

LAW COMMISSION OF INDIA

192ND REPORT

ON

PREVENTION OF VEXATIOUS LITIGATION

JUNE 2005

Justice
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Chairman

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Dear Shri Bhradwaj ji,

I have great pleasure in forwarding the 192nd Report of the Law Commission on 'Prevention of Vexatious Litigation' in our High Courts and Courts subordinate to the High Courts. Earlier, law on this subject was enacted in the former State of Madras and has been in force as the Madras Vexatious Litigation (Prevention) Act, 1949, and also in the State of Maharashtra wherein it is called the Maharashtra Vexatious Litigation (Prevention) Act, 1971 but similar enactments have not been enacted in the other States. The Law Commission, in its 189th Report on 'Revision of Court Fee Structure' (2004) has also recommended enacting a law on the subject by the Parliament. The Commission has, therefore, taken up the subject in detail in this Report. It has made an in depth study of the matter as enforced in different jurisdictions.

The validity of the aforesaid Madras Act of 1949 was upheld by the Supreme Court of India in P.H. Mawle vs. State of A.P.: (AIR 1965 SC 1827) and the Court pointed out the advantages of having such a law. It may be observed that the Madras Act of 1949 and the Maharashtra Act of 1971 are based upon an old statute of England of 1896 and the law declared in Grepe vs. Loam (1879) 39 ChD 168. Several improvements have been made in the law in that country, the latest provisions being sec 42 of the (UK) Supreme Court Act, 1981. Under that Act, the English Courts have decided a number of cases. In Attorney General vs. Banker 2000(1) F.L.R. 759, Lord Bingham explained the meaning of the words 'habitually and persistently' used in sec 42. The European Court in Application 11559 of 1985, H vs. UK: (1985) D&R 281 has also upheld the Vexatious Actions (Scot Law) Act, 1898. The Ebert series of cases from 1999 to 2001 and the

Bhamjee series of cases in 2003 in UK, decided by the Court of Appeal have laid down the procedure to be followed so that the statutes do not offend the principle of 'access to justice' contained in Art 6 of the European Convention. In Australia and New Zealand also laws on prevention of vexatious litigation have been enacted. (Vide High Court Rules 1952 (Rule 63.6 of High Court of Australia; the Western Australia 'Vexatious Proceedings Prevention Act, 2002; the Queensland 'Vexatious Litigants Act, 1981, etc.) There are also provisions in this behalf in sec 88 of the New Zealand Judicature Act, 1908.

The main purpose of enacting the law on the subject is to prevent a person from instituting or continuing vexatious proceedings habitually and without reasonable ground in the High Courts and subordinate courts.

After considering various laws on the subject in Commonwealth jurisdictions as also the aforesaid Indian statutes of Madras and Maharashtra, we have recommended in the report that if a person is instituting or continuing vexatious proceedings 'habitually and without reasonable ground', the Advocate General or the Registrar of the High Court or the person against whom such cases are filed (with leave of the High Court) may move the High Court (in a Division Bench) to declare the person a 'vexatious litigant'. Once that declaration is made, it is published in the Gazette and communicated to all subordinate courts. Thereafter, the person so declared as the vexatious litigant, can file civil or criminal proceedings in the High Court or subordinate courts only (i) with the leave of the High Court or, (ii) (if he is filing such cases in the subordinate courts) with the leave of the District and Sessions Court. These courts will examine whether the proceedings proposed to be instituted or being continued, have a prima facie ground and also whether they are not an abuse of the process of court. If the leave is refused, the proposed or pending case filed by such person will be dismissed by the court. If the vexatious litigant files any such case before a court without obtaining leave as required by the Act, the case will be dismissed and costs will have to be awarded by the court in which such proceedings are filed. In addition, the High Court which imposed the condition of leave, if it thinks fit, may punish the vexatious litigant for contempt of the High Court. However, the provisions of the proposed Act will not be applicable to proceedings taken by the vexatious litigant in defending himself against proceedings filed by other parties. Similarly, proceedings under Art 226 of the Constitution of India are also excluded from its purview. The bar against vexatious litigant for taking out criminal

proceedings is restricted to private complaints that he may propose to lodge against others.

The proposed Act will be applicable to the whole of the India, except the State of Jammu & Kashmir. It fills an important area where there has been a vacuum in the past nearly five decades in this country. The Commission feels that if the recommendations materialize into an Act, law-abiding citizens in the country will have legal protection from vexatious litigations pursued against them, in the same manner as protection has been available in the regions covered by the former State of Madras since 1949 and as available in the State of Maharashtra from 1971.

