

"A STUDY ON 'MALICIOUS PROSECUTION' AND THE 'MISUSE' OF PARTICULAR LEGAL PROVISIONS"

Satyanarayan,
Research Scholar,
Maharaj Vinayak Global University, Kukas, Jaipur- Rajasthan.

Dr. Mahendra Tiwari,
Research Supervisor,
Professor, Law Department, Maharaj Vinayak global university, Kukas, Jaipur- Rajasthan

ABSTRACT

One of the four requirements for that kind of action is that the plaintiff in a claim for malicious prosecution must show that the initiator or prosecutor lacked a good and sufficient reason to start, initiate, or continue the prosecution. The defendant's mental state and the validity of the prosecution are fundamentally related. Once more, the legality or impropriety of a prosecution depends on the existence of a reasonable and probable cause as well as the defendant's animus inebriant in initiating, creating, or pursuing it. It isn't a question of whether the prosecutor had enough evidence to secure a conviction—the trial court must make that decision after the evidence is concluded—but rather of the prosecutor's sincere belief that, after meticulously compiling and fairly assessing the available evidence, the plaintiff was probably guilty of the crime. The prosecutor must have had difficulty balancing the subjective and objective considerations while exercising that discretion and coming at that conclusion. The 2007 230 CLR 500 (HCA) decision in *A v. New South Wales* by the Australian High Court resolved this aspect of the problem. This paper contends that the ten-point guidelines issued by that court in that case, which were meant to provide the courts with a supposedly less complicated formula for determining whether the prosecutor lacked reasonable and probable cause, do not appear to have provided a resolution to the problem.

Keywords: misuse, certain legal, civil proceedings

INTRODUCTION

The plaintiff will need to show that the prosecution was brought about purposefully, that there were no just or reasonable reasons for it, and that the issue was finally handled in the plaintiff's favor for their case to be successful. It is vital to offer evidence in order to establish that the prosecution was the cause of the damage that occurred. Despite the fact that the conflict was initiated with the intention of causing harm to the other party, it was resolved in the plaintiff's advantage. It is vital to offer evidence in order to establish that the prosecution was the cause of the damage that occurred. Despite the fact that the conflict was initiated with the intention of causing harm to the other party, it was resolved in the plaintiff's advantage. It is vital to offer evidence in order to establish that the prosecution was the cause of the damage that occurred.

In addition to malicious prosecution and malicious arrest, malicious procedures can also include malicious bankruptcy and liquidation proceeding (civil proceedings), malicious execution of process against property, and malicious search. Malicious proceedings can also be started by using malicious execution of procedure against property.

Malicious Prosecution

Malicious prosecution is considered to be a tortious practice. This malicious prosecution strikes a balance between ensuring that no one is unfairly accused of wrongdoing and allowing people to utilize their rights to seek justice through the legal system by filing a lawsuit. The goal of this compromise is to prevent anybody

from being wrongfully accused of wrongdoing. This issue may be broken down into two distinct categories: first, the fact that the person who presented the false case to the court caused the court to waste its time, and second, the fact that the person who was falsely accused of wrongdoing suffered financial setbacks as a direct result of the false case being made against them. If the plaintiff initiated the legal process without any probable or reasonable cause, then it is an abuse of the legal process, and at the end of the case, the legal system should come to the judgement that the defendant is innocent because of the abuse of the legal process.

Proof Of Malice

The existence of pre-existing hostile relations, behaviour that is unlawful or unjustified (such as promoting the claim or gathering fake evidence, etc.), or both can be used as proof of malice. Although negligence alone is not evidence of malice, improper conduct such as haste, negligence or failure to prove the inquiry would be some evidence. When there is no reasonable basis for the defendant's statement, the fact that the defendant does not believe it to be true is irrefutable proof that the defendant acted maliciously. However, the inverse of this statement is not accurate since a person might have malicious intentions while simultaneously having a rational view that what he is saying is true of the situation. There is a possibility of ill will in either the beginning of a prosecution that has been undertaken in good faith or in the continuation of that prosecution.

OBJECTIVES

1. To study the concept of judicial accountability, its meaning, nature, scope and mechanism.
2. To determine the parameters to measure the judicial accountability.

