

# SLAPP Suits and Chilling of Public Participation: A Constitutional Study of Growth, Suppression, and Renewal of Dissent in India

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## Abstract

In the last few decades, there has been an alarming increase in the filing of Strategic Lawsuits Against Public Participation, popularly known as SLAPP suits—litigations filed not to seek justice but to threaten, intimidate, or exhaust critics who engage in public debate. These suits, nearly always framed as defamation or injunction matters, pose a serious challenge to the constitutional guarantee of free speech under Article 19(1)(a) and to the democratic ideal of public participation. This paper examines SLAPP suits as a constitutional and democratic problem, traces their increase, their role in democratic backsliding, and the possible routes for repair and revival within India's constitutional framework.

The research evaluates the judicial and constitutional responses to SLAPP suits in India, identifying both progressive tendencies and systemic inadequacies. It argues for a process of constitutional repair through adopting anti-SLAPP mechanisms that balance the protection of reputation with the preservation of democratic discourse. Finally, the study envisions a revival of participatory democracy through legislative reform, judicial activism, and the reaffirmation of constitutional morality as the guiding principle of free expression.

By locating SLAPP suits within the larger debate on constitutional resilience and democratic renewal, this study contributes to an understanding of how legal systems simultaneously threaten and protect the core values of constitutional democracy.

**Keywords:** SLAPP Suits, Public Participation, Constitutional Repair.

## 1. INTRODUCTION – CONSTITUTIONAL PROMISE AND THE SLAPP PHENOMENON

SLAPPs, an acronym popularly defined as Strategic Lawsuits Against Public Participation, are lawsuits that are filed for the purpose of intimidating, silencing, or punishing individuals or entities for speaking out on issues of public concern. While frequently cloaked as defamation suits, trespass actions, nuisance suits, or criminal complaints, SLAPPs seek to deter citizens from exercising their political rights by miring them in protracted and expensive litigation and the threat of crippling financial judgments.

The term "SLAPP suit" remains unfamiliar in statutory texts and jurisprudence in India. However, the practice itself is all-pervasive. Defamation suits, injunction applications, and criminal complaints by powerful individuals, corporations, and state authorities are regularly filed against environmental activists, citizen journalists, anti-corruption campaigners, #MeToo survivors, public-interest researchers, and digital rights advocates. A growing misuse of both civil and criminal law to silence dissent thus poses a constitutional challenge to freedom of speech and democratic participation.

In recent years, SLAPP suits have become a major constitutional challenge in India's democratic landscape. Though originating as a variant of defamation or injunction actions, the SLAPPs of today are systematic, concerted tools of silencing-undertaken by corporations, political actors, developers, state bodies, and sometimes even private persons-which employ the threat of a lawsuit to deter scrutiny and criticism. Within the Indian context-where public-interest advocacy, investigative journalism, student movements, and environmental activism play a critical role-SLAPP suits pose a very real danger of distorting democratic participation using a weaponised legal system<sup>[1]</sup>.

SLAPP suits are not just legal disputes; they are a kind of process-based punishment, where the aim is not to win on merits but to overwhelm the speaker with the costs of litigation, jurisdictional harassment, repeated summoning, or reputational pressure <sup>[2]</sup>. Such suits have a chilling effect in societies like India, with unequal access to legal aid and asymmetries of power between agents who can meaningfully participate in public discourse <sup>[3]</sup>. The rise of SLAPP suits in India should, therefore, be understood as nothing less than a structural assault on Article 19(1)(a) and the democratic ethos it protects.

Although the term "SLAPP" is rarely used in Indian judicial vocabulary, courts have time and again faced litigation whose purpose is to silence criticism rather than remedy an actual harm.<sup>4</sup> In jurisdictions everywhere, judges have expressed concern about "abusive litigation," "vexatious suits," and "muzzling dissent," betraying a deeper recognition that procedural law cannot be used to achieve unconstitutional purposes.<sup>5</sup> However, in the absence of explicit anti-SLAPP legislation-unlike several jurisdictions including the United States, Canada, and the European Union-Indian courts bear the primary responsibility of resisting and remedying this practice through constitutional interpretation.

The Indian constitutional framework locates free speech at the heart of participatory democracy. The Supreme Court has thus far, on several occasions, held that uninhibited criticism of the government, public authorities, and even strong institutions is necessary to ensure accountability and transparency. In *Romesh Thappar v. State of Madras*<sup>[6]</sup>, the

<sup>1</sup> Prashant Bhusan, "The Expanding Use of SLAPP Suits in India", 12 Indian J. Const. L. 45 (2020).

