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# MISUSE OF STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION (SLAPP) IN INDIA: NEED FOR ANTI-SLAPP LEGISLATION

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Rafiya Nazneen<sup>1</sup>

## I. ABSTRACT

*Strategic Lawsuits Against Public Participation (SLAPPs) are becoming more recognized as a potent tool of legal harassment, as corporations, powerful people, and state officials are now using it to silence dissent and discourage legitimate public activism. SLAPPs can be characterized as a tool that is used to exert not only financial but also psychological pressures on activists, journalists, and civil society organizations, as opposed to being a legitimate legal complaint. This paper critiques the scenario of India of misusing of SLAPPs, where the lack of sufficient defamation laws, the lengthy legal process, and unequal access to justice further intensify their chilling effect on free speech and political participation. Comparative analysis of anti-SLAPP laws in various jurisdictions, such as the United States, Canada as well as the nations in Europe, and South Africa, clarifies the variety of legislative and judicial approaches that may be used to guard civic activity. The paper notes the existing legal gaps in India that enable the continuation of SLAPPs and suggests that an effective anti-SLAPP framework based on constitutional protections to free speech, judicial effectiveness, and protection of litigation in the public interest can be implemented. The suggested structure aims to reconcile the rights of individual reputation and the right to criticize as a collective entity to strengthen the democratic spirit of India.*

## II. KEYWORDS

SLAPP, Defamation, Freedom of Speech, Public Interest, Journalism

## III. INTRODUCTION

The words “We the People of India” in the Preamble of the Constitution of India is not just a mere phrase but it declares that the citizens of India have given the Constitution

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<sup>1</sup> LLM Corporate and Commercial Law, Christ Deemed to be University, Bangalore, email: [rafiyanazneen8@gmail.com](mailto:rafiyanazneen8@gmail.com)

to themselves and the government is responsible to this Supreme Law. This Constitution guarantees the public with the fundamental rights, making it as an utmost part of their lives. One of the crucial rights among them is the freedom of speech to the people which is flag-bearer of a democratic country. The Strategic Lawsuits Against Public Participation is one the terrifying act which haunts the freedom of speech.

The concept of SLAPPs intelligently curtails this paramount right.<sup>2</sup> The Strategic Lawsuits Against Public Participation is designated as the meritless lawsuits.<sup>3</sup> SLAPP speaks about is a the social, legal, and political impacts of multi-crore rupee lawsuits filed against citizens or groups for advocating a viewpoint on a public issue.<sup>4</sup> The genesis of this sort of cases came for the first and foremost time during a meeting in University of Denver in the United States. It was Business Roundtable professors George W. Pring (Law) and Penelope Canan (Sociology) who came up with the term Strategic Lawsuits Against Public Participation (SLAPP).

They referred to their decades-long work, where they even defined SLAP as those civil lawsuits against someone or an organization due to their communications to a government body or an official in a matter of public interest. Although their work was first termed in the 1980s and 1990s, the definition of SLAPPs has now been expanded to cover not only communication with the government, but any involvement as a member of the society or in political issues of concern.<sup>5</sup> Putting together it is basically a form of retaliatory lawsuit intended to deter freedom of expression on matters of public interest.<sup>6</sup>

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<sup>2</sup> U.N. Off. of the High Comm'r for Hum. Rts., *The Impact of SLAPPs on Human Rights and How to Respond* (Apr. 2024), <https://www.ohchr.org/en/documents/brochures-and-leaflets/impact-slapps-human-rights-and-how-respond>

<sup>3</sup> Akshay Luhadia & Istela Jameel, *Strategic Lawsuits Against Public Participation in India: An Analysis in the Context of Indian Defamation Laws*, 12 NLIU L. Rev. 90 (2023), <https://nliulawreview.nliu.ac.in/wp-content/uploads/2023/07/99-131-Vol-XII-Issue-I.pdf>.

<sup>4</sup> Penelope Canan & George W. Pring, *Studying Strategic Lawsuits Against Public Participation: Mixing Quantitative and Qualitative Approaches*, 35 Soc. Probs. 244 (1988), <https://doi.org/10.2307/3053441>

<sup>5</sup> Malcolm Katrak, *Curbing Free Speech: Strategic Lawsuits Against Public Participation in India*, 7 Christ Univ. L.J. 27 (2018), <https://doi.org/10.12728/culj.12.2>

<sup>6</sup> R. Kraski, *Combating Fake News in social media: U.S. and German Legal Approaches*, 91 St. John's L. Rev. 923 (2017).