MISUSE OF CERTAIN LEGAL PROVISION

The rule of law, as defined in each nation's founding document, the Constitution, was the major focus of the comparative study that the researcher carried out on countries such as the United States of America, the United Kingdom, and India. The researcher's primary purpose was to protect the rule of law as outlined in each nation's founding document. Every one of these countries puts a lot of effort into working towards the objective of establishing a legal system that possesses attributes such as being efficient, effective, responsive, accountable, trustworthy, people-oriented, transparent, and other desirable characteristics.

Behaving towards another person in an animalistic manner, including beating and torturing them, is part of what is meant by the term "being cruel" towards that person. It is not unheard of for women to be treated cruelly in Indian society; unfortunately, this is the norm. Each and every minute, a woman or a girl somewhere in the globe becomes the victim of cruel treatment at the hands of a member of her own family, a close friend or acquaintance of hers, or a person with whom she is otherwise acquainted. There are some men who have the misconception that striking and harassing women is the ultimate expression of machismo, and as a result, they find pleasure in engaging in these behaviours.

Therefore, in order to put an end to this, the law of our country had produced section 489-A in the Indian penal code, which specifically dealt with cruelty against women. This was done in order to put an end to the practise. This was done in order to safeguard women from being subjected to inappropriate treatment. The women who are in fact subjected to the brutality that is being recounted in this section have been granted a great gift by the inclusion of this particular section. On the other hand, in light of recent events, section 489-A of the Indian penal code has been abused by some unsatisfied women just for the goal of bothering their spouse or their family in order to make money off of it. This abuse of the law has occurred as a result of the recent occurrences.

Only the wife/daughter-in-law or a relative can use 498A. The majority of Sec 498A accusations are bogus extortion efforts by the lady or her family in a problematic marriage. Most 498A allegations end with an extortion demand to pay out of court.

Essential Elements Of This Section;

- For the commission of an offence under Section 498-A, following necessary ingredients require to be satisfied:
- The woman must be married;
- She must be subjected to cruelty or harassment; and
- Such cruelty or harassment must have been shown either by the husband of the woman or by the relative of her husband.

This section's bare perusal points out that the word 'cruelty' covers the occurrence of the following act: any intentional behavior that has the potential to drive a woman to take her own life, or that poses a significant risk to her health, safety, or life, is prohibited.

a woman's health (mental or physical);

It is not permissible to engage in any purposeful activity that creates a major risk to a woman's life, health, or safety or that has the potential to push a woman to end her own life by taking her own life.

- Mistreatment through abusive legal action
- The cruel combination of hardship and careless behaviour
- The cruel application of constant pressure
- Abusive behaviour in extramarital relationships

Taking Away Children

In 1983, the government of India included Section 489-A in the criminal code so that women might be protected from their spouses and other relatives. This was done in order to prevent domestic violence. The amendment that was made to the IPC in 1983 resulted in the creation of Section 498A, which defines harsh treatment within the context of a marriage as a criminal offence. IPC 498A is a punitive statute that discourages compliance with other provisions of the Code of Civil Procedure by imposing harsh penalties for those who do so. The authorities instantly acknowledge the crime without conducting an investigation or obtaining warrants if the victim or designated relatives register a complaint with the police.

JUDICIAL TRENDS & JUDICIAL ACCOUNTABILITY

Judicial Accountability and Judicial Independence

At the point where we left off in the prior chapter, we had been discussing the concept of judicial responsibility. As we move forward into the following chapter, we are going to discuss the concept of judicial accountability in connection with the concept of judicial independence. As a result of the fact that we discussed the concept of judicial responsibility in the preceding chapter, in this one we will first go over the concept of judicial accountability, and only after that will we talk about the concept of judicial independence in connection to judicial independence.

Judicial Accountability In India-

The three pillars that make up the Indian government are known as the Legislative Branch, the Executive Branch, and the Judicial Branch respectively. They are accountable for three essential responsibilities, namely the creation of rules, the implementation of rules, and the interpretation of rules, in that order. The "Separation of Powers" is the overarching principle that serves as the rationale for this assignment of roles and tasks. This concept guarantees that our rights and freedoms are safeguarded by keeping the government accountable for its actions and prevents it from going beyond the confines of its constitutional authority. The proverb "Power corrupts man, and absolute power corrupts absolutely" is the major source of inspiration for this concept.