With regards,

Yours sincerely,

(Justice M. Jagannadha Rao)

Sri H.R. Bharadwaj
Hon'ble Minister for Law and Justice
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I N D E X

<u>Chapter</u>	<u>Title</u>	<u>Page Nos.</u>
I	Introductory	3 to 6
II	Existing State Enactments to Prevent Vexatious Litigation (Madras, Maharashtra and Kerala)	7 to 13
III	Legislative Competence of Parliament to enact The Vexatious Litigation (Prevention) Law	14 to 17
IV	Curbs on Vexatious Litigation in United Kingdom	18 to 44
V 54	Curbs on Vexatious Litigation in USA	45 to
VI	Curbs on Vexatious Litigation in Australia And New Zealand	55 to 72
VII	Curbs on Vexatious Litigation in Canada	73 to 75
VIII	Recommendation for Preventing Vexatious Litigation in India	76 to 94
Appendix I	Draft Bill – ‘The Vexatious Litigation Prevention Bill, 2005’	95 to 101

Chapter – I

INTRODUCTORY

Earlier Reports of the Law Commission

In the 189th Report of the Law Commission of India on ‘Revision of Court-Fee Structure’ (February 2004), there was a reference to ‘frivolous and vexatious’ litigation. In the Introductory Chapter and in Chapter VI of that Report, the Commission had occasion to refer to the constant demand for increase in court fee to prevent frivolous or vexatious litigation. The Commission agreed with the critical remarks of Lord Macaulay made over one hundred and fifty years ago in connection with the preamble to the Bengal Regulation of 1795. The preamble to the said Regulation stated that the purpose of prescribing higher court fee in the said Regulation was intended to drive away “vexatious” litigation. But Lord Macaulay who was then heading the Law Commission of pre-independent India disagreed with the said statement in the preamble and said that the increase in court fee, if it was intended to drive away vexatious litigation, it would also drive away genuine and bona fide litigation. In his minutes dated 25th June, 1835 he described the preamble as:

“the most eminently absurd preamble, that was ever drawn.”

He further stated that there was frivolous and vexatious litigation long before the system of levying ‘court fee’ came into vogue and it continued after the levy also. He posed various questions:

“It is undoubtedly a great evil that frivolous and vexatious actions should be instituted. But it is an evil for which the Government has only itself and its agents to blame, and for which it has the power of providing a most sufficient remedy
 Why did dishonest plaintiffs apply to the Courts before the institution fee was imposed? Evidently because they thought that they had a chance of success. Does the institution of fee diminish that chance? Not in the smallest degree. It neither makes pleadings clearer, nor the law plain ... It will no doubt drive away dishonest plaintiffs who cannot pay the fee. But it will also drive away honest plaintiff.”

The views of Lord Macaulay were accepted in the 14th Report of the Law Commission (Chapter 22, para 6) and it was observed:

“29. The argument that it is necessary to impose high court fee to prevent frivolous litigation, already referred to has no substance”.
 (para 29, Ch 22)

These views were further reiterated in the 128th Report of the Law Commission on ‘Cost of Litigation’ (1988) (para 3.6).

In Chapter VII of the 189th Report, the Law Commission proposed that a separate law be made on the lines of the Madras Vexatious Litigation (Prevention) Act, 1949 (Act VIII of 1949) and referred to the judgment of the Supreme Court in P.H. Mawle vs. State of A.P.: AIR 1965 SC 1827 in regard to the applicability and validity of that Act and to other cases. Under Recommendation 10, in Chapter IX, the Law Commission recommended:

“We recommend that, on the lines of the above mentioned Madras Act VIII of 1949, a Central Act may be enacted to curb vexatious or frivolous litigation”.

That frivolous and vexatious litigation has to be separately tackled and not by way of increase in court fee was also stated by the Supreme Court in Secretary to Govt. of Madras vs. P.R. Sriramulu : 1996(1) SCC 345 (p 351) where it was observed as follows:

“In the beginning the imposition of the (court) fee was nominal but in the course of time, it was enhanced gradually under the impression that it would prevent the institution of frivolous and groundless litigation and as an effective deterrent to the abuse of process of the Court without causing any impediment in the institution of just claims. However significant this view may be that the levy of fees would have a tendency to put a restraint on frivolous litigation, that view, at any rate, had the merit of seeking to achieve a purpose which was believed to have some relevance to the administration of justice. Since about past two decades, the levy of court fee on higher scales would seem to find its justification, nor in any purpose related to the sound administration of justice but in the need of the State Government for revenue as a means for recompense.”