Asia Pacific accounts for 25% of the SLAPPs around the world.<sup>7</sup> SLAPPs literally and phonetically a “slap” on the face of anyone who speaks against power are distinguished from standard legal actions by several indicators: they target acts of public participation such as journalism, advocacy, whistleblowing, peaceful protests or boycotts, activism, or simply speaking out against abuse of power; the subject matter almost always involves a matter of public interest; the suits are often filed against individuals rather than the organizations they work for to inflict reputational harm; they generally lack a valid cause of action and are devoid of merit; winning the lawsuit is not the focus, as the plaintiff’s goal is often achieved if the defendant succumbs to fear, intimidation, mounting legal costs, or exhaustion; and the remedies sought are typically substantial, aggressive, or disproportionate to the subject matter of the dispute. such suits are filed with no intention of winning on their merit but to intimidate criticism, stall legal proceedings, and exhaust the other party both physically and mentally.

Such abuse of legal proceedings has been known to have profound implications for freedom of speech and journalism. The existence of this problem globally is not addressed with an appropriate legal system in India, nor is there an anti-SLAPP system in place to prevent or refute such lawsuits at an early stage.

### **A. Research Objectives**

1. To comprehend the idea and nature of SLAPP suits as well as their mechanism in public participation.
2. To study the use and abuse of SLAPP suits in the Indian context through case analysis of the affected journalists, environmentalists, and activists.
3. To assess how the lacunae in the civil and criminal laws of India facilitate and perpetuate SLAPP cases.

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<sup>7</sup> (U.N. Env'tl. Programme, *Environmental Rule of Law and Human Rights in Asia Pacific: Supporting the Protection of Environmental Human Rights Defenders* (July 2023), <https://www.unep.org/resources/publication/environmental-rule-law-and-human-rights-asia-pacific-supporting-protection>).

4. To analyse anti-SLAPP regulations in other countries (such as the United States of America, Canada, Australia, and the EU) and assess their effectiveness. To put forth the requirement and framework for the legislation of an anti-SLAPP law in India, which can be established.

## **B. Research Questions**

1. Are the criminal and civil laws in India adequate to counter the effect of the SLAPPS? What legal provisions in India are conducive or do not stop the abuse of legal process in SLAPPS?
2. What is a SLAPP suit, and how does it differ from other defamation or tort actions?
3. There is some confusion regarding the definition of a SLAPP suit.
4. In what ways are SLAPP suits being abused in India to suppress freedom of expression and dissent?
5. What can India learn from anti-SLAPP laws in foreign jurisdictions such as the USA, Canada, or the EU?
6. What might an effective anti-SLAPP legal system look like in the Indian situation?

## **C. Research Hypothesis**

“The improper use of SLAPPS (IV) specifically impacts and erodes democratic freedoms and participation (DV) and the issue of how legal reforms, such as the enactment of Anti-SLAPP legislation, may facilitate the relationship and ensure equity”. Here the improper use of SLAPPS is the independent variable and democratic freedoms, and participation is the dependent variable.

## **D. Research Methodology**

The approach of this research is doctrinal and comparative legal research methodology, relying on primary sources such as constitutional provisions, statutes, and judicial decisions, and secondary sources including books, journal articles, reports of international organizations, and policy documents. The study undertakes a

comparative survey of the anti-SLAPP frameworks in the United States, Canada, the European Union, and Australia to analyze best practices. The research is qualitative and analytical, with a purpose to point out doctrinal gaps in Indian law and suggest normative legal reforms.

### **E. Literature Review**

George W. Pring and Penelope Canan's pioneering work first defined SLAPPs as the end of the 1980s; they referred to meritless civil lawsuits filed with the primary aim of punishing those who engage in public participation through communicating with governmental entities on issues of public concern. In their empirical analysis, they proved that the goal of these lawsuits is usually not to be successful in court but rather to intimidate through prolonged litigation, financial burden, and psychological strain.<sup>8</sup>

