BEYOND JUDICIAL INNOVATION: NEED TO CODIFY PROTECTION AGAINST ABUSIVE PROCEEDINGS AGAINST PUBLIC PARTICIPATION IN INDIA

Deepti Panda, Founder & Principal Associate of the Litigation & Arbitration Chamber of Deepti Panda, Mumbai, India and a Ph.D. candidate at the Faculty of Law, Queen's University, Canada.

ABSTRACT

Abusive Proceedings against Public Participation ("APPP"), commonly referred to as Strategic Lawsuits Against Public Participation ("SLAPP"), constitute a systematic misuse of legal processes to suppress democratic speech and civic engagement. Although framed as legitimate claims for the protection of rights, these proceedings are not designed to secure justice but to intimidate critics, silence dissent, and deter public participation on matters of public interest. Typically initiated by powerful actors—including corporations, political elites, and the State—APPPs rely on high-value claims, parallel proceedings, and protracted litigation to impose financial, reputational, and psychological burdens on journalists, activists, scholars, and citizens. Their cumulative effect is deeply corrosive, undermining constitutional guarantees of free speech and weakening democratic governance.

Recognizing these harms, several jurisdictions have enacted anti-SLAPP or anti-APPP legislation to recalibrate the balance between access to justice and the protection of public participation. Such frameworks exist across multiple states in the United States, select Canadian provinces, parts of Southeast Asia, and the European Union, though their scope and procedural design vary considerably.

India, however, lacks a dedicated anti-APPP statute. While the Supreme Court of India and certain High Courts have, in limited cases, acknowledged the abusive nature of such proceedings and refused relief that would chill free expression, judicial responses remain fragmented, inconsistent, and dependent on individual discretion. In the absence of legislative recognition, the burden of countering APPPs rests almost entirely on the judiciary.

In this backdrop, this paper critically examines Indian judicial engagement with APPPs alongside comparative legislative developments and argues for comprehensive statutory codification in India. Drawing on international best practices, it identifies core design principles necessary to safeguard public

participation, strengthen democratic accountability, and protect freedom of expression.

Introduction

Abusive Proceedings against Public Participation (**"APPP"**), also known as "Strategic Lawsuits Against Public Participation" (**"SLAPP"**), represent the weaponization of the law against democratic speech. Cloaked in the language of rights and legality, these proceedings are abusive, designed not to seek justice but to silence dissent and deter future public engagement on matters of public interest. APPPs operate as a tool of intimidation, where powerful actors—whether corporations, private elites, or even governments—deploy costly, protracted, and vexatious litigation to exhaust, harass, and deter critics into submission. The cumulative impact of APPPs is profoundly corrosive to democratic governance: by chilling public participation and discouraging citizens from engaging in debates on governance and public interest, they strike at the very foundations of constitutional commitments to free speech and democratic discussion.

APPPs typically take the form of high-value claims or multiple proceedings across different jurisdictions, designed to impose financial and procedural burdens on defendants, cast doubt on the target's reputation, and thereby discourage their participation. These actions are often initiated by powerful actors against journalists, activists, scholars, students or citizens who challenge their conduct or policies. By instrumentalizing legal processes under the guise of protecting reputation, privacy, proprietary interests, or sovereign concerns, APPPs transform the judicial system into a mechanism for chilling democratic participation and silencing free speech rather than adjudicating genuine disputes.

Several jurisdictions have enacted legislation to recalibrate the balance of rights and mitigate the adverse effects of APPPs on public participation. "Anti-SLAPP" or "anti-APPP" frameworks have been adopted in multiple states in the United States (**"US"**), in three Canadian provinces, in Indonesia, Thailand, the Philippines, and across the European Union (**"EU"**). The breadth, design, and remedial mechanisms of these laws differ significantly across jurisdictions.

In India, although there is no dedicated anti-APPP statute, the Supreme Court of India (**"SCI"**) and select High Courts have, in some cases, declined to grant relief or have set aside injunctions on the ground that the underlying suit constituted an APPP. Courts have acknowledged the

abusive nature of these proceedings and the violation of the fundamental right to free speech and expression guaranteed under Article 19(1)(a) of the Constitution of India, 1950 (**"the Constitution"**). However, in the absence of a formal legislative framework, such interventions remain sporadic, case-specific, inconsistent and depend entirely on the subjective views of the judge.

Against this backdrop, this paper critically examines the emerging landscape of anti-APPP regulation in India and comparative jurisdictions and makes a sustained case for its comprehensive statutory codification in India. It analyses a growing body of Indian judicial decisions that, both explicitly and implicitly, have sought to curb the spread of APPPs by creatively deploying existing procedural and constitutional tools in the absence of a dedicated legislative framework. Drawing on international legislative developments, the paper argues that the continued reliance on judicial innovation alone is neither desirable nor sustainable. To meaningfully protect democratic values, foster public participation, and safeguard freedom of expression, legislative intervention is imperative so that the burden of countering APPPs does not rest solely on the judiciary.

