality. Main causes behind these cowardice and unscrupulous act on the part of frustrated and litigative complainants or litigants in our country

and society are of various nature viz. Social, economical, political and psychological. Therefore, in brevity these all the causes or grounds of filing of the false case or vexatious litigation by one person against the another have been found rooted mainly on three fundamental inceptions viz.

- (i) Personal and circumstantial (including political) grudge or enmity of one person against the another and thereby taking undue benefits of legal and juridical process to harass him or her mentally, physically and economically;
- (ii) Greediness, coupled with the motive and intention of unlawful gains of another's person and property by taking undue benefits of available legal and juridical process; and
- (iii) Mistake or negligent on the part of the complainant/plaintiff against another innocent person.

Hence, these three circumstances are the causes or reasons for filing a false case or vexatious litigation before the subordinate courts in India. Out of these three causes, the cause of filing of a false case or a vexatious litigation being motivated by the greediness of *de facto* complainant or prosecutor in the instances of criminal case and of the plaintiff or petitioner in the instances of civil litigation is very common and very often in Indian socio-legal atmosphere. Furthermore, it is required to be mentioned here that the word 'greediness' means and includes any illegal or unlawful intention of *de facto* complainant or plaintiff/petitioner for the unlawful gain of any pecuniary or material/physical benefits from the possession of an innocent accused/defendant. In respect to another cause of filing of the false cases or vexatious litigation before the subordinate court in India *i. e.* the personal and circumstantial (including political) grudge or enmity which elaborately includes the intention of taking revenge or avenge by means of misusing the available law and judicial proceeding including the personal ego of the complainant/plaintiff against an accused/defendant even for a trivial issues. Lastly, as mentioned above a good numbers of civil and criminal cases are also being filed before the subordinate court in India only due to the mistakes or negligent on the part of the complainant or plaintiff to recognize or identify the real culprits of an offense and the real or necessary party to a suit and sometimes also on the assumptions. Nevertheless, in all the above cases and circumstances, an innocent has to become a scapegoat of the unscrupulous and malicious act on the part of the complainant which shall be disbursed by him with a high price.

IV. Impacts or menace of filing of the false case or vexatious litigation upon the socio-legal system in India:

The unlawful and unethical practice and tendency of filing the false cases or vexatious litigation before the subordinate court by the frustrated and unscrupulous litigants against the innocent and gentleman have severe and deteriorating impacts upon the socio-legal system in India. Altogether it has triangular or three dimensional adverse impacts and consequences viz.

- (i) impact upon the particular person (or victim) against whom the false case or vexatious suit has been filed or sued;
- (ii) impact upon the legal machinery or particular to the images and functioning of the judiciary; and
- (iii) impact upon the society at large.

Now, a brief discussion about these three kinds of impacts can be given as-

(i) Impact of false case or vexatious litigation upon the victim:

The mischievous and unscrupulous act of filing of the false case or vexatious litigation against an innocent gentleman first of all most severely and adversely impacts upon the said particular person or victim by mentally, physically, economically and psychologically. It is as because here the victim or the person against whom a false case or vexatious cause has been filed not only suffers the mental and physical torture by such an act of falsehood but also suffers from the pecuniary loss, loss of his precious and valuable time and after all earns a black stain or bad reputation in the society. It takes thousands times of efforts on his part to disprove the said false allegation and to prove his innocence before the society in the prevailing socio-legal and judicial system in India. Thus, all the course or journey of contest against the false case or vexatious litigation is bit lengthy, expensive and troublesome for which an innocent has to pay a high price including mental and physical torture and loss of his valuable time. **(ii) Impact of false case or vexatious litigation upon the legal machinery and judiciary:**