However, later other scholars have widened the definition of SLAPPs to encompass more general forms of civic participation like the media, environmental protest, whistleblowing, and online posting. Writing on the Indian legal context, SLAPPs expert Malcolm Katrak describes how procedural inefficiencies and abuse of the law of defamation particularly render India vulnerable to SLAPPs<sup>9</sup>. Akshay Luhadia and Istela Jameel, an Indian academic duo, digging deeper into the Indian defamation laws, observe how both civil and criminal laws of defamation are being increasingly used by corporations and persons of influence to intimidate investigative journalists and civil society actors. They observe that the lack of early dismissal and cost shifting features raises the chill factor against freedom of speech.<sup>10</sup>

The literature on comparative law has shed light on potential approaches to this issue. Jason Aimonetti & Eric Talley have shown that anti-SLAPP legislation in the United States has been successful in combating frivolous lawsuits by providing for early

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<sup>8</sup> George W. Pring & Penelope Canan, *Strategic Lawsuits Against Public Participation (SLAPPs)*, 12 *Bridgeport L. Rev.* 937, 944–46 (1992).

<sup>9</sup> Malcolm Katrak, *Curbing Free Speech: Strategic Lawsuits Against Public Participation in India*, 7 *Christ Univ. L.J.* 27, 33–39 (2018).

<sup>10</sup> Akshay Luhadia & Istela Jameel, *Strategic Lawsuits Against Public Participation in India*, 12 *NLIU L. Rev.* 90, 101–07 (2023).

dismissal relief and mandatory fee shifting.<sup>11</sup> The data also show that those regions with better anti-SLAPP safeguards have lower rates of corporate fraud hiding incidents. Canadian case law on this issue, including that of Ontario with its anti-SLAPP legislation, applies a functional approach that favors speech about issues of public concern while dismissing claims for lack of merit.<sup>12</sup>

Internationally, there is evidence of recognition regarding the Anti-SLAPP Directive policy established by the European Commission to address SLAPP cases internationally.<sup>13</sup> Additionally, reports by the United Nations and UNEP indicate a connection between violations of human rights and sustainable development through SLAPP cases targeting environmental defenders and journalists.<sup>14</sup>

Despite the growing consensus at an international level, the Indian legal literature has perennially located the vacuum in doctrine and legislation. Although Indian courts have been conscious of the chilling effect of abusive litigation, at present, there exists no systematic legal structure to segregate SLAPPs from legitimate claims. This serves as an important pointer to the pressing need for general anti-SLAPP legislation on the basis of India's commitment to free speech under its constitution.

#### IV. UNDERSTANDING SLAPPS SUITS

Protecting free expression is conventionally viewed as central to ensuring a transparent and accountable government. This paper extends this debate by asking whether free speech protections also promote corporate accountability and transparency by analyzing the role of anti-SLAPP laws in decreasing the managerial suppression of bad news.

Managers of corporate firms often have incentives to suppress negative and to rapidly disclose positive information. However, nontraditional monitors including the media, employees, short sellers, and members of the general public play important roles in

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<sup>11</sup> Jason Aimonetti & Eric L. Talley, *Anti-SLAPP Law in Action*, 168 U. Pa. L. Rev. 1, 22–30 (2021).

<sup>12</sup> Mark Hanna, *SLAPPs: What Are They? And How Should Defamation Law Be Reformed to Address Them?*, 16 J. Media L. 118, 126–29 (2024).

<sup>13</sup> European Comm'n, *Proposal for a Directive on Protecting Persons Who Engage in Public Participation from Manifestly Unfounded or Abusive Court Proceedings (Anti-SLAPP Directive)*, COM (2022) 177 final.

<sup>14</sup> U.N. Env't Programme, *Environmental Rule of Law and Human Rights in Asia Pacific* (July 2023).

uncovering corporate misbehavior. Unlike providers of capital, their monitoring incentives often are reputational, social, or monetary and linked to the exercise of free speech rights. Yet managers frequently try to discourage nontraditional monitors from speaking out through retaliatory litigation that increases the costs of disseminating information.

In response to such a problem, states started to adopt anti-SLAPP laws in the 1990s, and these laws offer “early dismissal of frivolous cases, recovery of attorney fees, and similar prophylactics that enhance free speech protection beyond that commanded by Courts and scholars.” Corporate actions, according to Courts and scholars, are a matter of public concern because of their large influence on investors and markets.

To calculate the degree of concealed bad news, “this paper uses three metrics: the probability of stock price crashes, the probability of accounting fraud measured by F-score, and the number of firm-issued negative press releases.” In a difference in differences test, anti-SLAPP laws are found to successfully decrease the number of frivolous lawsuits.