The rest of the paper is structured into five sections. The first section clarifies the concept and terminology of "APPP," explains why such proceedings should not be characterised as "strategic" but rather as "abusive". This section underscores the importance of precise definition and conceptual clarity. The second section distinguishes APPPs from ordinary litigation and examines the unique threats they pose to free speech and public participation. The third section analyses Indian judicial responses to APPPs, highlighting the development of anti-APPP reasoning through case law. The fourth section undertakes a comparative survey of anti-APPP legislation across jurisdictions and juxtaposes these regimes with existing—though fragmented—Indian procedural and substantive law provisions that courts have invoked or could invoke pending legislative action. The fifth and final section advances a normative argument for enacting a comprehensive anti-APPP statute in India and identifies core principles and design features that should inform such legislation.

Abusive, not Strategic: Identifying a Proper Nomenclature

APPPs are also referred to as SLAPPs. However, by referring to abusive suits as "strategic litigation," the intent, purpose and effect of such proceedings is neutralized. This is because, by labelling an abusive action as "strategic," the signalling is that it is a well-designed form of

litigation that empowers the filer of the proceeding. Cebulak, Morvillo, and Salomon define "strategic litigation" as:

> "[A] legal action initiated to achieve broader social, political, or economic ends. It is a form of legal mobilization and a way to exert influence over policies and political processes. It can be used by various actors pursuing different interests and agendas—public or private, progressive or conservative—and often operates alongside other forms of mobilization, such as lobbying or civil society campaigning."[1]

APPPs are not intended to galvanize public debate but rather to suppress it. They do not achieve any "broader social, political, or economic ends" but serve to benefit the filer by avoiding being questioned or criticized in matters of public interest. Although presented as conventional legal claims, APPPs function in practice as coercive tools typically deployed by actors with substantial economic or political power against members of the public. These actions seek to deter the sharing of information relevant to the public interest or to discourage public awareness and participation in matters affecting the community.

Fundamentally, APPPs take the form of civil suits, criminal proceedings, or threats of litigation that are not genuinely intended to vindicate a legal right. Instead, their primary objective is to hinder, limit, or punish public participation, often capitalizing on power imbalances between the parties. APPPs frequently advance meritless claims through abusive proceedings designed to silence engagement on issues of broad societal importance.

The Supreme Court of the United States of America, in 1983, while describing the chilling effect of retaliatory or abusive lawsuits, observed that "[a] lawsuit no doubt may be used… as a powerful instrument of coercion or retaliation".[2] The court held that in cases where there is a clear imbalance of power, such as in the case before it where the corporation sued its employee as a retaliatory measure against the employee who had approached the Labour Board, the lawsuit serves as a deterrent to other employees, since challenging the corporation could result in burdensome lawsuits. The court noted, "[r]egardless of how unmeritorious the employer's suit is, the employee will most likely have to retain counsel and incur substantial

[1] Pola Cebulak, Marta Morvillo & Stefan Salomon, "Strategic Litigation in EU Law: Who does it Empower?" (2024) 25:6 German Law Journal 800.
[2] Bill Johnson's Restaurants, Inc. v NLRB, 461 U.S. 731 (1983) at 740.

legal expenses to defend against it".[3] This chilling effect of a lawsuit is magnified when the corporation seeks enormous damages in addition to injunctive relief.[4]

In this context, referring to such suits as "strategic" or, more commonly, by the acronym "SLAPPs" adopts a more empowering, positive language that may disguise the chilling effect of these suits, which are weaponized to silence public participation or criticism. Borg-Barthet and Farrington point out,

> "[F]raming SLAPPs as a form of strategic litigation may ultimately lend SLAPP pursuers an air of legitimacy... once framed as a form of strategic litigation, the debate shifts to whether the aims pursued through the legal system are normatively desirable rather than whether they are a legitimate and permissible use of the legal system".[5]

It is perhaps in recognition of the fact that referring to these proceedings as "strategic" would grant them legitimacy and mask their abusive effects that many legislations around the world have not used the word "strategic". For example, the legislation in both Ontario and British Columbia concerning APPP is called the *Protection of Public Participation Act*.[6] By emphasizing "protection," the statutes signal a potential need to protect targets of such suits and may make courts more circumspect in handling such proceedings.

Similarly, Article 1 of the EU Directive on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings (**"EU Directive"**) "safeguards against manifestly unfounded claims or abusive court proceedings in civil matters with cross-border implications brought against natural and legal persons on account of their engagement in public participation".[7] The EU directive shifts the focus from strategy to "abusive court proceedings against public participation".[8] By shifting the focus from "strategic" to "abusive" the signalling is that that such proceedings are contrary to the

---

[3] *Ibid* at 741.
[4] Ibid.
[5] Justin Borg-Barthet & Francesca Farrington, "The EU's Anti-SLAPP Directive: A Partial Victory for Rule of Law Advocacy in Europe" (2024) 25:6 German Law Journal 840, online: <https://www.cambridge.org/core/product/identifier/S2071832224000518/type/journal_article> at 843.
[6] *Protection of Public Participation Act*, 2015, S.O. 2015, c. 23 - Bill 52 (Ontario) & *Protection of Public Participation Act*, 2019, SBC, c. 3 (British Columbia).
[7] Parliament and Council Directive (EU) 2024/1069 of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings (Strategic lawsuits against public participation) [2024] OJ L
[8] Borg-Barthet & Farrington, "The EU's Anti-SLAPP Directive", *supra* note 5 at 842.

common good and the targets of such proceedings need protection legislative and judicial protection. Therefore, in this paper, such abusive suits are referred to as APPPs and not SLAPPs.