Secondly, and most importantly the impact of ill practice of filing of the false case or vexatious litigation extensively hampers and prejudice the subordinate judicial system in India and others legal mechanism. It is as because the judiciary and investigation agency are the actual warriors in these regards and they have to give an appropriate counter attack of said encounter of false cases and vexatious litigation from the forefront. The impact or adverse effect of filing of the false case or vexatious suit upon the subordinate judicial system in India is a matter of great worry and concern. In these respect it is pertinent to mention here that, the justice delivery system before the subordinate judiciary in India is desperately in the verge of collapsing because of the many reasons and drawbacks. The most important and remarkable among them is the unconscionable delay in the administration of justice due to the unsurmountable pendency or backlog of cases before the subordinate court or district judiciary in India. In these regard, it is furthermore to be mentioned here that at present there are in total 31742932 numbers of pending cases before the subordinate court or district judiciary in India and out of which 8941969 cases are civil and 22800963 are criminal. Again the number of such 5 year old cases is 80,26,805 (including both the civil & criminal cases)⁴. Thus, of course there is a great contribution made by the tendency and fashion of filing of the false case and vexatious litigation behind such an unsurmountable backlog of cases before the subordinate court in India including both the civil and criminal subordinate courts. In these regard it is furthermore worthy to mention here that our courts and police stations are already overburdened and fatigue due to tracing out and fighting against the genuine cases and genuine cause of action. In this situation, if the false cases or vexatious litigations are rampantly filed and allowed before the court without any restriction, there will obviously be a serious legal and judicial crisis before our court. It is as because the courts and legal machinery in India have to be indulged in verifying the merit and genuineness of every case and suit including the false cases or vexatious litigations which ultimately brings no positive results but obviously the misuse of time, energy and infrastructures.

(iii) Impact of false case or vexatious litigation upon the society at large:

Lastly, the tendencies of filing of the false case or vexatious litigation before the court by the unscrupulous and frustrated litigants against an innocent

gentlemen has ultimately a very adverse impacts upon the society at large. It creates many more bad aspects in the civil society and to the life and livings of general public including mis-management and mis-governance in society and loss of moral values and ethic. Thus, the tendencies of filing of the false case or vexatious litigation produces no positive outcome in the society but certainly the seed of falsehood, enmity, hatred and immorality.

Thus, the unlawful and deleterious tendency of filing of the false case or vexatious litigation before the subordinate court in India by the unscrupulous and desperate complainant or plaintiff against an innocent and gentleman with a malicious intention has very severe and deteriorating impacts to our socio-legal system. It has ever been an incurable disease or even a cancer which is killing the entire judicial system in India from inside. Hence, such type of ill practice must be discouraged and carve out from all the level of administration and legal system to protect the integrity and chastity of our judicial system.

V. Instances of filing of the false cases and vexatious litigations before the subordinate court in India:

While talking about the instances of filing of the false cases and vexatious litigation before the subordinate court in India, everyday in our daily life we see the same coming before the court from the surroundings and society where we live in. There are varieties of false criminal cases which come before the nearby police stations and thereby also to the subordinate courts in India which considerably occupy a good ratio or percentage in total numbers of pending cases. In these regards, it is here worth mentioning that there are maximum numbers of filing of the false cases regarding the offence against the women in India. The Constitution of India in its Art. 15(3) enshrines the special provision for the protection of right and interest of women including children threatening them as a vulnerable section in society. Accordingly, many civil and criminal laws in country provides the enormous right and protection to the women as compare to men. However, very unfortunately and disgracefully, these laws which are enacted for the purpose of benefit of the women upliftment, empowerment and protection are very often misused by some cantankerous lady against her innocent male partner. Hence, this very unfortunate aspect of our social phenomena around us also can not be denied. Thus, there are many civil and criminal laws which are often misused in the name of the protection of the interest of a women in India. Prominent among them are the offence of rape under Sec. 376 of the *Indian Penal Code 1860 (Act No. 45 of 1860)*, allegation and offence of cruelty by husband and relatives of husband as provided under Sec. 498A of the same penal Code. An application for the maintenances under Sec. 125 of the *Code of Criminal Procedure, 1973 (Act No. 2 of 1974)* and matters relating to the *Protection of Women from Domestic Violence Act, 2005 (Act No. 43 of 2005)* and the *Dowry Prohibition Act, 1961 (Act No. 28 of 1961)* are also often filed before the subordinate criminal courts in India without having any lawful grounds. Very often these cases are filed falsely by the female complainant in the instigation of other persons with the aim and object of merely harassing her male partner and the relatives of said male partner without having any sufficient justifiable legal grounds. Besides than these cases concerning to the families disputes, the nature of politically motivated criminal cases in India also do occupy at the high numbers. Now a days in