Judicial Accountability

After the idea of judicial independence came along came the idea of judicial accountability, which may be

thought of as a follow-up idea. Accountability may be broken down into its most fundamental component, which is the act of taking personal responsibility for one's actions and decisions. In general, it refers to being accountable to any external entity; nevertheless, there are some people who argue that responsibility should be kept to principles or to oneself rather than to any authority that has the capacity to reprimand or punish. In this view, accountability refers to being answerable to any external entity. because Accountability is required to be one of the components of independence according to Article 235 of the Constitution, which can be found in the Constitution. The 'control' that the High Court exercises over the lesser courts is unmistakably suggestive of the successful construction of a system to ensure accountability in a timely manner. Therefore, in order to preserve the independence of the judiciary, it is necessary to confer authority over lesser courts on the High Court, which is not accountable to either the administrative branch or the legislative branch of government. This goal is being pursued in a number of different ways, one of which is the construction of a rigorous system for the impeachment of public officials. The founders of the Constitution had the belief that 'settled standards' and 'peer pressure' would function as effective checks and balances; as a result, they removed any mechanism for the higher judiciary from the instrument, with the exception of scenarios involving the most extreme conditions. Peer pressure refers to the influence that one's peers have on one's behaviour.

Maintenance Of Distance from Relatives-

Considering that being a judge is not a job but rather a vocation, it is essential for the judge to keep his or her distance from the litigants and their solicitors while the case is being heard. One should be aware that there is currently the development of a new caste in the legal profession. These individuals succeed not due to their intellectual or professional talents, but rather by making use of their personal connections with the judges. It is possible to put a stop to the expansion of this dubious tendency if one refrains from meeting regularly in private with solicitors who are actively practicing law. Individuals who hold high public posts have a responsibility to ensure that individuals who claim to be close to them are not given the opportunity to profit from that closeness, whether or not it actually exists.

LACK OF JUDICIAL ACCOUNTABILITY IN INDIA

Within sixty years after the drafting of the Indian constitution, the Indian judiciary has grown to become the most powerful institution in the state. This is something that the people who drafted the constitution for India could not have foreseen happening. Not only for the purpose of dispensing justice, but also for the purpose of ensuring that the executive and the legislature did not exceed the authority conferred upon them by the constitution, the constitution established the Honorable High Courts and the Supreme Court as watchdog institutions, which are separate and independent of the executive and the legislature. This was done to ensure that the executive and the legislature did not violate the constitution in any way. As a result, the authorities to interpret the laws and the constitution, as well as the ability to overturn presidential actions that violated any law or the fundamental rights of individuals, were given to the judicial branch. It has the jurisdiction to investigate whether legislation enacted by parliament comply with the constitution and to declare those laws null and unconstitutional if they do not comply with the constitution. Therefore, as a result of a creative interpretation of the article that authorises the parliament to alter the constitution, the Honourable Supreme Court in 1973 also obtained the right to strike down even constitutional modifications that were considered by the court to be in violation of the fundamental structure of the constitution. This power was granted to the court in order to ensure that the constitution was upheld in its entirety. During this time period, the courts have invalidated a significant number of legislation and several modifications to the constitution up until the present day.

JUDICIAL ACCOUNTABILITY BILL-

The court Standards and Accountability Bill attempted to establish standards for the court system as well as hold judges accountable for any mistakes they may have made. It also requires that the judges of the Honourable High Courts and the Supreme Court disclose their assets and liabilities, including those of their spouses and dependents, as part of this legislation's requirements. The draught of the Judicial Standards and Accountability Bill, 2010, which calls for the establishment of a five-person oversight body to investigate complaints lodged against members of the higher judiciary, was approved by the Cabinet of the Union. According to official sources, judges would also be forced to publicly disclose their holdings and submit an annual return detailing both their assets and liabilities. All of these particulars are going to be made public on the websites of the Honourable Supreme Court as well as the High courts. It is common practise for judges to maintain distant relationships with members of the Bar, particularly solicitors who work in the same court in which the judge is assigned to serve. In addition to boosting the credibility and autonomy of the judicial system, the passage of this bill will make an effort to address rising concerns about the need to provide more accountability of the higher court by bringing about greater openness. This will allow for potential solutions to the problem. The oversight committee would be led by a person who has previously held the position of chief justice of India. Other members of the group would include the attorney general, a judge from the Supreme Court, the chief justice of a high court, and a distinguished person chosen by the President.