Additionally, the term "SLAPP" conventionally refers to "lawsuits". Except for Thailand and, to a limited extent, Indonesia, most anti-SLAPP regimes do not extend to criminal proceedings. In the Indian context, however, abusive litigation has increasingly taken the form of criminal complaints, criminal defamation actions, and the filing of multiple FIRs across jurisdictions. These practices have been widely used to intimidate, harass, and exhaust targets of public participation. Accordingly, this paper does not confine its analysis to civil litigation alone, but also examines vindictive criminal processes initiated for the same suppressive ends. It ultimately contends that any meaningful Indian framework to address abusive proceedings must extend beyond civil suits to encompass the criminal process as well. For this reason, the paper deliberately employs the term "proceedings" rather than "lawsuits" to capture the full spectrum of coercive legal measures, including civil suits, cease-and-desist notices, criminal complaints, FIRs, and related criminal processes.

APPPs Masquerade as Ordinary Lawsuits: Challenges to Public Participation

APPPs abuse an individual's genuine right to pursue legal remedies for harm, loss, or injury suffered. Rather than serving a legitimate legal purpose, APPPs are initiated to silence public criticism and curb public opinion mobilization through the misuse of legal processes. These proceedings are not intended to correct a legal wrong or to obtain redress for a breach of rights. Indeed, in many cases, APPPs are not even brought with a real intention of succeeding on the merits. The goal is not protection or enforcement of legal rights, but to intimidate citizens participating in governance or engaged in free speech through "expensive, exhausting, frivolous litigation".[9]

APPPs may take several forms, such as civil or criminal defamation suits instituted by corporations against protestors, whistleblowers, or activists; injunction suits or gag orders against journalists, the press, and media; sedition charges against people protesting government action; and multiple FIRs across states. Despite the variety, a few common themes can be

[9] Meenakshi Rao, "In the Shadow of Liberty: SLAPP Suits and the Evolution of Fundamental Rights" (2024) 6:3 IJLLR 2425 at 2426.

traced across all these legal proceedings. These common themes provide crucial points of departure that distinguish regular suits (or *bona fide* proceedings) from APPPs.

First, the objective of APPPs is to suppress public protest, participation, or criticism by exploiting legal processes as tools of intimidation, harassment, or coercion. Their purpose is to disempower or seriously disrupt those targeted, while simultaneously sending a warning to others who might speak out. The intention of APPP filers is not to prevail on the merits; indeed, such claims rarely succeed in court, yet the targets of such proceedings frequently are "devastated and depoliticized—'chilled'".[10] As Pring explains

> "The apparent goal of SLAPPs is to stop citizens from exercising their political rights or to punish them for having done so. SLAPPs send a clear message: that there is a 'price' for speaking out politically. The price is a multimillion-dollar lawsuit and the expenses, lost resources, and emotional stress such litigation brings".[11]

Second, APPPs are fundamentally process-driven rather than outcome-driven. Instead of genuinely seeking the determination of legal rights or a favourable judgment, their purpose is to draw the respondent into protracted private litigation. Unlike in an ordinary lawsuit, the complainant is largely indifferent to the result. The real benefit lies in the interim relief that may be secured. For instance, a temporary gag order can block the release of information into the public sphere, limit media discussion of a matter of public interest, or remove the issue altogether from public scrutiny, thereby weakening public participation, activism, and collective momentum. Even in cases where no relief is obtained, the cost, duration, and sometimes the multiplicity of proceedings diverts resources, adversely affecting both present and future public participation.

Third, these proceedings are designed to remove matters of public interest from the public sphere and recast them as issues for private adjudication before courts.[12] APPP is thus described as a "classic dispute transformation device" which uses the legal system to

[10] George W Pring, "SLAPPs: Strategic Lawsuits against Public Participation" (1989) 7:1 Pace Environmental Law Review 3, online: <https://digitalcommons.pace.edu/pelr/vol7/iss1/11> at 6.
[11] *Ibid* at 4.
[12] Borg-Barthet & Farrington, "The EU's Anti-SLAPP Directive", *supra* note 5 at 841.

"reprivatize public grievances".[13] The filer can undermine public opinion mobilization by forcing a public-interest issue into a private right adjudication.

Broadly, APPPs produce a threefold effect. First, the arena in which the public interest issue is debated shifts from the public domain to the confines of a courtroom. Second, the focus shifts away from broader questions of public policy, public interest, or citizens' rights toward a private dispute centred on the claimant's personal rights. Third, if the claimant secures interim injunctive relief, information on a matter of public concern is immediately removed from public access. This allows filers to control or distort the information available to the public, shape public opinion, or eliminate issues from public view.