our country there is a fashion and culture of political victimization. The person in chair and power often use his muscle power and police and thereby makes a political opponent politically victimized. Thus, they implicate an innocent from opposition party in a false charge or allegation due to political rivalry. Besides than these, the persons who have a very good nexus with the politicians also often misuse said posts and relationship and thereby do target the persons in opposition or without post and power and implicate them in the false criminal cases. Most importantly, it is also seen and found that in many occasions the police personals who being the law enforcing agencies and protector of the safety and security of common men very often have been found misusing the criminal laws by means of making a false criminal case and tagging the name of an innocent in a false case. Thus, the police being a watch dog of law and order file a false case against an innocent merely for some personal grudge or to grasp a large booty. Consequently, such an act on the part of the police pile up the police station with false F.I.R. and false cases which ultimately come to court and makes the unsurmountable numbers of pendency of false cases besides than the genuine one. Such an act on the part of the police is very frustrating and same is also against the law and police ethics in our country. Thus, the criminal laws and judicial mechanism in India in these ways become victim of encounter mercilessly by the political and influential persons holding the post and powers which ultimately brings no positive outcome but obviously ruins the entire system and society. Thus, at present time we find there many instances wherein the criminal laws which are enacted for the purpose of maintaining law and order in the society and punishing the hardened criminals are being misused or used for the purpose of harassing innocents in different part of our country.

In a report of the Delhi Commission for Women published in the year 2014 it was reported that 53% of rape cases complained in the city in the previous year were 'false'.⁵ It was more specifically reported in India Today whereby a trend of filing false rape case was exposed with the Delhi Commission of Women (DCW) which revealed the shocking statistics of filing a false rape case from the period April 2013 to July 2014 which is 53.2% of the total rape cases in Delhi. The report furthermore specifically stated that between April 2013 and July 2014, out of total 2,753 numbers of complaints of rape, only 1,287 cases were found to be true, and the remaining 1,464 cases were found to be false. The report furthermore stated that in between June 2013 to December 2013, the number of false cases lodged were 525 and in between, January 2014 to July 2014, the number of false rape cases were 900⁶.

In respect to the false matrimonial cases the Hon'ble Supreme Court in the case of *Rajesh Sharma and Ors. v. State of U.P. and Ors.*⁷ observed that; as per the Reports of the National Crime Record Bureau for the year 2005, the total numbers of 58,319 cases were reported Under Sec. 498A of the Indian Penal Code, and out of these cases 1,27,560 persons were arrested in connection with these cases, and total 6,141 numbers of cases were declared false later on account of either mistake of fact or of law. Furthermore, in the year 2009 a total 89,546 numbers of cases were reported, and a total 1, 74,395 numbers of persons were arrested and 8,352 numbers of cases were declared false later on account of either mistake of fact or of law. Again, during the period from 2011 and 2013 as many as 31,292 numbers of false cases were found to have been filed by the women against her husband or relatives of

her husband Under Sec. 498A of the Penal Code, on account of either mistake of fact or of law and this facts were also raised by the then minister of state for home affairs Haribhai Parathibhai Chaudhary in the Lok Sabha in March 2015⁸.

Now, in respect to the false cases under the *Scheduled Castes and Tribes (Prevention of Atrocities) Act, 1989 (Act No. 33 of 1989)* the Hon'ble Supreme Court in the recent controversial case of *Subhash Kashinath Mahajan v. the State of Maharashtra and Ors.*⁹(the SC/ST Act Case) observed that:

*As per data (Crime in India 2016- Statistics) as compiled by the National Crime Records Bureau, Ministry of Home Affairs; ...it is stated that in the year 2016, in total 5347 numbers of cases were found to be false cases out of the investigated out of SC cases and 912 were found to be false cases out of ST cases. It was pointed out that in the year 2015, out of 15638 cases decided by the courts, 11024 cases resulted in acquittal or discharge, 495 cases were withdrawn and 4119 cases resulted in conviction.*¹⁰

Furthermore, besides than these false criminal cases, there are also a great numbers of vexatious civil litigations which are filed everyday before the subordinate civil courts in India being influenced by the above mentioned three reasons.