The results show that there are fewer stock price crashes, fewer chances of accounting fraud, but more negative press releases for companies operating in states that have enacted anti-SLAPP legislation, meaning that companies do this to a lesser extent. The result is seen to be more pronounced in states with wider anti-SLAPP legislation; this is determined by an organization known as the Institute of Free Speech.

The result is also seen to be greatest in companies with greater incentives for concealing information, for instance, when they issue stock or engage in M&A transactions. After anti-SLAPP legislation is enacted,<sup>15</sup> monitoring by employees, short sellers, and journalists increases due to their willingness to dig out and publish negative pieces of information.

## V. SLAPPS VIOLATING SUSTAINABLE DEVELOPMENT

Human rights defenders, environmental campaigners, journalists, and activists have been the victims of SLAPPs all over the world in their quest to raise issues concerning

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<sup>15</sup> Institute for Free Speech, *U.S. Anti-SLAPP Laws: Rankings and Analysis* (2023).



climate change, corporate responsibility and environmental preservation.<sup>16</sup> Through its repression of such involvement, the SLAPPs directly interfere with the social interaction that is one of the foundations of sustainable development.

These lawsuits take advantage of the already existing imbalance of political and financial power and transform the general problems of mass interest into mini dilemmas. This chilling effect does not only deter investigative journalism and environmental activism, but it also destroys the quest of social justice. Transparency, accountability, and involvement of community are essential to sustainable development, and when SLAP is applied as a means of intimidation, all of that is endangered. Moreover, SLAPPs disparage the basic freedoms, including expression, assembly and association, which are essential to the Sustainable Development Goals (SDGs). Specifically, the objectives connected with environmental protection, human rights, and inclusive decision-making are endangered when the voices of the activists of these movements are suppressed or sentenced to prison.

The United Nations Guiding Principles on Business and Human Rights underscores the responsibility of the business not to infringement of human rights. The application of SLAPPs contravenes this obligation as it prevents environmental and social accountability both of which constitute sustainable development. The international organizations are aware of these dangers and hence, the necessity of implementing anti-SLAPP practices. States are encouraged to safeguard civic engagement and in particular the issues that relate to environmental sustainability and other issues of public interests. This is because such legal protection is essential in maintaining the sanctity of sustainable development models and in averting the undermining of environmental activism in the face of SLAPP lawsuits.<sup>17</sup>

## VI. SLAPPS THROUGH INDIA'S LENS

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<sup>16</sup> Supra note. 13.

<sup>17</sup> U.N. Env'tl. Programme, *Environmental Rule of Law and Human Rights in Asia Pacific: Supporting the Protection of Environmental Human Rights Defenders* (July 2023), <https://www.unep.org/resources/publication/environmental-rule-law-and-human-rights-asia-pacific-supporting-protection>.

In India, misuse of the law of defamation and civil litigation has frequently served as a SLAPP measure, especially towards journalists, activists, and civil society organizations challenging state or corporate authority.<sup>18</sup> An example is that influential companies have employed defamation suits to block media coverage of governance lapses or environmental evils and thus discourage investigative journalism. The misuse of defamation and regulatory litigation in India has frequently functioned as a SLAPP mechanism against journalists and civil society actors.

While courts have occasionally acknowledged the chilling effect of excessive litigation, they have not consistently evolved a doctrine to restrain abusive suits. In this context, reliance on *Sahara India Real Estate Corp. Ltd. v. SEBI* is misplaced, as the decision primarily concerned SEBI's regulatory jurisdiction over Optionally Fully Convertible Debentures (OFCDs) and investor protection, rather than press freedom. A more apposite judicial articulation on prior restraint and media freedom is found in *R. Rajagopal v. State of Tamil Nadu*, where the Supreme Court categorically held that the State cannot impose prior restraint on the publication of matters of public record, thereby affirming constitutional protection for press freedom against indirect censorship.<sup>19</sup>

Similarly, in *Subramanian Swamy v. Union of India*, confirmed the constitutionality of criminal defamation in the Indian Penal Code in section 499 and 500<sup>20</sup>, despite claims that such clauses have a chilling effect on free speech.<sup>21</sup> Through these decisions, it is clear that even though courts are aware of the chilling effects of litigation, they have not always developed a doctrine to restrain SLAPPs.

