COMBATING DISHONEST CLAIMS AND ABUSE OF PROCESS IN INDIAN CIVIL LITIGATION: A CRITICAL ANALYSIS OF SECTION 35A OF THE CODE OF CIVIL PROCEDURE, 1908 AND SECTION 246 OF THE BHARATIYA NYAYA SANHITA, 2023

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ABSTRACT

Dishonest claims and vexatious pleadings can impose costs beyond the actual dispute: they can take up valuable judicial time, increase litigation expenses, and even be used to pressure the other party into giving up lawful rights. There are two distinct mechanisms in Indian law to deal with these issues. Section 35A of Code of Civil Procedure, 1908 (CPC) allows for the award of compensatory costs in cases where claims or defences are found to be knowingly false or vexatious. Section 246 of Bharatiya Nyaya Sanhita, 2023 (BNS) makes it a criminal offence to dishonestly make a false claim in court. This article critically analyses the elements, the procedural boundaries, and the practical efficacy of both mechanisms. It does so by examining Supreme Court decisions on realistic costs, fraud, and abuse of process. While the central cap on costs under CPC of Rs. 3,000 has become inadequate as a deterrent, courts cannot simply override statutory caps by invoking inherent powers. For criminal prosecution, the statutory mental element must be proved and the court-complaint process under the Bharatiya Nagarik Suraksha Sanhita, 2023 must be followed. This article advocates calibrated legislative reforms, reasoned cost orders, and careful screening of genuinely dishonest claims without discouraging bona fide access to justice.

Keywords: Civil litigation, False claims, Compensatory costs, Abuse of process, Section 35A CPC, Section 246 BNS.

1. Introduction

Civil justice is an indispensable part of the rule of law. However, the same procedural machinery can be misused to harass the other party, delay the enforcement of rights, or pressure the other party into giving up because of the cost of prolonged litigation. For instance, a knowingly false claim of property, a fabricated claim of contract, or even strategic repetition of an issue decided earlier can impose significant financial and reputational costs on the other party. These costs are not only borne by the other party to the dispute. It can divert judicial time from genuine disputes and undermine the confidence in adjudication.

The legal response must, however, be calibrated. A claim that is ultimately unsuccessful may not be dishonest. Civil disputes can involve contested facts, uncertain documents, or unsettled law. Therefore, sanctions cannot be imposed simply because of an adverse judgment. This article explores the relationship between the civil mechanism of compensatory costs under Section 35A CPC and the criminal offence of knowingly making a false claim in court with the specified dishonest or injurious purpose under Section 246 BNS. This article argues that both provisions are complementary but serve different purposes. While Section 35A is concerned with litigation costs, Section 246 addresses the administration of justice and provides a penal response to conduct that meets a higher threshold.

2. The Statutory Framework

2.1 Compensatory costs under Section 35A CPC

Section 35A applies when a party objects to a claim or defence, or any part thereof, as false or vexatious to the knowledge of the party making the claim or defence, and the claim or defence is subsequently disallowed, abandoned, or withdrawn, wholly or in part. The court can award compensatory costs after recording reasons for holding the claim or defence to be false or vexatious. Thus, the provision is not triggered simply because a litigant loses. It requires a specific objection, a qualifying outcome, a finding of knowing falsity or vexatiousness, and a reasoned exercise of discretion.[1]

The general cap on costs under Section 35A(2) is ordinarily Rs. 3,000 or the pecuniary limits of the court, whichever is lower. The statutory framework has some qualifications. Section 35A(2) is omitted for commercial disputes of specified value by Section 16 and Schedule to

[1] Code of Civil Procedure, 1908, § 35A (India).

the Commercial Courts Act, 2015. One must also check for state-specific amendments in the relevant forum. Section 35A(3) allows for the possibility of criminal liability. Section 35A(4) requires that the compensation awarded must be taken into account in a subsequent suit for damages or compensation arising out of the same claim or defence. Thus, Section 35A is a modest immediate remedy. It is not a complete code for all the consequences of malicious litigation.[2]