In the light of the recommendation in the 189th Report, referred to above, the Commission has decided to deal with frivolous and vexatious litigation in detail. It was, however, found that the special statutes which

deal with prevention of ‘vexatious’ litigation are different from those dealing with ‘frivolous’ litigation. The concepts are also quite different. As will be seen in the ensuing chapter, ‘vexatious’ litigation means habitually or persistently filing cases on the issues in which have already been decided once or more than once or against the same parties or their successors in interest or against different parties. But so far as ‘frivolous’ litigation is concerned, a litigation may be frivolous,- without the need for persistent filing of similar case,- even if it has no merits whatsoever and is intended to harass the defendant or is an abuse of the process of the Court. Further, there are some existing provisions in the Code of Civil Procedure like Order 6 Rule 16, Order 7 Rule 1, sec 35A etc. which deal with ‘frivolous’ litigation. It is also necessary to deal with vexatious criminal proceedings which now fall under sec 250 of the Code of Criminal procedure, 1973. Those provisions may indeed have to be strengthened further. For these reasons we are separating the issues and giving separate reports. Hence, it was decided that two separate reports are necessary, one on preventing vexatious litigation and another on restricting frivolous litigation.

We have, therefore, decided that this Report will deal with prevention of vexatious litigation only. We shall following this up by a separate report on restriction of frivolous litigation.

Chapter – II

Existing State enactments to Prevent vexatious litigation

(Madras, Maharashtra and Kerala)

Atleast in two States, Madras and Maharashtra there are statutes made by the State Legislatures in 1949 and 1971 respectively, to declare a person as a vexatious litigant and prevent him from initiating action in court unless he obtains previous permission of a specified authority. In Kerala, a Bill has been proposed.

To declare a person as a ‘vexatious’ litigant and impose restriction on his right to ‘access to justice’ requires legislation on the subject. But, a litigation, if it is found to be vexatious, can be stayed by the court under its inherent powers. The statements referred to above lay down the procedural aspects in regard to exercise of inherent power of the Court to prevent abuse of its process.

Madras Vexatious Litigation (Prevention) (Act 8 of 1949):

The above Act was designed to control vexatious litigation. It refers to persons who habitually and without any reasonable ground, institute vexatious proceedings, civil or criminal. Sections 2, 3, 4 and 5 of the Act, provide for declaring a person as a vexatious litigant upon the application of the Advocate General and once he is so declared, he cannot initiate any action of a civil or criminal nature without prior leave of the Court. The declaration will be published in the State Gazette. The following are the relevant important provisions.

“Section 2(1): If, on an application made by the Advocate General, the High Court is satisfied that any person has habitually and without any

reasonable ground instituted vexatious proceedings, civil or criminal, in any court or courts, the High Court may, after giving that person an opportunity of being heard, order that no proceedings civil or criminal, shall be instituted by him in any Court –

- (i) in the Presidency – town, without the leave of the High Court; and
- (ii) elsewhere, without the leave of the District and Sessions Judge.
- (2)

“Section 3: The leave referred to in section 2, sub section (1) shall not be given in respect of any proceedings unless the High Court or, as the case may be, the District and Sessions Judge, is satisfied that there is prima facie ground for such proceedings.”

“Section 4: Any proceedings instituted by a person against whom an order under section 2, subsection (1), has been made, without obtaining the leave referred to in that sub section, shall be dismissed.

Provided that this section shall not apply to any proceedings instituted for the purpose of obtaining such leave.”

“Section 5: A copy of every such order made under section 2, subsection (1), shall be published in the Fort St. George Gazette”.

The above provisions of the Madras Act were challenged as bad for want of legislative competence and also as offending Arts 14 and 19 of the Constitution of India. The said challenge was rejected by a Constitution Bench of the Supreme Court in P.H. Mawle vs. State of A.P. (AIR 1965 SC

1827). Hidayatullah J (as he then was) pointed out that such legislation were there in England, namely statutes 16 and 17 vict Ch 30 (1896), later replaced by sec 51 of the Supreme Court of Judicature (Constitution Act, 1925)(15 & 16 Geo Vc. 49). (These laws have since been replaced by sec 42 of the Supreme Court Act, 1981).