The dual personality of Indian media regulation—marked by formal constitutional guarantees of free speech under Article 19(1)(a) alongside informal pressures through litigation and regulatory mechanisms—creates fertile ground for SLAPPs.<sup>5</sup> Civil and

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<sup>18</sup> Prashant Reddy T. & Sumathi Chandrashekar, *Rein and Laissez Faire: The Dual Personality of Media Regulation in India*, 12 J. INDIAN L. & SOC'Y 45, 62 (2016).

<sup>19</sup> *Sahara India Real Estate Corp. Ltd. v. Sec. & Exch. Bd. of India*, (2012) 10 S.C.C. 603 (India).

<sup>20</sup> Indian Penal Code, No. 45 of 1860, §§ 499–500 (India).

<sup>21</sup> Reddy & Chandrashekar, *supra* note 1, at 66.

criminal defamation proceedings often drag on for years, with the process itself serving as punishment for defendants.

Unlike in jurisdictions such as the United States, where procedural protections exist in the form of anti-SLAPP statutes, Indian litigants must endure protracted legal battles without early dismissal mechanisms. This imbalance underscores the urgent need for a robust anti-SLAPP framework in India.

## **VII. LEGAL INADEQUACIES IN PERPETUATING SLAPP SUITS IN INDIA**

The Indian legal system has a number of weaknesses that enable Strategic Lawsuits Against Public Participation (SLAPPs) to flourish successfully and easily mute criticism. These weaknesses are not only caused by legislative loopholes but also due to the courts of law and the imbalance in the litigation processes.

One of the most significant weaknesses is the economic imbalance of parties. Companies or influential personalities who file SLAPP suits usually have a profound financial base, whereas journalists, publishers, or researchers usually have very minimal resources to defend themselves. Such an imbalance compels the defendants to either give in to financial pressure or to retreat out of fair criticism. This is further complicated by the fact that plaintiffs have the tendency to glorify the amount of damages they demand as unreasonable most of the time with no real basis and very little relation to the real damage. These are exaggerated assertions that are used to intimidate and not to seek legal redress.

It is also typical that SLAPP suits in India are baseless with little or no evidence of loss of goodwill or reputation exemplified in the court. Plaintiffs tend to support their claims, and even the litigation process is already the punishment of the defendant. Abuse of jurisdictional provisions in defamation law is another grave inadequacy. The plaintiffs are also tactical in instituting cases in various jurisdictions playing on technicalities like having a small cause of action or having one defendant who is resident. This is a process that is observed through cases like that lodged by the Indian Institute of Planning and Management (IIPM) and it makes defendants to incur extra

expenses and inconveniences of having to defend suits in an unfamiliar place or even several courts.

The constitutional standpoint to the establishment of the right to reputation under Article 21 grants plaintiffs with a veil of legitimacy to launch SLAPPS with defamation as the premise. Being connected to a primary right, the criminal defamation model provides corporations and individuals with a constitutional foundation to pursue legal action, in cases where such suits are not serious or aimed at intimidation. It is also of concern that the judiciary has a not-so-good attitude to investigative journalism and the freedom of speech. Rather than being strong protectors of democratic participation and the right to dissent courts have been perceived as being more concerned with corporate reputation. It has been construed that this judicial apathy has been construed to mean a silent consent to allow corporations to use SLAPP suits as a tool to keep themselves off the radar of the public hence the destruction of the constitutional right to free speech.<sup>22</sup>

## VIII. CROSS-JURISDICTIONAL AFFAIRS OF ANTI-SLAPP LEGISLATION

The fact that SLAPP suits have received mixed legal outcomes throughout jurisdictions has indicated the degree of either appreciation or non-appreciation of the right to participate in the affair of the state and the freedom of expression.<sup>23</sup> An inter-jurisdictional review shows the gains achieved as well as the flaws that remain unresolved in handling these vexatious procedures.

Anti-SLAPP laws have been most widely experimented in the United States. Such statutes were first adopted in California and New York where the chilling effect of SLAPPS on free expression and civic engagement was acknowledged. The frameworks enable the defendants to be in fast-tracked steps to dismiss the suits against them that seek to prosecute the expression that falls under protection and hence, reduce the burden of an elongated court process. Anti-SLAPP laws have been

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<sup>22</sup> Akshay Luhadia & Istela Jameel, *Strategic Lawsuits Against Public Participation in India: An Analysis in the Context of Indian Defamation Laws*, 12 NLIU L. Rev. 90 (2023), <https://nliulawreview.nliu.ac.in/wp-content/uploads/2023/07/99-131-Vol-XII-Issue-I.pdf>.