Judicial Innovation by Indian Courts: Recognition of APPPs and Anti-APPP Reasoning

APPPs are rapidly proliferating in India, posing an increasing threat to meaningful public participation and free expression. Yet, despite their growing prevalence and chilling effects, India still lacks any formal statutory recognition of APPPs. The problem is worsened because retaliation through APPP proceedings often involves not just civil lawsuits but also criminal complaints, including the filing of multiple FIRs across different jurisdictions. In this legal vacuum, some High Courts—and more recently the SCI—have begun to acknowledge the phenomenon, drawing on comparative legislation and global discourse. In several cases, they have refused interim relief, set aside orders that unfairly favoured complainants, and rejected plaints, thereby providing threshold remedies to the targets of the proceedings.

In this context, the SCI's judgment in the defamation proceedings in *Bloomberg v Zee Entertainment* is a landmark ruling, as it represents the first time the Court expressly acknowledged the pernicious effects of APPP lawsuits and their broader implications for freedom of speech.[14] Although several High Courts had earlier recognized APPPs, the apex court's intervention and engagement with international discourse on the subject is especially significant.

The decision is notable for two key reasons: first, it marks the first occasion on which the highest court of India took judicial notice of APPPs; and second, it recalibrated the burden of

[13] Penelope Canan & George W Pring, "Studying Strategic Lawsuits against Public Participation: Mixing Quantitative and Qualitative Approaches" (1988) 22:2 Law & Society Review 385 at 386.
[14] *Bloomberg Television Production Services India Private Limited & Ors v Zee Entertainment Enterprises Limited*, [2024] INSC 255 ["*Bloomberg*"].

proof by shifting it from the defendant—who would otherwise have to establish the truth of the impugned content—to the plaintiff to demonstrate that the defence will "undoubtedly fail", at the interim stage itself. This ruling now serves as a binding precedent for all High Courts when deciding interim applications in cases alleged to be APPPs, particularly in defamation suits against the media, press, and journalists, and constitutes a major step toward protecting public participation and safeguarding free speech.

To arrive at its decision, the SCI relied on the old English judgment in *Bonnard v Perryman* (***"Bonnard"***) and the importance of safeguarding free speech—known as the "Bonnard standard"—laid down in that judgement.[15] In *Bonnard*, the Court of Appeal (England and Wales) had held,

> "The right of free speech is one which it is for the public interest that individuals should possess, and, indeed, that they should exercise without impediment, so long as no wrongful act is done; and, unless an alleged libel is untrue, there is no wrong committed… Until it is clear that an alleged libel is untrue, it is not clear that any right at all has been infringed; and the importance of leaving free speech unfettered is a strong reason in cases of libel for dealing most cautiously and warily with the granting of interim injunctions".

The SCI also relied on *Fraser v Evans* (***"Fraser"***), in which the Court of Appeal (England and Wales) followed the Bonnard standard and held that it is in public interest that truth should be out and therefore, "[t]he Court will not restrain the publication of an article, even though it is defamatory, when the defendant says he intends to justify it or to make fair comment on a matter of public interest".[16]

Relying on these English decisions, the SCI held that "the grant of a pre-trial injunction against the publication of an article may have severe ramifications on the right to freedom of speech of the author and the public's right to know".[17] The court acknowledged that APPPs are lawsuits "[p]redominantly initiated by entities that wield immense economic power against members of the media or civil society, to prevent the public from knowing about or

[15] [1891] 2 Ch 269 (CA) at 284-85.
[16] [1969] 1 Q.B. 349 at 360-61.
[17] *Bloomberg*, *supra* note 14 at para 9.

participating in important affairs in the public interest. We must be cognizant of the realities of prolonged trials".[18]

The SCI reiterated that it is well settled that a three-fold test applies for granting interim relief: (i) a *prima facie* case, (ii) balance of convenience and (iii) irreparable loss or harm, for the grant of interim relief. However, the court cautioned that although this test is equally applicable to the grant of interim injunctions in defamation suits, the decision should not be made "cavalierly" to the detriment of the respondent in the case of injunctions against journalistic pieces.[19] The court held that

> "The grant of an interim injunction, before the trial commences, often acts as a 'death sentence' to the material sought to be published, well before the allegations have been proven. While granting ad-interim injunctions in defamation suits, the potential of using prolonged litigation to prevent free speech and public participation must also be kept in mind by courts".[20]

Acknowledging the chilling impact of APPPs, the SCI held that interim gag orders should be granted only in truly exceptional circumstances where it is not in doubt that the respondent's defence will fail. The Court cautioned that mechanically granting such orders would suppress public discourse and undermine democratic debate. This represents a significant advance in shielding public participation from APPPs and strengthening the protection of free speech.

Before *Bloomberg*, the Delhi High Court had engaged with the pervasive and suppressive effects of APPPs in *Crop Care Federation of India v Rajasthan Patrika* (***"Crop Care"***).[21] The decision in *Crop Care* goes beyond a routine refusal to grant interim relief and stands out as a rare and explicit judicial application of APPP discourse in India. Crucially, the High Court rejected the suit summarily at the threshold under Order VII Rule 11 of the Code of Civil Procedure, 1908 (**"CPC"**), holding that the plaint disclosed no cause of action and was barred in law.

