

The Times of India, Mumbai, 10 Nov 2007

Penalties Imposed By Lower Courts Against Fake Complainants Are Too Mild To Deter Them

HOW FRIVOLOUS CASES CLOG THE LEGAL SYSTEM

Swati Deshpande

Mumbai: Frivolous complainants who clog the courts and put parties to inconvenience for years need more than just the threat of a modest fine to deter them, say legal experts. The law as it stands today, however, provides for no other penalty.

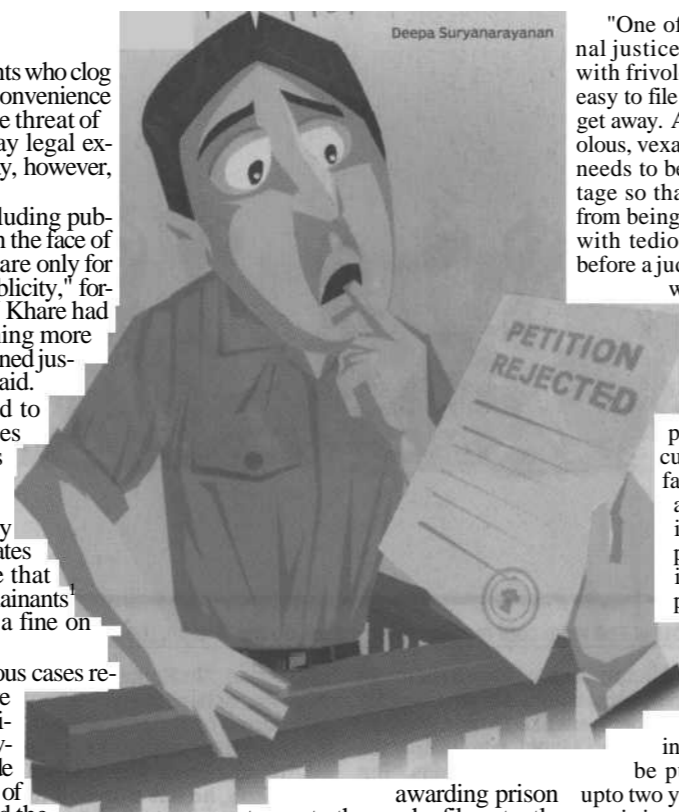
"There are many cases, including public interest litigations, which on the face of it, are frivolous. Many of them are only for propaganda or to win cheap publicity," former Chief Justice of India V N Khare had remarked once. "They do nothing more than clog the already overburdened justice delivery mechanism," he said.

The supreme court in a bid to curb such litigation that serves only to take away the judiciary's time from other pressing and genuine cases, has often warned lower courts, especially trial courts presided by magistrates and sessions courts, to ensure that frivolous complaints and complainants are discouraged by imposing a fine on them.

But, as a lawyer says, frivolous cases remain a problem with no effective remedy in sight. The only provisions under the law to check frivolous litigation are in the Code of Civil Procedure (CPC), Code of Criminal Procedure (CrPC) and the Consumer Protection Act. But the fine prescribed under the CPC is at best Rs 3,000 while the maximum set by the Consumer Act is Rs 10,000. In civil disputes, only a high court has the discretion to invoke a levy a bigger fine. And in criminal cases, the CrPC allow for hefty fines to be imposed but lower courts are often wary of doing so. In a recent case where a criminal case was filed against the Corporation Bank and its managing director in retaliation for recovery proceedings initiated against a garment manufacturing firm, the court had imposed a fine of Rs 10,000 against the litigants (TOI, November 9).

Experts agree the amounts should be higher if they are to serve as a genuine deterrent. Further amendments are needed to the legislation, activists have been saying for years now. "We can learn from other countries which also face the issue of frivolous litigation but have designed a mechanism to meet it," said advocate Pranav Badheka, who practices on the criminal side in Mumbai. For instance, in some developed countries, lawyers are even asked to do a status check on clients and the facts of the case before they take it up.

Other lawyers say it's time to draw out and implement sterner measures such as



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"One of the shortcomings in the criminal justice system is that we are crowded with frivolous complaints. Today it is very easy to file false or frivolous complaints and get away. A mechanism to check false, frivolous, vexatious and mischievous complaints needs to be conceived for a two-fold advantage so that it will protect innocent people from being dragged to court and threatened with tedious litigation that lasts for years before a judge may hold that the allegations were baseless. The second advantage of a good mechanism of course is that it will also cut down the backlog," says criminal law expert Majeed Memon.

He suggests that unlike the present system in which an accused, found to have been charged falsely, can initiate a prosecution against the complainant for having filed a false and vexatious complaint, the court should on its own initiate action against such complainants.