<sup>23</sup> Jason Aimonetti & Eric L. Talley, *Anti-SLAPP Law in Action*, 168 U. Pa. L. Rev. 1 (2021).

introduced in over thirty U.S. states currently, though their reach, remedies and strength are wide ranging. Other jurisdictions permit punitive damages and costs to be taken against plaintiffs who abuse the litigation process, whereas other jurisdictions experience only procedural protection, like imposing a burden of proving or accelerating dismissal.

Ontario province has passed one of the most globally recognized anti-SLAPP laws in Canada.<sup>24</sup> This law lacks a strict statutory definition of SLAPPs but sets up a functional test; proceedings are said to be dismissed at an early stage when they are an expression on an issue of public interests and have no substantial merit, or by which the defendant can show a valid defence. The Canadian courts have also explained further that SLAPs are not suits that are filed on the basis of actual redress but to indirectly deter expression.

The European Union has typically been lagging behind in dealing with SLAPPs.<sup>25</sup> In 2022, however, the European Commission proposed an anti-SLAPP Directive setting minimum standards of early dismissal and costs protection, especially in cases having cross-border consequences. This program is an indication that transnational challenges associated with SLAPPs are a threat to not only the rights of individuals but also the democratic procedures of member states.<sup>26</sup>

Australia has embraced more restrictive legislations. It has anti-SLAPP laws that permit termination of cases that were filed on improper purpose, like an attempt to keep someone out of the political discussion. Although it is a move to restrain the abusive litigation, it is not comprehensive enough to rule out the possibility of SLAPS continuing to be practiced.<sup>27</sup>

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<sup>24</sup> Mark Hanna, *SLAPPs: What Are They? And How Should Defamation Law Be Reformed to Address Them?*, 16 *J. Media L.* 118 (2024), <https://doi.org/10.1080/17577632.2024.2345982>

<sup>25</sup> European Commission, *Proposal for an Anti-SLAPP Directive* (2022), <https://commission.europa.eu/anti-slapp-directive>.

<sup>26</sup> U.N. Env'tl. Programme, *Environmental Rule of Law and Human Rights in Asia Pacific: Supporting the Protection of Environmental Human Rights Defenders* (July 2023), <https://www.unep.org/resources/publication/environmental-rule-law-and-human-rights-asia-pacific-supporting-protection>.

<sup>27</sup> Malcolm Katrak, *Curbing Free Speech: Strategic Lawsuits Against Public Participation in India*, 7 *Christ Univ. L.J.* 27 (2018), <https://journals.christuniversity.in/index.php/culj/article/view/1870>.

The South African case law has developed judicial appreciation of SLAP. The High Court has characterized SLAPPs as acts in which the chief intention is not resolution of a legitimate dispute, but punishment or retaliation against the citizens due to the exercise of the rights to speak out. The approach of jurisprudence is in line with Canadian definitions and highlights the fact that SLAPPs are inherently retaliatory.<sup>28</sup>

Altogether, though significant steps have been made by countries like the U.S. and Canada with institutionalized early dismissal mechanisms, there are still formidable challenges to scope and remedy. The EU's emerging directive tends toward harmonization and a coordinated transnational response, while other regions such as Australia and South Africa reflect more cautious or judicially driven approaches. Together, these frameworks demonstrate that increasing but very uneven recognition of SLAPPs as a serious threat to free expression, requiring a comprehensive and globally coordinated legal response.

## **IX. NEED OF AN ANTI-SLAPP LAW IN INDIA**

The results show that there are fewer stock price crashes, fewer chances of accounting fraud, but more negative press releases for companies operating in states that have enacted anti-SLAPP legislation, meaning that companies do this to a lesser extent. The result is seen to be more pronounced in states with wider anti-SLAPP legislation; this is determined by an organization known as the Institute of Free Speech. The result is also seen to be greatest in companies with greater incentives for concealing information, for instance, when they issue stock or engage in M&A transactions. After anti-SLAPP legislation is enacted, monitoring by employees, short sellers, and journalists increases due to their willingness to dig out and publish negative pieces of information.