In the Supreme Court, an argument that the Madras legislature had no competency as it was not covered by any entry in List II or List III of the Government of India Act 1935 was rejected. It was stated that the subject of the said legislation was covered by Entry 2 of List II (Jurisdiction and powers of all Court except the Federal Court, with respect of the matters in this List; procedure in Rent and Revenue Courts), and entry 2 of List III (Criminal procedure, including all matters included in the Code of Criminal procedure at the date of passing of this Act) and Entry 4 of List II (Civil procedure, including the law of Limitation and all matters included in the Code of Civil Procedure at the date of passing this Act) of the VII Schedule to the 1935 Act.

The Supreme Court, after upholding the legislative competence of the Madras Legislature considered the validity vis-à-vis Art 14 and Art 19 of the Constitution of India. It was argued that Art 14 was attracted because litigants were being divided into two classes and being discriminated. The Supreme Court rejected the contention that

“the litigants who are prevented from approaching the Court without the sanction of the High Court etc. are a class by themselves. They are described in the Act as persons who ‘habitually’ and ‘without

reasonable cause' file vexatious actions, civil or criminal. The Act is not intended to deprive such a person of his right to go to Court. It only creates a check so that the Court may examine the bona fides of any claim before the opposite party is harassed. Such an Act was passed in England, has been applied in several cases to prevent an abuse of the process of Court. In its object, the Act promotes public good because it cannot be claimed that it is an inviolable right of any citizen to bring vexatious actions without control, either legislative or administrative. The Act subserves public interest and the restraint that it creates is designed to promote public good. The Act does not prevent a person declared to be habitual litigant from bringing genuine and bone fide actions. It only seeks to cut-short attempt to be vexatious. In our judgment, the Act cannot be described as unconstitutional or offending either Art 19 or Art 14”.

Madras Act 8/49 is confined to old geographical areas of AP, Kerala and Karnataka which were parts of Old Madras Province before the SR Act, 1956:

Another question that arose in P.H. Mawle vs. State of AP AIR 1965 SC 1827 referred to above was whether the High Court of Andhra Pradesh was right in applying the provisions of the Madras Act 1949 to the cities of Hyderabad and Secunderabad where the appellant was filing a number of cases. The Supreme Court, after referring to sections 65 and 119 of the States Re-organisation Act, 1956, held that the previous law in operation before 1.11.56 in the respective parts of the newly formed State of Andhra Pradesh was confined to the geographical limits in which it was operating

before 1.11.56 and could not be extended to other geographical areas of the new State of Andhra Pradesh unless this was done by the legislature of the newly formed State of Andhra Pradesh. The Madras Act, 1949 was, therefore, held not applicable to the cities of Hyderabad and Secunderabad, which were outside the territorial limits of the former State of Madras.

In the State of Kerala, a similar question arose in Advocate General vs. T.A. Rajendran 1988(1) KLT and in Jose vs. Madhu: 1994(1) KLT 855 and it was held that the Madras Act of 1949 was not applicable to the areas in the State of Kerala except in regard to the North Malabar area which was part of the composite State of Madras before 1.11.56.

Maharashtra Vexatious Litigation (Prevention) Act, 1971 is confined to the State of Maharashtra

This Act of 1971 is made applicable to fresh cases to be filed as well as to pending actions. It is otherwise on the same lines as the Madras Act of 1949. Under this Act, the Advocate General can apply for declaring the opposite party as a vexatious litigant, as per sec 2(j), but the applications have to be filed on the Appellate Side of the High Court (see Rule 7 of the Rules) and should be heard by a Division Bench of the Court and order of the Court should be published as prescribed in the Act (published in the Gazette) and be circulated to such courts as the High Court would order.

A person against whom an order under sec 2(i) was passed, could apply for leave to institute the either to the High Court (on the original side) or the High Court (on the appellate side) or to the District Judge or to the

Sessions Judge, as the case may be, while instituting or continuing civil or criminal proceedings. Unless the courts above referred to, granted permission for initiating or continuing the proceedings, the Court would not take up the action on adjudication.

Kerala

So far as the State of Kerala is concerned, only the old Malabar area was part of the former State of Madras before 1.11.56. As pointed while discussing the applicability of the Madras Act of 1949, the said Act was restricted in its territorial application only to the former State of Madras, here the North Malabar part of the new State of Kerala (which was formed on 1.11.56). It was held in Advocate General vs. T.A. Rajendran: 1988(1) KLT 305 and Jose vs. Madhu: 1494(1) KLT 855 that it was not applicable to other parts of the State of Kerala.

Therefore, the Kerala Law Reforms Committee has now recommended a legislation on the same lines as the Madras Act of 1949 to be made applicable to the entire State of Kerala. The Government brought forward the Bill titled ‘The Kerala Vexatious Litigation (Prevention) Bill, 2002’. It applies to civil, criminal or other proceedings.