VI. Prevailing laws in India to prevent the tendencies of filing of the false case or vexatious litigation before the court:

There are very few states in India likewise *Madras* and *Maharashtra* which have legislated their state laws for the purpose of prevention of unscrupulous practices of false case and vexatious litigation before their courts. These Acts are the *Madras Vexatious Litigation (Prevention) (Act No. 8 of 1949)* and the *Maharashtra Vexatious Litigation (Prevention) Act, 1971(Act No. 48 of 1971)*. Therefore, still there is no separate and specific central legislation for the said purpose of prevention and restriction of the malicious and unscrupulous practices on the part of the desperate complainants or claimants to file such false cases or vexatious litigations before the courts in India. However, there are some provisions in these respect as provided in different central civil and criminal statutes providing the strict prevention and restriction of such types of illegal and unethical practices of filing of the false case and vexatious litigation and thereby also letting the scope for compensation and stringent penal actions against such types of false claimant or complainant. A brief account of the same may be given as-

(i) Provisions as contained in the *Code of Civil Procedure, 1908 (Act. No 5 of 1908)*:

Prevailing laws providing the restriction and prevention of practice of illegal and unethical practice of institution of false or vexatious litigation before the subordinate court in India have been contained in Sec. 35A and Order VI, Rule 16 of the *Code of Civil Procedure, 1908 (Act. No 5 of 1908)*. The provision discourages all the illegal and unethical practices of institution of the false or vexatious suits or claims including the false or vexatious defences. The very provision reads as-¹¹**[35A. Compensatory costs in respect of false or vexatious claims or defences.-**

(1) If in any suit or other proceedings ¹²*[including an execution proceeding but* ¹³*[excluding an appeal or a revision] any party objects to the claim or defence on the ground that the claim or defence or any part of it is, as*

against the objector, false or vexatious to the knowledge of the party by whom it has been put forward, and if thereafter, as against the objector, such claim or defence is disallowed, abandoned or withdrawn in whole or in part, the Court,¹⁴[if it so thinks fit], may, after recording its reasons for holding such claim or defence to be false or vexatious, make an order for the payment to the object or by the party by whom such claim or defence has been put forward, of cost by way of compensation.¹⁵[(2) No Court shall make any such order for the payment of an amount exceeding¹⁶[three thousand rupees] or exceeding the limits of its pecuniary jurisdiction, whichever amount is less: Provided that where the pecuniary limits of the jurisdiction of any Court exercising the jurisdiction of a Court of Small Causes under the Provincial Small Cause Courts Act, 1887 (9 of 1887),¹⁷[or under a corresponding law in force in¹⁸[any part of India to which the said Act does not extend]] and not being a Court constituted¹⁹[under such Act or law], are less than two hundred and fifty rupees, the High Court may empower such Court to award as costs under this section any amount not exceeding two hundred and fifty rupees and not exceeding those limits by more than one hundred rupees: Provided, further, that the High Court may limit the amount which any Court or class of Courts is empowered to award as costs under this section.] (3) No person against whom an order has been made under this section shall, by reason thereof, be exempted from any criminal liability in respect of any claim or defence made by him.(4) The amount of any compensation awarded under this section in respect of a false or vexatious claim or defence shall be taken into account in any subsequent suit for damages or compensation in respect of such claim or defence.]

Thus, this provision as contained under Sec. 35A of the Code of Civil Procedure, 1908 is a preventive measure against the unscrupulous practices of false or vexatious claims including the false or vexatious defences by way of compensatory cost which a competent civil court can exercise. Here, the falsification is not only prevented during the adjudication of the original suit but also during the execution proceeding. However, instant provision is not applicable when the suit is in the stage of an appeal or a revision. However, here as per the provision of Sec. 35A Sub-sec. (2) the quantum of compensatory cost available to the victim is very less according to the present economical parameter or prevailing market prices *i. e.* rupees three thousand or exceeding the limits of its pecuniary jurisdiction, whichever amount is less. Furthermore, very importantly as per the provision as contained in Sub-Sec. (3) the provision opens the scope for criminal prosecution against such an act of falsification treating the person who has acted so as a criminal/accused.