The provision on ordinary costs under Section 35 remains relevant. There is also Section 35B on costs caused by delay. Depending on the pleadings and procedural stage, the court may also consider Order VI Rule 16 CPC on striking out scandalous, frivolous, or vexatious matter. Order VII Rule 11 on the plaint falling under a statutory ground for rejection. Order XII Rule 6 on a clear admission allowing for judgment. Section 151 on inherent powers to prevent abuse of process. These are not interchangeable avenues. In particular, Section 151 cannot be used casually to circumvent an express statutory limitation. A contested factual allegation of dishonesty should not be summarily treated as established for the purpose of disposing of a suit.[3]

2.2 Dishonestly making a false claim in court under Section 246

BNS Under Section 246 BNS, any person who fraudulently or dishonestly, or with intent to injure or annoy any other person, makes in a court any claim which that person knows to be false, shall be punished with imprisonment of either description for a term which may extend to two years, and shall also be liable to fine.

The focus is on the deliberate making of a false claim in court, along with the specified mental element. The mere fact that the claim was rejected or that the title of the other party was not proved is not sufficient to establish that the claimant knew the claim was false when made.[4]

An important point on nomenclature is worth mentioning for accurate legal analysis. Section 246 BNS is largely a carryover of Section 209 of the repealed Indian Penal Code, 1860 on dishonestly making a false claim in court. It is not a successor to Section 211 of IPC on false charge of an offence with intent to injure. The corresponding provision for that distinct conduct

[2]Commercial Courts Act, 2015, § 16 & sched. (India) (providing for omission of § 35A(2) CPC in its application to commercial disputes of specified value).
[3] Code of Civil Procedure, 1908, §§ 35, 35A, 35B, Order VI Rule 16, Order VII Rule 11, Order XII Rule 6, § 151 (India).
[4] Bharatiya Nyaya Sanhita, 2023, § 246 (India)

is Section 248 BNS. Thus, a civil claim of property should not be automatically termed as a false criminal charge. It would depend on the act alleged and the statutory elements of the relevant provision.

2.3 The gatekeeping requirement of criminal procedure

Section 246 cannot be treated as a private criminal complaint in isolation, independent of the civil proceeding. Under Section 215(1)(b)(i) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), cognizance of offences under Sections 242 to 248 of BNS, when alleged to have been committed in or in relation to a court proceeding, is barred except upon a written complaint made by that court, or an officer authorised by that court, or a court to which that court is subordinate. Under Section 379 BNSS, the mechanism is provided for the court, on an application or otherwise, to make such preliminary inquiry as it deems fit and make a written complaint if it thinks it is expedient in the interest of justice to make an inquiry.[5]

This filter is a substantive safeguard. It helps in preventing a criminal process from being used as a tactical tool in ordinary civil disputes, while still providing a route when the conduct appears to strike at the integrity of the judicial process. Instead of assuming that an unsuccessful opponent can immediately be prosecuted on a private allegation, the aggrieved party must place the relevant pleadings, documents, admissions, etc., before the court seized of the proceeding and invite consideration under BNSS.

3. Supreme Court Guidance: Deterrence, costs, and abuse of process

3.1 Realistic costs and deliberate delay

In Ramrameshwari Devi v. Nirmala Devi, the Supreme Court was faced with a situation of prolonged litigation over property, which was used to harass the other party. The Supreme Court emphasised that courts must be vigilant about false claims, fabricated documents, and delay tactics. Courts must impose realistic costs when justified, rather than letting procedural indulgence reward abuse. This decision advocates for active case management and meaningful consequences for conduct that hinders fair adjudication. However, it should not be overstated. Strong judicial language in favour of realistic costs does not by itself amend the text of Section

[5] Bharatiya Nagarik Suraksha Sanhita, 2023, §§ 215(1)(b)(i), 379 (India)

35A or remove the monetary cap.[6]