<sup>2</sup> George W. Pring and Penelope Canan, *SLAPPs: Getting sued for Speaking Out* 8-12 (Temple University Press (1996)).

<sup>3</sup> Gautam Bhatia, *Offend, Shock, or Disturb: Free Speech Under the Indian Constitution* 214-20 (2016).

<sup>4</sup> *Jindal steel & Power Ltd. v. Greenpeace India*, (2014) Delhi HC.

<sup>5</sup> *Punjab State Power Corp. v. Punjab State Transmission Corp.*, (2017) P&H HC.

<sup>6</sup> AIR 1950 SC 124.

Court famously called freedom of expression the foundation of all democratic organisations<sup>[7]</sup>. Similarly, *Shreya Singhal v. Union of India* <sup>[8]</sup> reaffirmed that unclear or broadly worded legal restrictions-which result in chilling effects-are inconsistent with constitutional guarantee <sup>[9]</sup>. Doctrinal principles of this kind are foundational to understand precisely why SLAPP suits, by design, undermine the constitutional commitment to open public debate.

SLAPP suits in India have passed through several phases. Initially, they came principally in the form of civil defamation actions by corporations and politically powerful persons <sup>[10]</sup>. Over time, however, the repertoire has expanded to include criminal defamation complaints <sup>[11]</sup>, injunction suits, copyright claims, trespass allegations, and even multiple FIRs across states—all calibrated to suppress not only speech but also participation in public affairs <sup>[12]</sup>. Contemporary SLAPP cases increasingly target environmental

protests, land-right movements, journalists investigating corruption, and citizens exposing maladministration [13].

Recent high-profile examples include:

- suits against environmental activists resisting large-scale development projects [14];
- defamation actions filed by corporations against journalists for investigative reporting [15];
- complaints filed against citizens for social-media criticism of elected representatives [16];

<sup>7</sup> Ibid.

<sup>8</sup> (2015) 5 SCC 1.

<sup>9</sup> Ibid.

<sup>10</sup> Apar Gupta, “Corporate Defamation Litigation in India”, 6 Socio-Legal Rev. 73 (2010).

<sup>11</sup> Subramanian Swamy v. Union of India (2016) 7 SCC 221.

<sup>12</sup> Gujarat Maritime Board v. Shailesh Shah (2016) Guj. HC

<sup>13</sup> Amnesty International India, Challenging the Silence (2018).

<sup>14</sup> Sterlite Industries Ltd. v. Activists, Madras HC Orders (2018)

<sup>15</sup> Adani enterprises Ltd. v. The Wire, Delhi & Gujarat HC filings (2017-2023).

<sup>16</sup> State of Uttar Pradesh v. Twitter Users, Allahabad HC (2021)

## 2. CONSTITUTIONAL FOUNDATION OF FREE SPEECH AND PUBLIC PARTICIPATION

If the freedom of speech is taken away then dumb and silent, we may be led, like sheep to the slaughter.

- George Washington

The constitutional architecture of India places freedom of speech and expression at the heart of democratic governance. Far from being a mere individual liberty, Article 19(1)(a) embodies a collective democratic value—the right of citizens to participate in public discourse, scrutinize power, and shape governance through reasoned debate [17]. In this sense, the constitutional guarantee of free speech is both a shield protecting individuals against state interference and a sword enabling citizens to hold institutions accountable.

In drafting the Constitution, free expression was regarded not as an abstract philosophical concept but, rather, as a practical prerequisite to self-government. The Constituent Assembly Debates repeatedly asserted that political freedom is illusory unless citizens can publicly criticize public authorities, expose governmental misdeeds, and express ideas without fear of retribution [18]. This perspective was later reiterated by the Supreme Court when it said that free speech forms the essential premise of all democratic arrangements [19].

Article 19(1)(a) guarantees all citizens the right to “freedom of speech and expression.” Through the decades, the Supreme Court has expanded this right to include a broad range of expressive activities—political criticism, artistic speech, academic scholarship, investigative journalism, public demonstrations, and the right to receive information [20]. In *Indian Express Newspapers v. Union of India*, the Court held that the freedom of the press lies at the core of Article 19(1)(a) because the press serves as a public watchdog and facilitates the dissemination of information essential for democratic participation [21].

<sup>17</sup> Granville Austin, *The Indian Constitution: Cornerstone of a Nation* 75-77 (1966).

<sup>18</sup> Constituent Assembly Debates, Vol. VII (1948).

<sup>19</sup> Romesh Thappar v. State of Madras (AIR 1950 SC 124).

