



Columns

Breaking down SLAPP: Responding to and Overcoming Legal Challenges

SLAPP is typically a lawsuit intended to censor, intimidate and silence critics by burdening them with the cost of a legal defense until they abandon their criticism or opposition.



Soumya Gulati, Alipak Banerjee and Shruti Dhonde

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SLAPP stands for ‘Strategic Legal Action against Public Participation’ and is not a new concept in India. SLAPP is typically a lawsuit intended to censor, intimidate and silence critics by burdening them with the cost of a legal defense **until they abandon their criticism or opposition**. Simply put, it is a form of retaliatory lawsuit intended to deter freedom of expression on matters of public interest [R Kraski, 'Combating Fake News in Social Media: U.S. and German Legal Approaches' (2017) 91 St John's Law Review 923].



Asia Pacific accounts for 25% of the SLAPPs around the world [*Environmental rule of law and human rights in Asia Pacific: Strategic litigation against public participation (SLAPPs)*, UNEP (July 2023)]. SLAPP has been in focus as the European Parliament recently adopted a proposal for a directive on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings [*Rafal Manko, Strategic lawsuits against public participation (SLAPPs)*, EPRS (July 2023)]. This was followed by the enactment of the Economic Crimes and Corporate Transparency Act, 2023 (“**the UK Act**”) in the United Kingdom in October 2023, which defined SLAPP for the first time in the UK.

Meaning and identifiers of ‘SLAPP’:

SLAPP is literally (and phonetically) a slap on the face of anyone who speaks against power. Common indicators that distinguish a SLAPP suit from a standard legal action are:

- a. The subject matter of the suit would target an act of public participation such as engaging in an issue of societal or political significance, in the form of journalism, advocacy, whistleblowing, peaceful protests or boycotts, activism, **or simply speaking out against abuse of power.**
- b. The subject matter of the suit would almost certainly entail a matter of public interest.
- c. In most cases, such suits are filed against the individual rather than the organization they work for since one of the main aims of such a suit is reputational harm of individuals.
- d. Such suits lack any cause of action and are devoid of merit.
- e. As such, winning the lawsuit is not the focus. The plaintiff’s goal is typically accomplished if the defendant succumbs to fear, intimidation, mounting legal costs or simple exhaustion and abandons the criticism.
- f. The remedies sought are usually substantial amounts of damages, and generally aggressive or disproportionate to the subject matter of the dispute [*2019 SCC OnLine Mad 39165*].

Means to pursue SLAPP and remedies to defend such suits in India:

In India, *ex-parte*, *ad-interim* injunctions can be secured by litigants when there is imminent urgency, or where the purpose of the injunction may be defeated if the defendant is put to advance notice. Litigants may misuse such provisions to secure *ex-parte*, *ad-interim* injunction against the defendant. By seeking restraining orders, individuals or corporates strategically deploy legal actions to silence critics and prevent the dissemination of information that may be unfavorable to them. Defamation lawsuits are another tool in the SLAPP initiator's arsenal. By filing defamation suits, individuals aim not only to burden their opponents with legal proceedings but also to deter them from openly discussing matters of public concern. Legislations such as the Prevention of Money Laundering Act, 2002 or the Unlawful Activities (Prevention) Act, 1967, may be incorrectly invoked to undermine legitimate public discourse. Public Interest Litigations (PILs) designed for the public good, may also be twisted for malicious purposes, **by filing seemingly public-spirited cases with the hidden agenda of suppressing opposition or critics.**

To counter such frivolous lawsuits, Order 7 Rule 11 of the Code of Civil Procedure, 1908 (“CPC”) enables defendants to contest the suit on the basis that the plaintiff failed to disclose a genuine cause of action, or that the lawsuit is barred by law. Order 39 Rule 4 of the CPC also provides a countermeasure against potential abuses of the legal process and allows the defendant to challenge the grant of interim injunction that causes undue hardship. Further, Section 273 of the Bhartiya Nagrik Suraksha Sanhita, 2023 allows the accused to seek compensation from the Claimant upon acquittal, thereby discouraging the filing of malicious complaints.

Finally, ethical guidelines, as outlined by the Bar Council of India Rules, serve as a defensive tool, ensuring advocates refuse to engage in illegal or improper conduct [*The Bar Council of India, Rules on Advocate's duty towards the Court, Rule 4*] and exercise independent judgment to avoid complicity in frivolous legal actions [*The Bar Council of India, Rules on Advocate's duty towards the Court, Rule 5*].

Indian cases: SLAPP suits

The Delhi High Court's ruling in *Tata Sons Limited v. Greenpeace International & Anr.* delves into the concept of SLAPP in India, and has been cited with approval in many cases, including the Madras High Court's ruling in *Menaka & Co. v. Arappor Iyakkam*. In this case, Tata Sons Limited (“**Tata**”) filed a suit seeking a permanent injunction and a decree for damages to the extent of INR 10 crores against Greenpeace International (“**Greenpeace**”), a non-profit organisation.