In Salem Advocate Bar Association v. Union of India, the Supreme Court, as part of its broader attempt to make civil procedure effective and curb delay, emphasised, along with subsequent costs decisions, that the procedural rules must facilitate the resolution of disputes on merits, rather than provide an advantage to a party that unnecessarily prolongs proceedings. The practical takeaway is that courts must use their available powers consistently and provide reasons for the conduct warranting costs or other procedural measures.[7]

3.2 The statutory cap: Ashok Kumar Mittal and Vinod Seth

The deterrence issue is particularly stark in Ashok Kumar Mittal v. Ram Kumar Gupta. The Supreme Court was concerned with exemplary costs in civil litigation. The Supreme Court explained that, when the issue is governed by the CPC, courts must adhere to the statutory restrictions on costs. Inherent powers cannot simply be used to contradict the Code. The Supreme Court also noted that the meagre awards often fail to deter vexatious or speculative litigation. It observed that the issue of realistic costs requires legislative attention. This judgment highlights a structural tension. On one hand, courts are urged to discourage abuse. On the other hand, a central statutory cap may be economically trivial compared to the cost of defending a civil suit.[8]

In Vinod Seth v. Devinder Bajaj, the Supreme Court again noted that the cap of Rs. 3,000 under Section 35A is almost ineffective in modern litigation conditions. It called for a realistic revision. At the same time, the Supreme Court disapproved an onerous condition requiring the plaintiff to give an undertaking to pay Rs. 25 lakh if the suit was unsuccessful. These propositions must be read together. Anti-abuse measures must be effective. But the sanctions must have a lawful basis and be proportionate. A court must distinguish ordinary costs under Section 35 from the additional compensatory sanction, which is specifically governed by Section 35A. It should not create an unbridled penalty in the name of inherent jurisdiction. [9]

3.3 Fraud and abuse of process

In K.K. Modi v. K.N. Modi, the Supreme Court explained that the process of court must be

[6] Ramrameshwari Devi v. Nirmala Devi, (2011) 8 SCC 249 (India)
[7] Salem Advocate Bar Ass'n v. Union of India, (2005) 6 SCC 344 (India)
[8] Ashok Kumar Mittal v. Ram Kumar Gupta, (2009) 2 SCC 656 (India)
[9] Vinod Seth v. Devinder Bajaj, (2010) 8 SCC 1 (India)

used bona fide and properly. Relitigation of an issue decided earlier, proceedings for collateral purposes, or a spurious claim, may, in appropriate circumstances, constitute abuse of process. The Supreme Court also stressed that this power must be used sparingly and with circumspection. This principle provides a basis for targeted procedural intervention when abuse is manifest. It does not warrant the summary rejection of every weak or contentious case.[10]

In S.P. Chengalvaraya Naidu v. Jagannath, the foundational proposition is that a judgment obtained by fraud on the court is a nullity. Fraud is fundamentally different from a mistake, lack of evidence, or a failed legal argument. These cases, when read together, suggest a graduated response. Correct the pleadings or strike out abusive material, as permissible under the Code. Impose lawful costs for proven vexatious conduct. Reserve criminal proceedings for conduct that meets the elements and procedural conditions of the penal law.[11]

4. Critical Analysis

There are three major limitations in the current framework. First, the low monetary cap under Section 35A reduces its deterrent effect. When the dispute is over valuable immovable property or years of litigation, the cap of Rs. 3,000 can be completely divorced from the expense imposed on the successful party. While ordinary costs under Section 35 may provide some reimbursement, the distinction between ordinary and compensatory costs can create uncertainty and inconsistent outcomes. The repeated call for realistic costs by the Supreme Court suggests that judicial exhortation alone cannot remedy a monetary limit set by legislation.

Second, the conditions under Section 35A make it a non-general penalty for misconduct. There must be an objection to the claim or defence as knowingly false or vexatious, which is then disallowed, abandoned, or withdrawn, before the court exercises its discretion. This trigger may come much after the harm has occurred in long-running litigation. Therefore, courts must use other lawful tools of case management, where appropriate. These include costs for delay, striking out abusive pleadings, orders based on clear admissions, res judicata, etc. These tools must be selected based on their statutory prerequisites, rather than being used as a substitute for a missing power.