Section 2 of the proposed Kerala Act permits the Advocate General to move the High Court to declare a person as a vexatious litigant if he is “habitually and without any reasonable ground” initiating vexatious proceedings of a civil, criminal or of other nature in any court or courts. The person has to obtain leave of the High Court if he is initiating a proceeding

in the High Court or of the District Court if he is initiating a proceeding in any other court. Section 6 requires the order to be published in the Gazette. Section 3 requires the person to obtain leave of the High Court (in Division Bench) or District Court, as the case may be, by establishing prima facie grounds. Section 4 provides for an appeal to the Division Bench of the High Court if the District Court refuses to grant permission to the vexatious litigant. Section 7 declares that the Madras Act, 1949 shall cease to apply to the Malabar District.

There are no such statutes in other States and that is the reason why we are now recommending that Parliament make a law on the lines of the Madras Act, 1949 and Maharashtra Act, 1971 so as to be applicable to all States and Union Territories.

Chapter III

Legislative competence of Parliament to enact the Vexatious Litigation (Prevention) Law.

We have pointed out that currently there are legislations made in the former State of Madras and in the State of Maharashtra on the subject of Prevention of Vexatious Litigation. There is also a Bill proposed in the State of Kerala.

The constitutional validity of the Madras Act of 1949 has been upheld by the Supreme Court in P.H. Mawle vs. State of A.P.: AIR 1965 SC 1827. We are of the view that there is a great need to have a law on the same subject for being applied to the whole of India, whereby a person can be declared by a Division Bench of the High Court as a vexatious litigant if he has been initiating vexatious litigation. In that event the Advocate General of the State or such other law officer to be notified by the concerned State or Union Territory could apply to the Division Bench of the High Court to declare the person as a vexatious litigant, have the order published in the Gazette and inform all the subordinate courts. Thereafter, he would not be allowed to file any civil or criminal cases or any other type of case in the High Court, except with the leave of the High Court or the District Court, as the case may be.

It is, therefore, proposed to recommend the bringing into force of a comprehensive legislation on prevention of vexatious litigation applicable to all the States and Union Territories.

We shall first examine the legislative competence of the Parliament to legislate on this subject of ‘vexatious litigation’.

As we shall presently show, Parliament has necessary powers to make a law on Prevention of Vexatious Litigation, applicable uniformly to all States and Union Territories.

In this context, it is well to remember that the Supreme Court in P.H. Mawle vs. State of AP: AIR 1965 SC 1827, dealing with the legislative competence of the then State Legislature of Madras under the Government of India Act, 1935 referred to Entry 2 of List II and Entries 2 and 4 of List III of the VII Schedule of that Act.

In the Government of India Act, 1935, these Entries read as follows:

“Entry 2 of List II: Jurisdiction and powers of all courts except the Federal Court, with respect to the matters in this List; procedure in Rend and Revenue Courts.”

“Entry 2 of List III: Criminal procedure, including all matters included in the criminal procedure at the date of the passing of this Act.”

“Entry 4 of List III: Civil procedure, including the law of Limitation and all matters included in the Code of Civil Procedure at the date of commencement of this Act; the recovery in a Chief Commissioner’s Province.”

The position under the Constitution of India, after the Constitution (42nd Amendment) Act, 1976 (w.e.f. 3.1.77) is as follows:

List III: Concurrent List

“Entry 2: Criminal procedures, including all matters included in the Code of Criminal Procedure at the commencement of the Constitution.

Entry 11A: Administration of justice; constitution and organization of all Courts, except the Supreme Court and the High court;

Entry 13 : Civil Procedure, including all matters included in the Code of Civil Procedure at the commencement of this Constitution, limitation and arbitration.’

Entry 46: Jurisdictions and powers of all courts, except the Supreme Court, with respect to any of the matter in this List.”

It is to be noted that under the 42nd Amendment the words in Entry 3 of List II of VII Schedule of the Constitution ‘Administration of justice, constitution and organization of all courts, except the Supreme Court and the High Courts’ have been transferred to Entry 11A of the Concurrent List.

On the basis of the reasoning of the Supreme Court in P.H. Mawle’s case holding in favour of the legislative power of the State Legislature of Madras under Entry 2 of List II, Entries 2 and 4 of List III of the Government of India Act, 1935, the position under the Constitution becomes clear.