The significance of *Crop Care* lies in its dual contribution to Indian jurisprudence on abusive litigation. It represents one of the earliest substantive judicial engagements with APPPs, and it

[18] *Ibid*.
[19] *Ibid*.
[20] *Ibid* at para 10.
[21] CS (OS) No. 531/2005, Delhi High Court decision dated 27 November2009.

resulted in the outright dismissal of an abusive suit rather than merely limiting its immediate effects. While several decisions have affirmed the importance of protecting free speech, *Crop Care* is exceptional in that it squarely recognized the abusive nature of APPPs and empowered defendants to proactively challenge such litigation at the inception stage—a challenge that ultimately succeeded.

In a defamation suit filed by the plaintiff against a newspaper, the respondent filed an application to reject the plaint under Order 7 Rule 11 of the CPC. The court held that it contained all the ingredients of a SLAPP suit.[22] The court held that

> "A SLAPP is 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. Winning the lawsuit is not necessarily the intent of the person filing the SLAPP. In such instances the plaintiff's goals are accomplished if the defendant succumbs to fear, intimidation, mounting legal costs or simple exhaustion and abandons the criticism. A SLAPP may also intimidate others from participating in the debate".[23]

The court thereafter took judicial notice that several jurisdictions have made APPP suits illegal. The court held that the APPP suit filed in Delhi by Crop Care, related to publications in Rajasthan, was launched with the intent to intimidate and stifle public debate on matters of public interest.[24] The court, while rejecting the suit, held that

> "Free speech and expression is the life blood of democracy. Any action—even civil injunctions, damages, or threat to damages, are bound to chill the exercise of that invaluable right of the people, and the press. By giving such orders, or allowing claims for damages, for perceived injury to reputation, the harm done to freedom of press, which facilitates free flow of ideas is incalculable".[25]

Other than the two cases above, Indian High Courts have seldom explicitly employed the terminology of "SLAPP" or "APPP" in their judicial reasoning. However, courts have repeatedly acknowledged that legal proceedings—both civil and criminal—are increasingly

[22] *Ibid* at para 23.
[23] *Ibid.*
[24] *Ibid.*
[25] *Ibid* at para 25.

used to silence public opinion and deter public participation. In this regard, three decisions merit particular attention despite not expressly invoking the APPP framework: *(i) Menaka & Co and Others v Arappor Iyakkam and Anr* (***"Menaka"***),[26] *(ii) Priya Parameswaran Pillai v Union of India* (***"Priya Pillai"***),[27] and (iii) *Tata Sons v Greenpeace International* (***"Greenpeace"***).[28] It must be noted that while these are not the only cases engaging with these issues, they have been selected for analysis in this paper because of the significant public attention they attracted at the relevant time, the distinct forms of abusive litigation they address, and the extent to which they most closely approximate APPP discourse in the Indian context.

These cases are central to the APPP discourse in India because they reflect judicial recognition of the chilling and coercive effects of legal proceedings when used to suppress free speech on matters of public interest. Guided by a commitment to safeguarding the fundamental right to freedom of speech and expression under the Constitution, the court in *Menaka* refused to grant an injunction in a defamation suit, in *Priya Pillai,* the court upheld her right to free speech and movement and in *Greenpeace,* the court refused to pass an order of injunction in a trademark infringement action. In each of these cases, courts effectively curbed the misuse of judicial proceedings in a manner consistent with anti-APPP principles.

In *Menaka*, the Madras High Court refused to grant an interim injunction in a defamation suit, holding that such injunctions can be granted only in exceptional circumstances. Although the respondent's counsel referred to international discussions regarding APPPs, the court did not address the issue. Instead, the court relied on the decisions of *Bonnard* and *Fraser* (discussed above) to hold that courts must strike a balance between privacy rights and the right to free speech.[29]

In the case of *Priya Pillai*, government authorities detained Pillai and prevented her from travelling to the United Kingdom. The Government of India (**"GoI"**) alleged that Pillai intended to testify before the All-Party Parliamentary Group on Tribal Peoples, a body comprising British parliamentarians. The authorities justified the restriction on the basis that her testimony would "negatively" portray the GoI and be "prejudicial to national interest".[30]

[26] 2019 SCC OnLine Mad 39165.
[27] (2015) 218 DLT 621.
[28] 2011 SCC Online Del 466.
[29] *Menaka* at para 20-21.
[30] *Priya Pillai* at para 8.2-8.3.

Pillai was working in the Singrauli coal belt of Madhya Pradesh, alongside tribal communities that, according to her, were opposing the proposed operation of a coal mine in the area. These non-violent protests were rooted in concerns that the project would displace tribal populations, undermine livelihoods dependent on forest produce, damage existing wildlife, flora, and fauna, and cause air and water pollution in the region.