<sup>20</sup> Secretary, Ministry of I&B v. Cricket Association of Bengal (1955) 2 SCC 161.

<sup>21</sup> Indian Express Newspapers v. Union of India (1985) 1 SCC 641.

Article 19(1)(a) has thus been interpreted by the Court in a way that shields critical, dissenting, and unpopular speech, and not just majority or dominant opinions, for to do so would be to denude constitutional democracy of its legitimacy; such a democracy rests on the ability of its subjects/citizens to question the majority view [<sup>22</sup>]. Free speech, then, furthers not only individual interests but also assures deliberative governance, transparency, and diffuses power.

Article 19(2) allows reasonable restrictions on speech in the interests of sovereignty, security, public order, decency, morality, contempt of court, defamation, and incitement. Yet the Supreme Court has repeatedly insisted that such restrictions must meet the tests of legality, necessity, and proportionality [<sup>23</sup>].

The constitutional value of free speech is inextricably linked with the value of public participation, which runs throughout the Constitution:

- The Preamble commits India to a democratic republic responsive to its citizens.
- Articles 14, 19, and 21 create a triad of due process, equality, and liberty.
- Article 32 confers the right to constitutional remedies, providing for active citizenship.
- Provisions with respect to elections, local governance, and public accountability undergird participatory ideals.

<sup>22</sup> S. Rangarajan v. P. Jagjivan Ram (1989) 2 SCC 574.

<sup>23</sup> Modern Dental College v. State of Madhya Pradesh (2016) 7 SCC 353.

### 3. GROWTH OF SLAPP SUITS IN INDIA- FROM DEFAMATION TO SUPPRESSION

SLAPPs in India have not appeared overnight; they have emerged over a period through the intersection of criminal defamation, civil defamation, injunction jurisprudence, and increased weaponization of the legal system by state and private actors. This is part of a wider trend in which litigation-instead of serving as a dispute-resolution mechanism-becomes a tool of harassment, silencing, and disciplining dissent.

Defamation law, particularly Sections 499-500 of the IPC [<sup>24</sup>], has been open to abuse for a long time. The retention of criminal defamation after independence allowed political and corporate actors to then use the criminal process not for redressal but for deterrence and intimidation. The broad exceptions in this law, the vagueness of standards of "reputation," and the ease with which complaints could be filed made criminal courts a gateway to harassment.

A Supreme Court judgment in *Subramanian Swamy v. Union of India* [<sup>25</sup>], 2016 upheld criminal defamation as constitutional on the grounds that the right to reputation was a facet of Article 21 and could restrict Article 19(1)(a). While not a SLAPP case per se, it had a chilling effect- the judgment indicated that criminal defamation would remain a legitimate instrument and indirectly legitimized its misuse.

At the same time, civil defamation claims-starting with, but not limited to, corporations-were becoming a weapon. In most of these cases, the plaintiffs did not aim at any damages; an interim injunction was what they wanted to stop publication or reporting. The Delhi High Court in *Tata Sons Ltd. v. Greenpeace* [<sup>26</sup>] (2011) refused to grant an injunction against a satirical game on climate issues, holding that exaggeration and parody fall within free expression. This case stands as an early judicial recognition of SLAPP-like attempts, though Indian courts lacked the terminology at the time.

By the 2010s, however, a marked increase in corporate-driven SLAPP lawsuits could be observed. Realty firms, mining companies, construction conglomerates, and manufacturing

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<sup>24</sup> Indian Penal Code, 1860.

<sup>25</sup> Subramanian Swamy v. Union of India, (2016) 7 SCC 221.

<sup>26</sup> (178 (2011) DLT 705).

giants increasingly began targeting activists, environmental groups, and independent journalists.

A leading example is *Sterlite Industries v. The People's Union for Civil Liberties (PUCL)* [<sup>27</sup>], in which the company filed suits for defamation to stop reporting on environmental violations. Realty developers have repeatedly sued activists opposing building projects, often for astronomical damages far beyond anything resembling a realistic reputational injury.

Strategic patterns became visible:

- Litigation not aimed at winning
- Delay as the punishment
- Psychological and financial attrition
- Targeting individuals rather than institutions
- Threat letters used to self-censor media outlets

One especially damaging development has been the misuse of temporary injunctions. *Ex parte* injunctions grant gag orders on the spot without hearing the defendant—just the type of judicial remedy that is ripe for SLAPP abuse.

The courts often issued injunctions that restrained publications of investigative stories, reports, or posts, sometimes even before publication. The judgment by the Delhi High Court in *Bloomberg v. Zee Entertainment Enterprises* [<sup>28</sup>], 2020, marked a critical moment. It restrained Bloomberg from publishing an article on loan defaults on the ground that unverified or adverse reporting may cause an injury to reputation.