Civil and Criminal Procedures continue, even under the Constitution of India in List III of VII Schedule, viz. Entry 2 and Entry 13. Further, the broad entry of 'Administration of Justice' which was in List II has been shifted into the List III as Entry 11A by the 42nd Amendment. Entry 46 of List III relates to jurisdiction and power of Courts (except Supreme Court). In view of these Entries, it is clear that on the very reasoning of the Supreme Court in P.H. Mawle, Parliament has ample power under Entries 2, 11A, 13 and 46 of List III to legislate on the subject of vexatious litigation, in both civil and criminal jurisdictions, in as much as these entries cover the same field as were covered by Entry 2 of List II and Entries 2 and 4 of List III of VII Schedule to the Government of India, Act, 1935. Thus there is no difficulty on the question of legislative competence of Parliament.

Chapter IV

Curbs on Vexatious Litigation in United Kingdom

In England, principles based on inherent power of Court to prevent abuse of process were coupled with legislation and rules to prevent frivolous and vexatious litigation. We shall refer to these developments and the recent case law on the subject wherein in some cases, after passing various restraint orders, the Court felt compelled even to restrict the litigant from entering the Royal Courts of Justice, under its inherent powers. The various steps which can finally lead to such orders, if need be, have to be carefully examined because the ‘right to access’ to courts is today recognized as a basic right. (See Ch. II of 189th Report).

1. The Grepe vs. Loam Order (1879): Leave of Court for future applications

The first step the Courts took under inherent powers goes back to 1879. An important principle was laid down in Grepe vs. Loam: (1879) 39 Ch. D. 168 and is still followed even now in the United Kingdom in recent cases. The head note in the above case reads thus:

“Repeated frivolous applications for the purpose of impeaching a judgment having been made by the same parties, the Court of Appeals made an order prohibiting any further application without leave of the Court.”

In that case the first of the actions resulted in a judgment dated 5th July 1879; the second action relating to the same property resulted in a judgment dated 6th June, 1882. Notice of appeal against this judgment was given by the infant defendants in 1883. The appeal was abandoned and by order dated 9th April, 1884, the costs of respondents were ordered to be paid by the next friend of appellants.

Thereafter in Nov. 1885, April 1886, June and July 1887, various applications were made, some to the trial court and some to the appellate court, seeking the setting aside of the judgment dated 6th June, 1882. All were dismissed with costs.

A fresh case was started on 27th Oct. 1887 to “arrest the minutes of judgment in the second case”. Lindley LJ after stating that he had recollection of a special type of order made in such cases earlier, passed the following order – which today is known as Grepe vs. Loam order:

“That the said applicants or any of them be not allowed to make any further applications in these actions or either of them to this Court or to the Court below without leave of this Court being first obtained. And if notice of any such applications shall be given without such leave being obtained, the Respondents shall not be required to appear upon such applications, and it shall be dismissed without being heard.”

2. Inherent powers: The Supreme Court Practice (UK) in its commentary under Order 18 Rule 19 refers to “inherent power” of Courts to stay or dismiss actions which are frivolous or vexatious. It states: (page 346)

“Apart from the rule, the Court has an inherent jurisdiction to stay or dismiss actions, and to strike out pleadings which are vexatious or frivolous, or in any way an abuse of the process of the Court, under which it could deal with all the cases included in this Rule (Reichel vs. Magrath (1889) 14. App.Cas 665.” Gleeson vs. J. Wippall & Co. Ltd.: 1977(1) WLR 510. It can stay or dismiss actions, before the hearing, which it holds to be frivolous or vexatious: Metropolitan Bank vs. Pooley (1885) 10 App les 210. This jurisdiction is not diminished by Order 18 Rule 19.

3. (UK) Order 18 Rule 19 (R.S.C.): Striking off frivolous or vexatious pleadings.

An order to strike off frivolous or vexatious pleadings can also be passed where pleadings contain such pleas. The relevant provision in UK is as follows:

“Order 18 Rule 19 (1) The Court may, at any stage of the proceedings, order to be struck out or amended any pleading or the endorsement of any writ in the actions, or anything in any pleading or in the endorsement, on the ground that –

- (a) it discloses no reasonable cause of action or defence, as the case may be; or

- (b) it is scandalous, frivolous or vexatious; or
- (c) it may prejudice, embarrass or delay the fair trial of the action;
or
- (d) it is otherwise an abuse of the process of the Court; and
may order the actions to be stayed or dismissed or judgment to
be entered accordingly, as the case may be.”

(2) No evidence shall be admissible on an application under para (1)(a)

(3) “

New Civil Procedure Rule 24.2 provides that the Court may give summary judgment in favour of the defendant if it considers that ‘the claimant has no real prospect of succeeding in the claim’.