Pillai challenged her detention before the Delhi High Court by way of Writ Petition, contending that the detention was violative of her fundamental rights, including Article 19(1)(a), 19(1)(g) and 21 and is egregiously illegal.[31] The court observed that the crux of the stand taken by the respondents appears to be that the GoI does not "approve of the view expressed by civil right activists" and that her actions retards foreign investment in India.[32] Although no argument was made around APPPs, the court held that Pillai's views, while may not be palatable to the GoI, that by itself cannot be a ground to "disable her from expressing her views on the subject".[33] While allowing Pillai's petition, the court held that

> "Amongst the varied freedoms conferred on an individual (i.e., the citizen), is the right of free speech and expression, which necessarily includes the right to criticise and dissent. Criticism, by an individual, may not be palatable; even so, it cannot be muzzled. Many civil right activists believe that they have the right, as citizens, to bring to the notice of the State the incongruity in the developmental policies of the State. The State may not accept the views of the civil rights activists, but that by itself cannot be a good enough reason to do away with dissent".[34]

In *Greenpeace*, the plaintiff filed suit seeking an order of injunction and damages against Greenpeace on the ground that the respondent has infringed the trademark name "TATA", its logo and has published defamatory material with the intent to malign the plaintiff's reputation. Greenpeace created an online game titled "Turtle Vs. TATA" in which the aim of the 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. The plaintiffs alleged that the respondents are spreading defamatory remarks and statements about the plaintiffs through the game, referring to "TATA demons" who need to be "vanquished"

[31] *Ibid*.
[32] *Ibid* at para 12.1.
[33] *Ibid* at para 13.2.
[34] *Ibid* at para 13.5.

because they are "threatening" homes.[35] Greenpeace, an international not-for-profit organization with a presence in India, was protesting against a proposed port that could potentially endanger the nesting and breeding of Olive Ridley turtles. Greenpeace contended that the game was made to spread awareness of the issue and mobilize public opinion.

Greenpeace argued that the lawsuit was an APPP, filed solely to silence or suppress criticisms about the ecological damage threatened by the proposed port. Although the court did not address the international discourse surrounding APPP, it ruled that injunctive relief in a defamation case should only be granted in exceptional circumstances where there is no doubt that the libellous content is false. The court determined that this was not the case here. Emphasizing the importance of free speech within a democratic process, the court stated that "granting an injunction would freeze the entire public debate on the effect of the port project… That, plainly, would not be in public interest; it would most certainly be contrary to established principles".[36]

Taken together, these cases converge around two foundational principles. First, the constitutional guarantee of freedom of speech and expression must remain the norm and may be curtailed only in the most exceptional circumstances. Second, litigation initiated with the objective of censoring or silencing public opinion and discouraging public participation runs counter to society's broader interests and ought not be permitted to achieve its suppressive purpose. However, despite some recognition by courts, judicial interventions remain fragmented, underscoring the urgent need for clear legal safeguards.

A Glimpse Outside India

Some countries around the world have enacted anti-APPP laws. These laws across different jurisdictions highlight the diversity in legislative design, scope, and level of protection. They show that while some regimes—such as those in Canada, several US states, and the EU—offer broad, speech-protective measures, including early dismissal, burden-shifting, and cost sanctions, others, such as Indonesia, adopt narrower or sector-specific approaches. Similarly, there is a notable divergence regarding the treatment of criminal proceedings, with only a few jurisdictions, such as Thailand and Indonesia, extending anti-APPP protections beyond civil

[35] *Greenpeace* at para 7.
[36] *Ibid* at para 43.

litigation.

This section undertakes a survey of anti-APPP enactments across jurisdictions and places them alongside the procedural framework currently operating in India. This exercise is significant because Indian procedural law already contains fragmented analogues to core anti-APPP mechanisms—such as early dismissal, restraint on interim injunctions, and cost sanctions. However, these tools operate in isolation and remain largely dependent on judicial discretion. Meanwhile, APPPs lack legislative recognition, and the legislature has not made any explicit normative commitment to protecting public participation. The comparative experience reflected in the table suggests that formal recognition of APPPs, coupled with calibrated mechanisms that empower targets of such proceedings to proactively seek relief, could consolidate the existing procedural devices into a coherent and effective anti-APPP framework in Indian law.

The comparative table that follows highlights both the growing global acknowledgment of abusive litigation as a threat to public participation and the uneven and fragmented nature of legal responses across jurisdictions. The purpose of examining key legislative features from different legal systems is not to replicate foreign models wholesale, but to distil best practices that may inform the design of an anti-APPP regime suited to the Indian context.

Two important caveats must be noted. First, the table identifies only the principal legal features of each enactment and does not engage in a detailed analysis of individual statutes. Such granular scrutiny is unnecessary at this stage, as the objective is not legislative transplantation but the identification of core issues that Indian legislation must address. Given the distinct socio-political and legal contexts of each jurisdiction, direct importation would be counterproductive. Second, while approximately 39 US states have enacted anti-SLAPP laws, the table captures only the shared, overarching legislative themes rather than state-specific provisions.