The controversy revolved around the construction of a port in Orissa. Dharma Port Company (DPCL), a 50 – 50 joint venture of Larsen and Toubro Limited and Tata Steel Limited was awarded a concession by Government of Orissa to build and operate a port near river Dharma. Various objections regarding environmental protection, pollution, costal zone regulation etc. had been raised, considered and dealt by the appropriate regulatory authorities and appellate bodies seized of the matter. Greenpeace allegedly made an online game by the title “Turtle v. Tata”. It was alleged that a mere look at the defendant's game's screenshot revealed how they had unauthorisedly used the trademark “Tata” as well as “T” within a circle device without the permission of Tata, thereby infringing its trademark rights.

It was also alleged that Greenpeace has been maligning Tata's reputation – reference was made to an article titled “Campaign 2.0: Turtle v Tata, the Game” published on 29 June 2010 in the Wall Street Journal, which stated “...*The aim of the colourful and noisy video game is to help the yellow turtles eat as many little white dots as possible without running into Ratty (presumably after Ratan Tata, chairman of the Tata Group), matty, Natty or Tinku*”. It was further alleged that Greenpeace was spreading defamatory remarks and statements about the Tatas, such as: “...*while dodging the TATA demons if you eat a power pill, you will be gifted with super-turtle powers to vanquish the demons of development that are threatening your home.*”

The Delhi High Court followed the principle in the English case of *Bonnard v. Perryman* wherein it was held that an injunction ought not to be granted unless the court was certain that the defendant would fail at trial (“**Bonnard Principle**”). The Court held that the Bonnard Principle is applicable to granting of injunctions against defamation claims as great value is attached to the freedom of speech and expression and “*public debate and discussion on issues that concern people at large*.” The Court identified the game created by Greenpeace as one seeking to address an issue of public concern. Since the Court was unable to determine the truth or falsehood of the publication, it

opined that granting the injunction would only freeze public debate and would not be in public interest. Accordingly, the court dismissed the interim application seeking an injunction.

In the case of *Crop Care Federation of India v. Rajasthan Patrika (Pvt.) Ltd. & Ors. ("Crop Care")*, the plaintiff, a trade body representing insecticide manufacturers, claimed loss of reputation of such manufactures due to articles published by the defendants (Rajasthan Patrika, the editor, publisher and advisor thereof) in the newspaper "Rajasthan Patrika". The defendants filed an application under Order 7, Rule 11 of the CPC for the rejection of the defamation suit. In rejecting the plaint, the Delhi High Court specifically classified the suit as SLAPP. The Court opined that the plaintiff's choice of filing the suit in Delhi, in relation to publications in Rajasthan, raised doubt on the real motive behind the lawsuit. Further, the Court observed that the plaintiff in the present case did not appear to be genuinely aggrieved. According to the Court, the aggrieved party in such a case can only be a manufacturer directly affected and possessing a legitimate cause of action. Instead, the plaintiff is a trade body, possibly suggesting that its motivations are more aligned with protecting economic interests rather than addressing real harm. The Court identified the subject matter of the dispute, i.e., the use of pesticides and insecticides as a matter that ought to be open to public discourse and debate, and characterized the plaintiff's action as an attempt at *"intimidatory SLAPP litigation"* to *"plainly to stifle debate"*.

UK Law Perspective

As per Section 195 of the UK Act, a "SLAPP claim" is intended to (a) restrain the exercise of freedom of speech and expression in relation to information pertaining to economic crime, the disclosure of which is in public interest, and (b) cause harassment, alarm, expense or any other inconvenience *"beyond that ordinarily encountered in the course of properly conducted litigation."* Section 195 also entails a determination of whether a claim is intended at restraining the freedom of speech and expression, which ought to be made assuming the absence of reasonable restraints on the freedom of speech and expression. Section 194 of the UK Act provides for delegated legislation to be made with the purpose of providing faster resolution of a SLAPP suit. The aim of making the rules is to ensure that the claim is dismissed before trial, upon its identification as a SLAPP claim.

Conclusion

There is a need to identify and provide a remedy against SLAPP in the form of legislation. In doing so, guidance can be taken from the UK Act that lowers the threshold of identifying a claim as SLAPP by seeking to examine its impact on the freedom of speech and expression, assuming the absence of reasonable restraints. Further, guidance can also be taken from the UK Act on the speedy resolution of a SLAPP dispute, as the UK Act seeks to dismiss a SLAPP upon its identification as a SLAPP instead of waiting until trial. A potential SLAPP legislation must also seek to impose stringent penalties not only on the claimant but also against the lawyers appearing for the claimant, so as to incentivize the lawyers to identify SLAPP claims and advise their clients against filing such claims.

Soumya Gulati and Shruti Dhonde – Members, International Dispute Resolution and Investigations Practice, Nishith Desai Associates, Mumbai; & Alipak Banerjee is a Head, International Dispute Resolution and Investigations Practice, Nishith Desai Associates (New Delhi).

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