In the case of *Kaza Sriramamurthy Appellants v. Andhra University, Waltair, represented by the Registrar Respondent*²⁰ single judge bench of the Hon'ble Andhra Pradesh High Court held as- "*The Court is entitled to award costs by way of compensation only in a case where the defendant objects that the claim is false or vexatious to the knowledge of the plaintiff and the same was ultimately found to be so false or vexatious. Then at the discretion of the Court, the defendant can claim costs by way of compensation. The costs that are awarded thus are compensatory and not penal.*"

Furthermore, in the case of *T. Arivandandam, Petitioner v. T. V. Satyapal and*

another; Respondents²¹ the ever great column of Indian judiciary, His Lordship, Hon'ble Justice Mr. V. R. Krishna Iyer and their divisional bench of the Apex Court, held as-

"If on a meaningful and not in formal reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, the trial Court should exercise its power under O. 7, R. 11, C. P. C. taking care to see that the ground mentioned therein is fulfilled. The trial courts should insist imperatively on examining the party at the first hearing so that bogus litigation can be shot down at the earliest stage. The Penal Code is also resourceful enough to meet such men, (Ch., XI) and must be triggered against them.

If the trial Court is satisfied that the litigation was inspired by vexatious motives and altogether groundless it should take deterrent action under S. 35A. The counsel, as an officer of justice, can also contribute to the cause of justice by screening wholly fraudulent and frivolous litigation and by not collaborating in shady actions."

The Hon'ble Justice Krishna Iyer in the same judicial decision furthermore reminded to the learned members of the bar for their noble responsibility to check such type of deleterious tendencies of the parties and held that- *"The pathology of litigative addiction ruins the poor of this country and the Bar has a role to cure this deleterious tendency of parties to launch frivolous and vexatious cases."*

Furthermore, in the case of *Secretary, West Bengal Council of Higher Secondary Education v. Soumyadeep Banerjee and Or*²² the Hon'ble High Court at Calcutta while interpreting the provision as contained in Sec. 35A of the *Code of Civil Procedure, 1908* held that-

"To impose a costs is the discretion of the Court. Here discretion means judicial discretion, not whims, caprice or fancy of a Judge. The discretion is something to be done according to the rules of reason and justice, not according to private opinion. It should not be arbitrary, vague and fanciful nor illegal and irregular. We add that discretion is a decision of a Court which on given facts and circumstances, a reasonable prudent man will think it is possible to take such an action under the circumstances and it is also possible to accept such views, then it can be said to be discretion well exercised."

Furthermore, Order VI, Rule 16 of the *Code of Civil Procedure, 1908* also provides the provision for striking out pleading which is a preventive measure for an unscrupulous act of filing of false or vexatious litigation. The provision reads as:-²³[16. Striking out pleadings.-

The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading- (a) which may be unnecessary, scandalous, frivolous or vexatious, of (b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or (c) which is otherwise an abuse of the process of the Court.]

(ii) Provisions as contained in the Indian Penal Code 1860 (Act. No 45 of 1860) and the Code of Criminal Procedure, 1973 (Act No. 2 of 1974):

The illegal and unethical practice of filing or institution of a false suit or claim is not only a civil wrong of which the remedy is not only available in the *Code of Civil Procedure, 1908* (Act. No 5 of 1908). However, the same practice has also been declared as a criminal offence as provided under Sec.

209 of the *Indian Penal Code 1860 (Act. No 45 of 1860)*. To that effect the very provision lays down as-**Sec. 209. Dishonestly making false claim in Court-** *Whoever fraudulently or dishonestly, or with intent to injure or annoy any person, makes in a Court of Justice any claim which he knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.*

The offence under Sec. 209 of the *Indian Penal Code 1860* is a bailable, non-cognizable, non-compoundable and triable by the Magistrate of the first class. Thus, the provision prescribes the punishment to the offender for the periods upto 2 years, or fine, or both.