Jurisdiction	**Law / Provision (Date in force)**	**Key Legal Features / Sections**	**Criminal Covered?**	**Breadth of Protection**
United States	39 states have anti-APPP enactments	Special motion to strike; burden shifts to plaintiff to show probability of success; automatic	No	Protection varies between broad (e.g., California, New York, Washington etc.)

		stay of discovery; mandatory fee-shifting to successful defendant.		to narrow or limited protection (e.g., Virginia, Delaware, Kentucky etc.)
Canada (Quebec)	Code of Civil Procedure, arts 51–54 (2009)	Early dismissal of abusive proceedings; focus on improper purpose; court may impose damages and costs for abuse.	No	Moderate (procedural, abuse-focused)
Australia	Protection of Public Participation Act 2008	Dismissal of proceedings brought for improper purpose of discouraging public participation; cost consequences.	No	Narrow (territorial and procedural)
Indonesia	Law No. 32/2009 (Art 66) & Law No. 18/2013 (Art 78(1))	Immunity from civil and criminal liability for environmental defenders acting in good faith.	Yes (environment-linked)	Narrow (environment-specific)
Philippines	Rules of Procedure for Environmental Cases (2010)	Summary dismissal of SLAPPs in environmental cases at preliminary stage.	No	Narrow (environment-specific)
Canada (Ontario)	Protection of Public Participation Act 2015 (Courts of Justice Act ss 137.1–137.5)	Early dismissal; defendant shows public-interest expression; burden shifts to plaintiff to prove substantial merit & public interest override; stay of proceedings; presumptive cost-shifting.	No	Broad (robust public interest protection)
Canada (British Columbia)	Protection of Public Participation Act 2019	Early dismissal; public-interest expression test; cost consequences for abusive litigation.	No	Broad

Thailand	Criminal Procedure Code § 161/1 (2019 amendment)	Court may dismiss criminal complaints filed in bad faith or to harass critics.	Yes (criminal)	Narrow (criminal-procedure focused)
United Kingdom	Economic Crime and Corporate Transparency Act 2023 (Anti-SLAPP provisions)	Early dismissal and cost protection limited to economic-crime-related reporting.	No	Narrow (subject-matter limited)
European Union	Directive (EU) 2024/1069 (entered into force May 2024)	Early dismissal of manifestly unfounded claims; burden on claimant; full cost shifting; penalties; accelerated procedures; cross-border scope.	No (civil, cross-border)	Broad (minimum harmonised standards)

Despite differences in legislation, one key similarity stands out: these countries identify APPPs as "a kind of process-based punishment" designed to overwhelm the target through costs associated with litigation, jurisdictional harassment, or reputational pressure. Accordingly, anti-APPP laws are enacted to counteract their widespread impact on public participation, protect free speech, and neutralize "process-based" harassment.

In India, courts, acknowledging the pervasive impact of APPPs, have relied on existing constitutional protections and procedural rules to protect free speech and the targets of APPPs. In the absence of anti-APPP legislation, courts have been innovative and vigilant, thereby protecting public participation and safeguarding free speech. The existing provisions in India that can be or that have been used to protect the targets of APPPs can be broadly divided into three components:

1. **Constitutional Protection of Free Speech**

   Article 19(1)(a) of the Constitution guarantees the fundamental right to free speech in India. Courts in India have recognised this as an essential component of democracy, including rights to speech, expression, criticism, dissent, and the right to know. This is why freedom of the press and media is diligently protected.

Many APPP lawsuits are instituted as defamation suits. The Indian courts, while typically not referring to these lawsuits as APPPs, have refused to issue gag orders to preserve and protect freedom of speech, which is essential to public participation. As discussed above, courts have, for example, in *Menaka and Bloomberg*, held that freedom of speech should not be curtailed except in exceptional circumstances, and have refused to grant injunctive orders restricting publication. Courts have consciously shifted the burden from the respondent to prove that the libellous content is true and placed the onus on the plaintiff to demonstrate that there is no doubt the respondent will fail.

2. Remedies against Civil APPPs

Indian courts have relied on procedural rules under the CPC to protect targets of APPPs. In the absence of anti-APPP legislation, courts could strengthen protection and safeguard speech by rejecting the plaint at the threshold under Order VII Rule 11 of the CPC, refusing to grant injunctions under Order XXXIX, imposing exemplary costs, or even shifting the cost burden under sections 35, 35A, and 35B of the CPC.

As in the *Crop Care* case, courts could reject abusive suits at the threshold. Under Order VII, Rule 11 of the CPC, a court may reject a plaint that discloses no cause of action or is barred by law. This will prevent the targets from being dragged into protracted and expensive litigation and empower them to take proactive steps to protect their rights rather than merely defend an APPP action. However, rejection of the plaint under Order VII Rule 11 is to be determined based on a reading of the plaint. Therefore, in the absence of specific anti-APPP provisions or prohibition of anti-APPP proceedings, clever drafting may prevent a court from being able to reject a plaint at this threshold stage.

Before granting interim relief or injunctions under Order XXXIX Rules 1 and 2 of the CPC, courts may consider the corrosive impact of gag orders in cases involving matters of public interest. Where speech concerns issues of public interest, the potential chilling effect of interim restraints must be carefully balanced against claims of privacy or reputational harm. Applying the Bonnard standard, which has found acceptance in Indian jurisprudence, courts may conclude that the balance of convenience tilts in favour of protecting free expression. In such cases, rather than applying the conventional *prima facie* threshold for interim injunctions, courts could adopt a more exacting standard—namely, that there is no doubt that the defendant's defence will fail.