DIFFERENT STEPS BY JUDICIARY FOR INCREASING IT'S ACCOUNTABILITY

The many measures that the judiciary is doing to continue to retain its accountability are outlined in the following paragraphs. Those are the actions to take.-

- **Central Information System-**

This system displays the specifics of the pending cases, such as the next date, rojnama, and stages of those cases that are currently being heard in the legal system.

- **Complaints with affidavit-**

The judicial system is listening to the complaints in two different ways. This is the second method. At first, only written complaints were taken into consideration; however, once it was discovered that judges were being accused of being unfairly treated, only complaints supported by affidavits are currently taken into consideration.

- **Appeal-**

As a result of the fact that both orders and judgements can be contested before higher courts of justice, it is possible for us to hold the judicial system responsible through the appeals process. As a result, the orders and judgements of subordinate courts are answerable to the courts of higher jurisdiction.

- **Reasoned orders-**

In order to maintain accountability, you must also issue orders that are supported by reasons. It is customary to anticipate that a judge would always issue an order that is supported by reasoning. When a court issues a judgement, the passage of a reasoned order makes it abundantly evident why the judge has reached the precise result that he or she has.

- **Independence of judiciary-**

During the meeting of the constituent assembly, Dr. Ambedkar had voiced his opinion that the judicial branch ought to be autonomous from the executive branch and capable on its own. Nehru had the conviction that "They (the judges) should be first class and seen to be first class."

Independence is a key component in maintaining the rule of law. It is essential that judges have complete autonomy when it comes to the application of the law and the making of judicial judgements in order to ensure that the law is applied uniformly and fairly to all persons in the country. Threats and demands from

litigants, particularly from the criminal element that is a part of society, can be directed against judges. The concept that all democratic nations should adhere to, which includes the United States, is called judicial independence.

THE INTEGRATED INDIAN JUDICIAL SYSTEM -

The blueprint for the constitution included provisions for an integrated judicial system, the construction of which was made possible as a result of the constitution's provisions. One of the primary components of this system is the Honorable State High Courts, and the Honorable Supreme Court of India sits atop the hierarchy of this system. It is of the utmost importance to stress the significance of the fact that the constitution itself not only outlines the powers and jurisdiction of the State High Courts, but also the constitution itself. And as a matter of fact, each judge of the Honorable High Court is to be appointed by the president of India after consultation with the Honourable Chief Justice of India, the governor of the state, and the Honorable Chief Justice of the High Court in the case of the appointment of a judge who is not the Chief Justice. This is to be done in the case of an appointment of a judge who is not the Chief Justice. The President of India is the one who will carry out these duties. The examination of the jurisdiction of the honorable Supreme Court of India that was done in the paragraphs that came before this one demonstrates that the honorable Supreme Court of India not only fulfils the primary responsibilities of a federal court, but it also acts as a regular court of appeal in the ordinary civil and criminal cases that are decided by the honorable High Courts. This is demonstrated by the fact that the honorable Supreme Court of India acts as a regular court of appeal in the paragraphs that came before this one.

NEED FOR JUDICIAL INDEPENDENCE-

The principle of "Separation of Powers" is the primary foundation upon which the idea of "Independence of the Judiciary" is founded. In the doctrine, independence of the judiciary from interference by the executive and the legislature is discussed. This is because the judiciary has the power to interpret the laws and make judicial decisions; the independence of judges is necessary for the proper functioning of the system because it is possible that judges could be subjected to improper influence, inducement, pressures, threats, or interference by litigants or any other criminal elements of society. The doctrine discusses the independence of the judiciary from interference by the executive and the legislature.

The evolution of the state may be measured in terms of its real progress via the lens of the judicial system. If the court is not independent, then this is the first step towards a despotic type of government, in which the power is concentrated in a single hand; if this is the case, then there is a one hundred percent likelihood that the authority will be abused. As a result, it is essential to have a conversation about what elements define judicial independence. The phrase "independent judiciary" may be described as "the independence of judges from any external factors which interfere with the performance of their functions in an unbiased manner." This is one way to think about the notion of "judicial independence. "Therefore, the independence of the judiciary may be seen of as both the independence of the institution itself as well as the independence of judges, who are a component of the judiciary. Immunities were granted to judges by the constitution to ensure judicial independence, which was designed for the benefit of the population and not for the judges' own personal interests to be fulfilled. In conclusion, it is possible to state that these immunities grant unrestricted and limitless powers, which, in turn, may increase the likelihood of the arbitrary and unjust use of these constitutional rights, privileges, and immunities. However, as of late, there has been a desire for increased responsibility from the judicial system.