In an old case of *Hiralal Surdu v. Emperor*,²⁴ the Court held that for the conviction of an accused person in such kind of offence the prosecution must prove the following parameter as-

- (i) The accused person made a false claim;
- (ii) The accused person made such a claim before a court of justice;
- (iii) The accused person knew the fact that his claim was false; &
- (iv) Such a claim was made with malicious intention on the part of accused person to injure other person against whom such claim was made.

Moreover, it is Sec. 211 of the *Indian Penal Code 1860 (Act. No 45 of 1860)* which more particularly prescribes the punishment to the complainant who files the criminal case against any innocent gentleman cantankerously with the malicious intention to injure him or her. In this regard the provision lays down as-

Sec. 211. False charge of offence made with intent to injure- *Whoever, with intent to cause injury to any person, institutes or causes to be instituted any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; and if such criminal proceeding be instituted on a false charge of an offence punishable with death, imprisonment for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

Thus, Sec. 211 of the *Indian Penal Code* prescribes the punishment for filing a false case against any innocent with the malicious intention to injure him or her. However, here the Section 211 prescribes punishment for filing two category of false criminal case or charges. In the first instance, where the punishment of said false criminal case or charge is less than seven years and in the second instance, the punishment of said false criminal case or proceeding is punishable with death, imprisonment for life, or imprisonment for seven years or upwards. Thus, in the first instance in para I the offence is bailable, non-cognizable, non-compoundable and triable by the court of the Magistrate of the first class and punishment is up to 2 years, or fine or both. Now, with regards to the second instance in para II, the offence is bailable, non-cognizable, non-compoundable and triable by the court of the Magistrate of the first class and the punishment is 7 years and imposition of fine.

In the case of *Hari Das and another Appellants v. State of W.B. and others Respondents*,²⁵ it was held by the Hon'ble Supreme Court that the scope of Sec. 211 I.P.C is very tremendous and includes not only the offence

committed by instituting any criminal proceeding, but also by falsely charging any person with the commission of an offence.²⁶

Besides than the above provisions of the *Indian Penal Code, 1860* Sec. 250 of the *Code of Criminal Procedure, 1973 (Act No. 2 of 1974)* also provides the provision for Compensation for accusation without reasonable cause and these provision also plays a vital role for prevention of unscrupulous tendencies of scandalous complainant to file any false case against an innocent person.

VII. Prevailing laws and approaches in India are insufficient to combat against the deleterious tactics of falsification before the court of justice:

As it has been mentioned above that there are provisions of law in both the *Code of Civil Procedure, 1908 (Act. No 5 of 1908)* and the *Indian Penal Code 1860 (Act. No 45 of 1860)* for the purpose of the prevention of cantankerous and deleterious tendencies of falsification by the frustrated parties before both the subordinate civil and criminal courts in India. However, to say very unfortunately and pathetically, these laws are either insufficient or lacks its proper implementation or lacks proper approaches to implement the same as because these unmindful tendencies of cantankerous behaviors are still continuing and increasing magnificently day by day and every year despite these laws are beautifully decorated in our statutes book. Therefore, an introspection in this regard is need of hour indeed.

In the case of *Dilip Singh v. State of U.P and Ors*²⁷, the Hon'ble Supreme Court made the following observation as- "*For many centuries, Indian society cherished two basic values of life i. e., 'Satya' (truth) and 'Ahimsa' (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of justice delivery system which was in vogue in pre-independence era and the people used to feel proud to tell truth in the Courts irrespective of the consequences. However, post-independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the Court proceedings....., who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.*"

Again in the case of *A. Shanmugam v. Ariya Kshatriay*,²⁸ AIR 2012 SC 2010 the Hon'ble Apex Court laid down the following guidelines as: "*On the facts of the present case, following principles emerge: 1. It is the bounden duty of the Court to uphold the truth and do justice.*

2. Every litigant is expected to state truth before the law court whether it is pleadings, affidavits or evidence. Dishonest and unscrupulous litigants have no place in law courts.