Besides, there is a provision under the Indian Penal Code under section 211 which says a person who has instituted a false criminal complaint knowingly against another person/s can be punished with imprisonment of upto two years or a fine or both. But lawyers say it is rare for an accused who has been acquitted after facing a trial on a false charge to drag the complainant to court. As Memon says, after years of doing the rounds of courts and having spent time in jail as an undertrial as well, the accused is "usually exhausted and has no energy to deal with the complainant again."

awarding prison terms to those who file patently false criminal cases, especially in disputes which are civil in nature. The SC has noted that people file criminal cases even in family property disputes and matrimonial cases to pressurize the opposite side to give in to their demands; such cases then hasten the irretrievable breakdown of family ties.

LEGAL RAP: WHEN HIGH COURTS STRIKE BACK

• **SEPTEMBER 2007:** Bombay high court fined a local activist Rs 25,000 after dismissing his petition against the demolition of a vegetable market at Chiplun. The HC observed that the petitioner seemed to have filed the PIL with an ulterior motive, after it was pointed out that demolition was preceded by an agreement between vegetable vendors and the civic authorities.

• **MAY 2006:** Bombay HC dismissed a PIL that alleged that Maharashtra director general of police P S Pasricha had acquired disproportionate assets through illegal means and asked

the petitioner advocate Devendra Shukla to pay a fine of Rs 20,000. The court remarked that Shukla had filed the petition and made serious allegations against a government officer without substantiating it with material.

• **NOVEMBER 2006:** Bombay HC ordered independent candidate Rakesh Arora to pay compensation of Rs 25,000 for filing a petition challenging poll nomination of Priya Dutt. Arora, who claimed to be president of the Krantikari Jaihind Sena, had sought Priya Dutt's disqualification on the grounds that she was using her father's name de-

spite being married to Owen Roncon. The court said there was no justification for filing the petition and added, filing such a petition again and again reveals the petitioner's intention to tamper with the election process."

• **DECEMBER 2006:** Delhi High Court slapped a fine of Rs 1 lakh on Javed Akhtar after the lyricist filed and subsequently withdrew a case of copyright violation against film production company Magic Mantra Vision. The court said Akhtar had caused "unnecessary financial burden" on the company to defend itself.

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Centre fails to learn from state law

Shibu Thomas | TNN

Mumbai: Litigation-happy persons would have had to think twice before approaching courts, if the central government had adopted the Maharashtra model across India.

Two years back, the Law Commission headed by Justice M Jagannadha Rao had, based on an existing Act in Maharashtra, asked the centre to enact a tough-legislation to discourage filing of frivolous and vexatious cases, both civil and criminal.

At present, Maharashtra is one of only two states, the other being Tamil Nadu, to have a law (Maharashtra Vexatious Litigations Prevention Act) to rein in litigants who file cases without reasonable grounds. Such laws to check vexatious litigation have also been enacted widely across the developed world, in UK, US, Canada, New Zealand and Australia.

Based on the law in Maharashtra and other countries, the Commission had recommended that if a person "persistently and habitually" files frivolous petitions with an intention to harass or abuse the process of law, the Advocate-General or Registrar may approach a division bench of the High Court to declare such an individual as a "vexatious litigant". Once the court makes such a declaration, it would be notified in a Gazette. No court would then entertain a case filed by such a litigant, without him getting permission from the HC. In

fact, if such a litigant filed a case without HC approval, the petition would be dismissed with a fine.

Incidentally, the last person to be declared a "vexatious litigant" in the state was a former professor of Ismail Yusuf College and Elphinstone College, Kavadu Tulsiram Khandale, in October 2003. In the application before the HC by then Advocate General Goolam Vahanvati, it was alleged that Khandale had filed over

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1,000 cases in the last 30 years across India. His targets included Shiv Sena leader Madhukar Sarpotdar, former principal of Ismail Yusuf College, Dr Devyani Dave, and principal of Sydenham College, V B Tayade.

While the law commission's recommendations were made in 2005, the Centre is yet to enact a nationwide law to deal with such litigants. At present, under section 35 A of the Civil Procedure Code (CPC), a lower court can order a person filing a false case to pay a fine not exceeding Rs 3,000. Another provision is section 151 of the CPC under which a High Court is empowered to pass orders and impose fines to meet the ends of justice.

As for false criminal complaints, section 250 of the Criminal Procedure Code empowers courts to direct a complainant to pay compensation to the affected party. Lawyers say all these provisions, however, do not act as a deterrent, especially in lower courts.