Although the decision was subsequently widely criticized, it has shown how injunction jurisprudence can become a SLAPP tool, particularly when the underlying claim of defamation is tenuous but the restraint harm is extensive.

A major shift in India's SLAPP landscape is the movement from defamation-based suits to multi-forum suppression. SLAPP is no longer confined to civil claims or criminal complaints. It now includes:

- Sedition charges under Section 124A IPC (before repeal in 2024)

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<sup>27</sup> PUCL cases involving Sterlite Industries discussed in A. Ganesan, *Corporate Accountability in India*, 54 *ECON. & POL. WKLY.* 22 (2019).

<sup>28</sup> (Special Leave to Appeal (C) No. 6696/2024).

- UAPA charges against activists
- ED, CBI, or Income Tax inquiries based on critical reporting
- Contempt of court notices
- FIRs for "hurting sentiments" under Section 295A
- IT Rules-2021: The pressure of compliance on digital media

The case of Priya Ramani v. M.J. Akbar [<sup>29</sup>], where Akbar filed a criminal defamation suit following sexual harassment allegations, aptly illustrates how litigation is used to counter public accusations by powerful actors. The trial court did acquit Ramani, noting the chilling effect caused by silencing survivors through criminal actions. While the verdict was in favor of free speech, the suit itself was essentially a SLAPP mechanism that forced the accused into prolonged litigation.

SLAPP suits in India have now evolved beyond mere defamation; they are an entire ecosystem of suppression:

- Chilled investigative journalism
- Self-censorship based on fear
- Weakening of public interest litigation
- Silencing of whistleblowers

The growth trajectory—from defamation to sophisticated systems of suppression—marks SLAPPs as one of the most serious threats to India’s democratic fabric.

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<sup>29</sup> Complaint Case no. 05 of 2019, decided on 17-02-2021.

#### 4. JUDICIAL RESPONSES - THE PATH OF REPAIR

Even though the Indian judiciary rarely employs the term “SLAPP,” several judgments show an unmistakable clarity on what SLAPPs achieve: harassment, silencing, and deterrence. Courts have repeatedly denied injunctions and thrown out suits when these appear to be aimed at intimidating citizens.

##### a. **Tata Sons v. Greenpeace** [<sup>30</sup>] – Early recognition of chilling effects

In *Tata Sons Ltd. v. Greenpeace*, the Delhi High Court in 2011 denied an injunction against a satirical video game critical of the company’s environmental practices. The Court recognized that granting such injunctions would “freeze public participation,” an observation that aligns with global SLAPP jurisprudence.

##### b. **Priya Ramani Case** [<sup>31</sup>] – Recognition of power asymmetry

In the case of *M.J. Akbar v. Priya Ramani*, the court discharged Ramani and recognized the power dynamic between powerful men and survivors when it stated that criminal defamation cannot be used to intimidate women speaking up about harassment. This case exemplifies judicial understanding that litigation can be used as a means of suppression, not protection.

##### c. **The Wire v. Jay Shah** [<sup>32</sup>] – Greater scrutiny of public servants and powerful persons must be tolerated

While the defamation case against *The Wire* continued, the Supreme Court had underlined in judgments like *R. Rajagopal v. State of Tamil Nadu*<sup>33</sup> that public functionaries must accept strong criticism. This constitutional principle brings clarity to modern courts on what constitutes SLAPP-like claims.

##### d. **Recent High Court Stands Against Prior Restraint**

The courts have become wary of issuing *ex parte* injunctions, which can be abused:

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<sup>30</sup> *Supra* at 4.

<sup>31</sup> *Supra* at 29.

<sup>32</sup> The specific court case citation for the *Jay Shah v. The Wire* defamation case is not a single, simple citation because it involved multiple legal proceedings.

<sup>33</sup> (1995 AIR 264).

In *A. Rajendran v. Chief Secretary* [<sup>34</sup>], the Madras High Court warned against prepublication restraints that impair public debate.

The Delhi High Court in *ANI Media Pvt. Ltd. v. Quinn India* [<sup>35</sup>] underscored the heavy presumption against the grant of gag orders.

These cases collectively reflect the courts' acknowledgment that injunctions can be used as SLAPP devices, particularly when issued on behalf of corporations or political entities.