There is considerable case law in UK under this Rule but we shall refer to a few of them relevant for the subject of ‘frivolous and vexatious’ actions.

The expression ‘frivolous or vexatious’ means cases which are ‘obviously’ frivolous or vexatious (Att. Gen of Duchy of Lancaster vs. L & N W Rly (1892)3 Ch 274 (277). The expression includes proceedings which are an abuse of the process: Ashmore vs. British Local Corp: (1990)(2) All ER 981 (CA).

UK Statutes to prevent ‘vexatious’ litigation in 1896, 1925 and 1981:

The earliest statute in UK was Act 16 and 17, vict. Ch 30 (1896) and was replaced by sec 51 of the Supreme Court of Judicature (Consolidation) Act, 1925 (15 & 16 Geo. V.C 49).

That has now been replaced by sec 42 of the Supreme Court Act, 1981. The 1981 Act is an improvement over the 1925 Act in several respects. In particular, by the 1985 Amendment, the Court can now pass a ‘civil proceedings order’ or a ‘criminal proceedings order’ or ‘all proceedings order’, as the case may be, and no appeal would be allowed from an order refusing leave. But, the Courts have said that the order under sec. 42 is the last of the various other options open to the Court before such an order is passed.

Section 42 (as amended by sec 24 of Prosecution of Offences Act, 1985), reads as follows:

“Section 42: If, on an application made by the Attorney General under this section, the High Court is satisfied that any person has habitually and persistently and without reasonable ground –

- (a) instituted vexatious civil proceedings, whether in the High Court or any inferior Court, and whether against the same persons or against different persons; or

- (b) made vexatious applications in any civil proceedings whether in the High Court or any inferior Court and whether instituted by him or another, or
- (c) instituted vexatious prosecutions (whether against the same person or different persons),

the Court may, after hearing that person or giving him an opportunity of being heard, make a civil proceedings order, a criminal proceedings order or an all proceedings order.

(1A) In the section, “civil proceedings order” means an order that

- (a) no civil proceedings shall, without the leave of the High Court, be instituted in any Court by the person against whom the order is made;
- (b) any civil proceedings instituted by him in any Court before the making of the order shall not be continued by him without the leave of the High Court; and
- (c) no application (other than the one for leave under this suitor) shall be made by him, in any civil proceedings instituted in any court by any person without leave of the High Court;

“Criminal proceedings order” means an order that

- (a) no information shall be laid before a justice of the peace by the person again whom the order is made without leave of the High Court; and

(b) no application for leave to prefer a bill of indictment shall be made by him without the leave of the High Court; and “all proceedings order” means an order which has the combined effect of the two other orders.

- (2) An order under sub section (1) may provide that it shall cease to have effect at the end of a specified period, but shall otherwise remain in force indefinitely.
- (3) Leave for institution or continuance of, or for the making an application in, any civil proceedings by a person who is the subject of an order for the time being in force under sub section (1), shall not be given unless the High Court is satisfied that the proceedings or applications are not an abuse of process of the Court in question and that there are reasonable grounds for the proceedings or application.
- (3A) Leave for the laying of an information or for an application for leave to prefer a bill of indictment by a person who is the subject of an order for the time being in force under subsection (1), shall not be given unless the High Court is satisfied that the institution of the prosecution is not an abuse of the criminal process and that there are reasonable grounds for the institution of the prosecution by the applicant.
- (4) No appeal shall lie from a decision of the High Court refusing leave required by virtue of this section.
- (5) A copy of any order under sub section (1) shall be published in the London Gazette.”

What is meant by the words ‘habitually and persistently’:

Lord Bingham explained in Attorney General vs. Banker: 2000(1) FLR 759 the meaning of the words ‘habitually and persistently’ (para 22) in sec. 42(1) as follows:

“The hallmark usually is that the plaintiff sues the same party repeatedly in reliance on essentially the same cause of action, perhaps with minor variations, after it has been ruled upon, thereby imposing on defendants the burden of revisiting claim after claim; that the claimant relies on essentially the same cause of action, perhaps with minor variations, after it has been ruled upon, in actions against successive parties who, if they were to be sued at all shall be joined in the same action; that the claimant automatically challenges every adverse decision on appeal, and that the claimant refuses to take any notice of or give effect to order of the Court. The essential vice of habitual and persistent litigation is keeping on and on litigating where earlier litigation has been unsuccessful and where on any rational and objective assessment the time has come to stop.”