Judicial independence under Indian constitution-

The "Independence of Judiciary" is a principle that is adhered to by the majority of democratic governments all over the world; nevertheless, the meaning of "independence of the judiciary" is not specified everywhere.

This may be due to the fact that the term "independence of the judiciary" was coined in the United States. Despite the fact that the standards have been written into our constitution, which ensures judicial independence, our constitution does not define exactly what it is that makes up judicial independence. Because of this, our position is quite vulnerable. The following provisions of India's constitution ensure that the country's judicial system will always operate without interference from the government.

Recent controversies on judicial independence-

There have been a number of cases, ranging from Sakalchand to the National judicial nomination commission Bill, in which the question of judicial independence has been brought up. Recently, there has been a debate about a bill known as the National judicial appointment commission bill. This bill attempted to alter the established collegiums system that is used for the appointment of judges.

PRESENT APPOINTMENT OF JUDGES IN SUPERIOR COURTS

Articles 124 and 217 of the Indian Constitution, collectively referred to as the "Judges Appointment clause," outline the process that must be followed in order to appoint judges to the Supreme Court and High Courts, respectively. According to these provisions, judges of the Supreme Court are to be appointed by the President of India, after doing so in consultation with the Chief Justice of India. In the First Judges Case⁹, also known as *S.P. Gupta v. President of India and Ors.*, the Supreme Court of India ruled that judges nominated to the Supreme Court and High Courts by the President, as well as the Chief Justice of India's recommendation to the President, had the ability to be rejected for compelling grounds. Therefore, in the first judge case, it was decided that the executive branch had precedence over the judicial branch in terms of the appointment and transfer of judges.

In the Second Judge Appointments Case¹⁰, which took place in 1993, the Supreme Court of India ruled and held that no appointment of any judge to the Supreme Court or High Court may be made unless it is compliance with the view of the Chief Justice of India. This ruling is still in effect today. The "Collegium" method of appointing judges came into being as a result of the Second Judges Appointment Case. This system is commonly referred to as the "Collegium" system of appointing judges. The "Collegium" system of judge nominations was refined thanks to a lawsuit that was decided in 1998 and referred to as the Third Judges nominations Case¹¹. The bill to establish a National Judicial Appointment Commission was presented to the Lok Sabha in 2014, and on December 31, 2014, it was officially passed into law as The National Judicial Appointments Commission Act. In addition to the passage of the NJAC Act, the parliament also approved the Constitution (121st) Amendment Bill, 2014, which included the addition of Article 124A to the Constitution. The Collegium method for appointing judges to the Supreme Court and High Courts was superseded by the new NJAC system, which came about as a result of the passage of the NJAC Act. But all of a sudden, on October 16th, 2015, it was brought up for review in front of the Supreme Court in the Fourth Judges Appointment Case. The Supreme Court decided that the NJAC Amendment was unconstitutional because it violated the fundamental framework of the Constitution. This decision was reached by 12 of the court's 15 justices. Therefore, the same collegium procedure has been used in the Judiciary from 2015 all the way up till the present day for the appointment and transfer of judges of the Supreme Court and High Courts.

CONCLUSION

A person has the constitutional right to seek redress in a court of law if they consider that they have been treated unfairly in a criminal or civil matter, regardless of whether the case is criminal or civil. Everyone has the ability to exercise this right. In addition to this, they have the right not to be subjected to any legal actions that might be detrimental to them or that were initiated in an intentionally hostile manner. In the context of the law, harassment in any form is expressly forbidden and under no circumstances shall be tolerated in any situation.

There is no necessity that a person have reasonable or probable cause in order to press charges against another individual; nevertheless, the law does give protection for persons who do so for the purposes of public policy. In other words, the law protects people who press charges because they believe it to be in the public's best interest. If, on the other hand, this privilege is abused in order to exact revenge, the person who committed the abuse will no longer enjoy the safeguards that are granted to law-abiding individuals, and they may be sued not for any actual violation but for the wrong of commencing legal proceedings that were not necessary. In other words, they may be sued for the wrong of initiating legal proceedings that were not necessary.

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