The Supreme Court's decision in *Bloomberg* reinforces this approach by expressly recognizing the chilling effect of interim gag orders on public discourse. In doing so, the court brought Indian jurisprudence closer to anti-APPP principles even in the absence of a dedicated statute. Comparable anti-APPP frameworks in other jurisdictions similarly require a shifting of the evidentiary burden to the plaintiff once the defendant demonstrates that the impugned expression arises from public-interest speech. Such burden shifting, combined with a heightened standard of proof, strikes a balance between individual rights and the broader public interest.

Although this shift in the burden of proof is not formally codified in Indian law, courts have implicitly adopted it in cases such as *Bloomberg*. Nonetheless, in the absence of legislative codification, the application of these principles remains uneven, discretionary, and contingent on individual judicial approaches.

Another important tool available under the CPC is cost determination. Cost-shifting is a core deterrent in many anti-SLAPP regimes. Indian law contains analogous, though underutilized, provisions in Sections 35, 35A, and 35B CPC, which permit courts to impose costs, including compensatory costs for false or vexatious claims. In practice, however, costs awarded in India are often nominal and rarely calibrated to deter abusive litigation, limiting their effectiveness as an anti-APPP substitute. Costs, when imposed, may not make much difference to a filer who typically is economically more powerful. Moreover, while costs may be recovered in the end, the initial cost burden may have to be borne by the target, forcing it to divide its resources or even give up the cause.

3. Remedies against Criminal Proceedings

Although APPPs originally were confined to civil defamation cases, over time, criminal defamation suits under sections 499 and 500 of the Indian Penal Code 1860 (**"IPC"**) have proliferated. Activists, students and journalists are increasingly becoming targets of criminal defamation or multiple FIRs across jurisdictions. Internationally, while some jurisdictions do not have criminal defamation laws, in India, criminal defamation is a strategic and even effective tool for launching APPP proceedings. Powerful actors, both private and state, frequently use criminal proceedings to suppress public criticism, democratic protest, public participation, and free speech.

> Except for Thailand and, to a limited extent, Indonesia, few jurisdictions extend anti-APPP protection to criminal proceedings. The absence of anti-APPP protection in criminal proceedings has drawn significant international criticism. For instance, Borg-Barthet & Farrington state that "[t]he exclusion of criminal matters from the scope of the [*EU*] Directive is particularly troubling".[37] Similarly, even in Indonesia, although the anti-APPP legislation extends to criminal proceedings against environmental activists, the lack of definition of who qualifies as an environmental activist and the need to seek government protection have raised serious concerns about the legislation's effectiveness.[38]
>
> Although the Indian courts have occasionally dismissed criminal complaints or quashed proceedings that are held to be abusive, the intimidation and harassment that even the threat of criminal process creates can be damaging and can deter future public participation.

In summary, while the Indian courts have demonstrated a growing awareness towards APPPs, these outcomes are sporadic, unpredictable and do not adequately protect those who dare to speak.

Conclusion: Need for Legislative Action

Judicial innovation and vigilance, while important, cannot and should not operate as a substitute for legislation. In the absence of a coherent and uniform legal framework, targets of APPPs remain exposed to procedural manipulation, protracted and costly litigation, forum shopping, and sustained harassment and intimidation. As public participation is effectively chilled, those initiating such proceedings exploit the legal process to evade public scrutiny and suppress criticism. The lack of anti-APPP legislation further enables powerful actors to initiate proceedings across multiple jurisdictions and strategically engage in forum shopping to identify courts more likely to grant relief in their favour, thereby amplifying the coercive impact of such litigation.

Protection of free speech and encouragement to public participation need proactive protective

[37] Borg-Barthet & Farrington, "The EU's Anti-SLAPP Directive", *supra* note 5 at 846.
[38] Gelar Ali Ahmad, "Critical Analysis of Anti-SLAPP Regulations in The Field of Criminal Law in Indonesia" (2024) 4:1 Golden Ratio of Law and Social Policy Review 32 at 35–36.

legislation that does not leave questions to the subjective satisfaction of a judge. What is required is the development of a clear anti-APPP jurisprudence grounded in proportionality, the safeguarding of public interest, and mechanisms for the early dismissal of abusive proceedings. A more structured and principled response to abusive proceedings requires well-designed legislation that covers both civil and criminal proceedings, identifies APPPs at the early stages of litigation, prevents costs from falling on targets, and puts in place safeguards that empower targets to take proactive steps to have APPPs identified and dismissed.

While courts must continue to refine doctrines that shield democratic participation, legislative intervention is urgent and necessary to provide clarity, uniformity, and procedural protections through a comprehensive national anti-APPP statute. Only through this combined constitutional and institutional effort can India ensure that its legal system is not weaponized to silence dissent, but instead functions as a protector of free speech, accountability, and democratic engagement.