3. The ultimate object of the judicial proceedings is to discern the truth and do justice. It is imperative that pleadings and all other presentations before the court should be truthful.

4. Once the court discovers falsehood, concealment, distortion, obstruction or confusion in pleadings and documents, the court should in addition to full restitution impose appropriate costs. The court must ensure that there is no incentive for wrongdoer in the temple of justice. Truth is the foundation of

justice and it has to be the common endeavour of all to uphold the truth and no one should be permitted to pollute the stream of justice. 5. It is the bounden obligation of the Court to neutralize any unjust and/or undeserved benefit or advantage obtained by abusing the judicial process.”

In the case of Ramrameshwari Devi and Ors., Appellants v. Nirmala Devi and Ors. Respondents,²⁹ the Hon'ble Supreme Court made the following observation as- “.....If injunction has been granted on the basis of false pleadings or forged documents, then the concerned court must impose costs, grant realistic or actual mesne profits and/or order prosecution. This must be done to discourage the dishonest and unscrupulous litigants from abusing the judicial system.....Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings.....In appropriate cases the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.”

In the same case the Hon'ble Apex Court dismissed the appeals and as a stringent measure also imposed costs of Rs.2,00,000/- (Rupees Two Lakhs only) to the appellants. The Court held as- “We are imposing the costs not out of anguish but by following the fundamental principle that wrongdoers should not get benefit out of frivolous litigation.”

Furthermore, in the case of Maria Margarida Sequeria Fernandes and Ors v. Erasmo Jack de Sequeria,³⁰ reminded the duty of presiding officer of the court and held as- “Truth is the foundation of justice. It must be the endeavour of all the judicial officers and judges to ascertain truth in every matter and no stone should be left unturned in achieving this object. Courts must give greater emphasis on the veracity of pleadings and documents in order to ascertain the truth.”

Again, in the case of Kishore Samrite v. State of U.P & Others,³¹ the Hon'ble Supreme Court held: “.....those who indulge in immoral acts like perjury, prevarication and motivated falsehood, must be appropriately dealt with. The parties must state forthwith sufficient factual details to the extent that it reduces the ability to put forward false and exaggerated claims and a litigant must approach the Court with clean hands. It is the bounden duty of the Court to ensure that dishonesty and any attempt to surpass the legal process must be effectively curbed and the Court must ensure that there is no wrongful, unauthorized or unjust gain to anyone as a result of abuse of the process of the Court. One way to curb this tendency is to impose realistic or punitive costs.”

Similarly, in the case of Subrata Roy Sahara v. Union of India & Ors³² the Hon'ble Supreme Court with the mixture of grief and anguish held as- “The Indian judicial system is grossly afflicted, with frivolous litigation. Ways and means need to be evolved, to deter litigants from their compulsive obsession, towards senseless and ill-considered claims. One needs to keep in mind, that in the process of litigation, there is an innocent sufferer on the other side, of every irresponsible and senseless claim. He suffers long drawn anxious periods of nervousness and restlessness, whilst the litigation is pending, without any fault on his part. He pays for the litigation, from out of his savings (or out of his borrowings), worrying that the other side may trick him

into defeat, for no fault of his.....Should a litigant not be compensated for, what he has lost, for no fault?The suggestion to the legislature is to formulate a mechanism, that anyone who initiates and continues a litigation senselessly, pays for the same. It is suggested that the legislature should consider the introduction of a "Code of Compulsory Costs".....It would, besides everything else, reduce frivolous litigation."

Furthermore in the case of *Smt. Seema Thakur v. Union of India & Others*³³ the single judge bench of Hon'ble Delhi High Court also held as: *"Considering the facts of the present case I am of the opinion that the plaintiff has come to this Court with a false case.....when a person comes to court with a false case, such person is liable to be punished by imprisonment for a period upto two years in addition to fine. I therefore issue notice to the plaintiff as also to her attorney, Sh. Vijay Kapoor under Section 340 of the Code of Criminal Procedure, 1973 (Cr. P.C) to show cause as to why a criminal case be not lodged against the plaintiff and her attorney.....under Section 209 IPC."*