Third, Section 246 BNS is intentionally more demanding than a normal civil costs order. The

[10] K.K. Modi v. K.N. Modi, (1998) 3 SCC 573 (India)
[11] S.P. Chengalvaraya Naidu v. Jagannath, (1994) 1 SCC 1 (India)

requirement of knowledge that the claim is false, along with the specified dishonest, fraudulent, or injurious purpose, protects bona fide litigants from criminalisation for simply losing a case. The court-complaint process under Section 215 BNSS reinforces this safeguard. However, these safeguards also require the litigant to gather cogent material showing the deliberate falsity, rather than just pointing to an adverse finding or a disputed document. Courts must explain why the material suggests an offence and why it is expedient to make an inquiry before initiating the statutory complaint process.

Finally, the law must avoid a chilling effect on access to justice. Disputes over property, inheritance, tenancy, contracts, etc., can be factually complex. A mistaken description of boundaries, a weak document of title, or an inconsistent witness is not necessarily evidence of a knowingly false claim. Effective deterrence should target deliberate abuse, not punish litigants for asserting arguable rights. Reasoned orders, proportionality, opportunity to respond, clear distinction between error and dishonesty, are crucial to maintain this balance.

5. Reform and Practical Recommendations

First, Parliament should revise the central monetary cap under Section 35A to make compensatory costs bear a rational relationship to the expense caused by a knowingly false or vexatious claim. The award must remain reasoned, proportionate, and reviewable. Relevant factors include duration of proceedings, costs reasonably incurred, nature and value of dispute, conduct of parties, extent to which the misconduct caused delay, etc. The commercial-disputes exception and state-level amendments indicate that the current framework is not uniform across all contexts. Reform should aim for principled consistency, while not ignoring the differences in jurisdiction and case type.

Second, courts must record a clear finding on the elements of Section 35A. They should not use generic language of a party 'abusing the process'. Orders must specify the claim or defence, the material showing that it was knowingly false or vexatious, the outcome triggering the provision, and the basis for the amount awarded. Where appropriate, distinguish between ordinary costs under Section 35 and compensatory costs under Section 35A. This will enhance transparency and make appellate scrutiny more coherent.

Third, when there is evidence of a deliberate false claim in court, the aggrieved party can make a documented application to the court for consideration under Sections 215 and 379 BNSS. The application should specify the exact pleading or claim alleged to be false, show why the

claimant knew it was false when made, and the fraudulent, dishonest, or injurious purpose alleged. The court must independently apply the statutory threshold. Criminal prosecution should not be threatened as a lever to force the withdrawal of a civil claim.

Fourth, legal education and judicial administration should encourage early identification of repeated, contradictory, or clearly untenable pleadings. Courts can use admissions, prior judgments, documentary records, costs for delay, appropriate pleading control powers, etc., to narrow down the real dispute. This approach is preferable to treating every contested suit as a potential criminal matter. It can save judicial resources, while preserving due process.

6. Conclusion

Section 35A CPC and Section 246 BNS are complementary but distinct mechanisms to address dishonest litigation. Section 35A provides a civil mechanism for compensatory costs when the statutory conditions are met. Section 246 imposes criminal liability for a knowingly false claim in court, along with the specified mental element. The Supreme Court decisions condemn deliberate abuse and call for realistic costs, while insisting that the sanctions must be within the law. The central limitation is the low cap under Section 35A, which requires legislative correction, rather than judicial circumvention. Effective reform must incorporate meaningful and proportionate costs, disciplined case management, and carefully screened criminal complaints under BNSS. 9 Ultimately, the aim is not to deter genuine litigation, but to ensure that the court procedure remains a tool for the resolution of rights, rather than an instrument for dishonest pressure.