The judiciary's gradual response to SLAPP suits in India mirrors the slow yet real shift toward restoring the constitutional balance between reputation rights and freedom of public participation under Article 19(1)(a). While Indian courts have not developed any articulated anti-SLAPP doctrine as such, there is a growing understanding through various judgments passed by Indian courts that litigation can be used as a tool to chill expression, create burdens on activists, suppress journalism, and distort democratic discourse. Through cautious scrutiny of injunction requests, the imposition of exemplary costs, and a more sensitive understanding of power asymmetries in defamation disputes, courts have begun exposing the deeper democratic harm on account of SLAPP actions.

However, these developments remain patchy, inconsistent, and largely at the mercy of judicial discretion. Without a uniform legal framework, victims of SLAPP suits remain open to procedural manipulation, multi-jurisdictional harassment, and debilitating legal procedures amounting to punishment. A far more systematic and principled approach is called for by the constitutional imperative considering decisions establishing that free speech is the lifeblood of democracy. A clear anti-SLAPP jurisprudence must, therefore, emerge based on proportionality, protection of public interest, and early dismissal of abusive suits.

Ultimately, repair will come from the harmonization of judicial innovation and legislative reform. Courts should continue the doctrinal refinement that protects democratic participation, while Parliament should consider enacting a national anti-SLAPP statute with clarity, consistency, and procedural safeguards. Only then, through a combination of constitutional and institutional action, will India ensure that the legal system is not used as a tool of suppression but serves as a guardian of truth, dissent, and democratic accountability.

<sup>34</sup> W.P. No. 17632/2015 (Madras HC 2016).

<sup>35</sup> CS(OS) 110/2020 (Del. HC 2020).

## 5. CONCLUSION

The judicial and constitutional responses to SLAPP suits in India are indicative of a flawed system that has nonetheless begun to evolve an emerging jurisprudence which is resistant to the strategic misuse of civil and criminal litigation to silence dissent. This chapter demonstrates that Indian courts, especially the Supreme Court and some proactive High Courts, have increasingly recognized the debilitating consequences of SLAPP suits for democratic participation, particularly upon journalists, activists, whistleblowers, and ordinary citizens. While these interventions have been episodic and not part of any coherent doctrine, collectively they form the beginnings of a constitutional route to repair.

Much of the judicial articulation rests on recognition that Article 19(1)(a) does not merely protect the individual's right to free speech but also safeguards the public's right to receive information, especially on

matters of public interest. Thus, when powerful individuals or corporations deploy litigation as a weapon, they do not merely burden a defendant—they impair the structural functioning of democracy itself [<sup>36</sup>].

The courts have reiterated that frivolous or vexatious litigation is an abuse of process, and although fair process has been the basis for this holding, profound constitutional undertones underlie it.

This is in line with global understandings of SLAPPs and reflects a growing judicial sensitivity to the socio-political realities within which public-interest speech is produced

Constitutional courts have also employed procedural innovation—such as pre-trial scrutiny, cost imposition, and directions against harassment—to counter the chilling effect of SLAPP suits. While India does not have any specific anti-SLAPP statute, judicial innovation has served as a stopgap protection. Yet, in the absence of a consistent doctrinal standard, uncertainty and inequity amongst jurisdictions persist. Some courts act with speed; others allow the litigation to trudge along, therefore defeating the very object of constitutional safeguards.

Criminal defamation remains a lawfully strategic tool of choice, as the Supreme Court controversially retained Section 499–500 IPC. The civil defamation suits burden newsrooms and human-rights defenders with exorbitant damages and interminable proceedings. It is only the legislative reforms that can provide for early-dismissal mechanisms, burden-shifting rules,

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<sup>36</sup> *Shreya Singhal v. Union of India* ( (2015) 5 SCC 1).

and meaningful penalties against abusive lawsuits, which judicial interventions alone cannot provide to stem the proliferation of SLAPP suits in India [<sup>37</sup>]. The judiciary's emergent responses have marked a constitutional awakening of sorts—a recognition that dissent is not disruptive or inconvenient, but quite indispensable for democratic resilience. Rooting their reasoning variously in the values of constitutional morality, public accountability, and informed citizenship, Indian courts have thus far paved the way on which public-interest speech may yet receive the robust protection that is its due. These judicial trends need to be crystallized through coherent jurisprudence, harmonized standards, and eventually legislative codification if India is to move decisively toward a mature and rights-respecting democracy. Till then, courts remain the principal guardians against the misuse of law as a tool of suppression. The path to repair is visible—but its full realization depends on continued judicial vigilance, institutional courage, and a deeper constitutional commitment to protecting the voices that keep democracy alive.

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<sup>37</sup> Law Commission of India, 285th Report, "The Law on criminal Defamation" (January 2024).