VIII. Conclusion and suggestions:

"Fraud-avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries before from now. Thus, focal point of the present article is to protect the court and justice delivery system in India from the frustrated fraudulent practices which in any democratic civilized country of the world is a temple of justice and ultimate ray of hope for the numerous poor, needy, deprived and aggrieved litigants. Thus, this sacred public institution which is entirely established and dedicated for the cause of poor masses or common cause in welfare state like India should not be misused and influenced and thereby become a nasty weapon in the hands of a few corrupt, quarrelsome, litigative persons and politician who on the strength of their ill earned money and illegally occupied chair do see dream of purchasing the court and justice system. Accordingly, the Law Commission of India also in its 192nd report titled as *"Prevention of Vexatious Litigation"* June, 2005 recommended a bill to the Ministry of Law and Justice, Government of India for making a suitable legislation namely, *'The Vexatious Litigation Prevention Bill, 2005'* for the purpose of curtailing and prevention of all the unscrupulous and scandalous tendencies of filing of false cases and vexatious proceedings, civil and criminal, in the High Courts and courts subordinate thereto. Again, the Law Commission of India in its 277th report titled as *"Wrongful Prosecution (Miscarriage of Justice): Legal Remedies"* August, 2018 recommended the Ministry of Law and Justice, Government of India for necessary amendment in the *Code of Criminal Procedure, 1973* thereby to provide an efficacious legal remedy by way of compensation to the victim of false charge and false prosecution. However, to say very pathetically and painfully, the situation and condition has yet not improved despite several recommendation by the Law Commission in the subject.

As has been mentioned above the practices of filing of the false cases or vexatious litigations have severe adverse impacts on the justice delivery system and on the persons or victims of such a heinous and scandalous act due to its having several adverse consequences. Moreover, it will be an astonishing and unfortunate event in case of such a false case or vexatious litigation be succeeded on the strength and foundation of falsehood there will

be a great crisis of a substantial justice or miscarriage of justice. In such an event of misfortune, the very foundation of cardinal principle of tortious liability *i. e. "ubi jus ibi remedium"* or where there is a violation of a legal right, there must be a legal remedy for it and the cardinal principle of criminal proceedings *i. e. "let the hundred criminals be set free but not even single innocent be punished"* will pathetically come to operate and under such circumstances the victim or aggrieved person will get double prejudiced. He will be grossly injustice and there will be an irreparable loss and injury on his or her part. Therefore, any such type of practices or tendencies of unscrupulous and scandalous filing of the false cases or vexatious litigation against an innocent gentleman should be checked and discouraged from every level of legal fraternity, machinery, judiciary and from the conscious civil society to prevent such type of practices of making an innocent as a scapegoat. In these respect the judiciary, especially the subordinate judiciary have a vital role to play. The presiding officer of a law court must apply both the statutory laws and guidelines given by the Hon'ble Apex Court as mentioned above very sternly to impose the real cost or compulsory cost of false case or vexatious litigation. Besides than the criminal court, the police station of the local area should also be very cautious before accepting the first information report and must remain alert and vigil throughout the investigation of every case before it. Last but not the least, all the conscious people from all the corner of civil society must come forward and should strive to protect the interest of truthfulness against the falsehood and should not hesitate to condemn such an act of unscrupulous, scandalous, illegal and unethical practices and tendencies of filing of the false case and vexatious litigation thereby pledge to combat against these heinous practices of making scapegoat of innocent gentleman for the greater cause of truth and justice.

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S. 35A ins. by Act 9 of 1922, s. 2, which, under section 1(2) thereof may be brought into force in any State by the State Government on any specified date. It has been so brought into force in Bombay, Bengal, U.P., Punjab, Bihar, C.P., Assam, Orissa and Madras.

Subs. by CPC (Amendment) Act 66 of 1956, s. 4, for "not being an appeal".

Subs. by Act 104 of 1976, s. 14, for “excluding an appeal” (w.e.f. 1-2-1977).
Subs. by Act 66 of 1956, s. 4, for certain words.
Shall not be applicable to commercial disputes of a specified value by Act 4 of 2016, s. 16 and the Schedule (w.e.f. 23-10-2015).
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