Examining the international context, specifically in relation to the United States, procedures for early dismissal of frivolous cases and cost shifting reforms like forced attorney's fees for defendants could be effective deterrents against abuse of SLAPPs. However, it is also necessary to take safeguards to prevent genuine defamation cases

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<sup>28</sup> U.N. Envtl. Programme, *supra* note 13.

as well as other cases in civil matters from being summarily dismissed without following proper procedures. Legislative reforms ought to take note of the interest of the public in freedoms of speech in relation to governance matters, environmental issues, and corporate matters. The Hon'ble Court has given effect to this in cases of *Rajagopal vs. The State of Tamil Nadu* by holding that even press publications about matters of public interest could not be priorly restrained.

Such a framework would not only ensure that journalists and other activists are not harassed but also solve the issue of democratic accountability through the free speech of the people. Such an approach to defining SLAPPs as a specific form of malaise litigation and a set of procedural mechanisms to eliminate it at the initial stage would both bring Indian practice to the global trend and solidify the democratic principles rooted in the Constitution.

## **X. SUGGESTIONS AND RECOMMENDATIONS**

India also needs a separate Anti-SLAPP law that considers Strategic Lawsuits Against Public Participation a separate kind of litigation. Basing the law on the Canadian or U.S. version, the new law should include an early dismissals or special motion provision, which would allow a court to dismiss a suit involving protected speech. After the defendant defends the speech as involving a matter of public concern, the plaintiff would have to prove significant merits. This would go a long way in protecting freedom of speech in India.

There is a need, therefore, for the abuse of the judicial process to be effectively discouraged by empowering courts with the capability of mandatory cost shifting and compensatory damages such as attorneys' costs and damages for financial loss, reputation damage, and mental harassment. The use of criminal defamation laws against SLAPP cases, particularly those that involve issues of governance, business accountability, environment, and public interest, is expected to decrease with greater review by magistrates prior to issuance of summons. This apparatus is expected to cut out forum shopping by ensuring that there is practical cause of action within the jurisdiction and that transfer of cases is possible.

However, legislation in conjunction with judicial awareness and conceptualization in the judicial domain remains imperative. Judges need to be trained for detecting SLAPPs, including the presence of excessive damages, no actual harm, plurality of lawsuits, and asymmetry in power. A more specific judicial notion in the constitutional domain, formulated in the context of Articles 19(1)(a) and 21, in understanding abusive lawsuits as an “indirect abridgement of freedom of expression and freedom persona,” will improve matters.

Special protective laws should be there to include journalists, whistleblowers, and environmental activists specifically. India’s anti-SLAPP laws should harmonize with India’s commitments to the United Nations Sustainable Development Goals, specifically Sustainable Development Goal number 16, which emphasizes the protection of civic engagement. Until such time that a comprehensive anti-SLAPP law is passed, constitutional courts may use their powers vested in Articles 226 and 32 to strike down SLAPPs in preliminary reliefs. They may develop particular guidelines on how to strike down SLAPPs much like the guidelines in the case of *Shreya Singhal vs. the Union of India*. Finally, Legal Service Authorities should offer free legal aid as well as conduct awareness seminars to empower defendants.

## **XI. CONCLUSION**

SLAPPs have become a serious threat to freedom of expression, democratic participation, and accountability in India. This study has illustrated that SLAPPs are not filed for legitimate legal redress; instead, they are used as means to intimidate journalists, activists, and other civil society actors by smothering them with cumbersome and expensive litigation. Misuse of civil and criminal defamation laws, besides the suffering of procedural delays and power imbalances, results in the chilling effect that really works to dismantle Article 19(1)(a) of the Constitution.

While Indian courts have recognised the chilling effect of abusive litigation, the persistence of such practices is perpetuated by the lack of a clear doctrinal or legislative framework that spells out how SLAPPs are to be identified and dismissed at an early stage. The persistence of criminal defamation, absence of early dismissal



mechanisms, and uncurbed forum shopping exacerbate this problem further by making the process itself punitive upon defendants.

A closer observation shows that countries such as the United States, Canada, and the European Union have been able to tackle issues concerning SLAPPs by coming up with specific provisions and timely dismissal orders. This indicates that freedom of participation is not mutually exclusive to claims concerning reputation. This thesis, therefore, proposes that India requires an anti-SLAPP law based on constitutional ideals and justice, and that the constitutional courts should be more vigilant to ensure that freedom of participation is not violated by those abusing the freedom.

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