Human Rights and Prevention of Vexatious Litigation:

We shall next refer to the rulings in UK and the European Court of Human Rights where such prevention has been held not to violate the right to access to justice as described in Art 6 of the European Convention.

Question has arisen in UK whether the provisions preventing or rather regulating vexatious litigation offends Art 6 of the European Convention.

European Commission on UK Act:

Art 6 of the European Convention guarantees a right to expeditious determination of rights and obligations by an impartial and independent judicial body. Question has arisen whether a provision like sec. 42 of the Supreme Court Act 1981 is in violation of the Convention. In Golder vs. United Kingdom: 1975(1) EHRR. 524, the European Commission on Human Rights observed, in the course of a general survey of the subject, that in the case of the United Kingdom, the provisions relating to curbing vexatious litigation do not violate the citizens' right to 'access to the Courts'. It said:

“Vexatious litigants in the United Kingdom are persons whom the Courts treat specially because they have abused their right to access. But, having been declared a vexatious litigant, it is open to a person to prove to the Court that he has sustainable cause of action and he will then be allowed to proceed. The control of vexatious litigants is entirely in the hands of the Courts Such control must be considered an acceptable form of judicial proceedings.”

The Commission also held in Ashingdane vs. UK (1985) 7 EHRR 528 that the right of access to courts is not absolute. In. Application 11559 of 1985, H Vs. UK (1985) (45 D&R 281), the applicant challenged the provisions of the vexatious Actions (Scot Law) Act, 1898. Declaring the application inadmissible, the Commission relied upon Golder and Ashingdane and on the validity of the provision requiring leave of Court, and observed (p 285):

“The vexatious litigation order did not limit the applicants’ access to court completely, but provided for a review of a senior Judge of any case the applicant wished to bring. The Commission considers that such a review is not such as to deny the essence of the right of access to court, indeed some form of regulation of a access to court is necessary in the interests of the proper administration of justice and must therefore, be regarded as a legitimate aim.”

Three Human Rights cases – Ebert, Mathews and Bhamjee

Chadwick and Buxton JJ in Ebert vs. Official Receiver 2001(3) ALL ER 942 (CA) decided a typical case in the Court of Appeal. They said, advertng to the decisions of the European Court and the provisions requiring leave of court in sec 42 of the 1981 Act, as follows:

“The detailed and elaborate procedures operated under section 42 of the 1981 Act respect the important ECHR values that procedures relating to the assertion of rights should be under judicial rather than administrative control; that an order inhibiting a citizen’s freedom should not be made without detailed inquiry; that the citizen should be able to revisit the issue in the context of new facts and of new complaints that he wishes to make; and that each step should be the subject of a separate judicial decision. The procedures also respect proportionality in the general access to public resources, in that they seek to prevent the monopolization of court services by a few litigants; our aim, and the national arrangements to implement it, that the

Strasbourg organs, applying the doctrine of merging of applications, are likely to respect”.

The Judges also pointed out that in H M Attorney General vs. Mathews (The Times, 2 March 2001), the Divisional Court had also held that the procedure leading to an order under sec 42 was in conformity with the requirements of Art 6 of the European Convention.

In Bhamjee vs. David Fordstick: 2004 (1) WLR 88, the Master of Rolls, Lord Phillips (speaking for himself, Brooke and Dyson JJ) explained the law on the subject exhaustively.

He first referred to Ebert vs. Official Receiver 2001 EWCA Liv 340 (2002 (1) WLR 32) (25th July 2003) where the Court held that sec 42 was convention compliant. The learned Judge referred to the observations of Lord Woolf in Ebert vs. Venvil 1999(3) WLR 670 to a similar effect. The cases under the Strasbourg jurisprudence in Golder vs. UK (A/18) 1 EHRR 524; Ashingdane vs. UK (A/93)(1985) 7 EHRR 528; Tolstoy – Miloslavask vs UK (A/323)(1995) 20 EHRR 442 were referred to for the principle that a court might regulate the access to justice in such a way that its processes are not abused.

According to Lord Phillips, access to justice could be limited if two conditions were satisfied:

- (i) that the limitations applied do not restrict or reduce the access left to the individual in such a way or to such an extent that the very essence of the right is impaired;
- (ii) that a restriction must pursue a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the aim sought to be achieved.

It was pointed out that H vs. UK (1985) 45 D&R 281 of the European Commission (already referred) upheld an order under the Vexatious Actions (Scotland) Act, 1898 restraining a vexatious litigant from bringing an action pursuant to an earlier order under the said Act.

Lord Phillips summarized the position under the following headings:

(i) Protective measures Strasbourg Jurisprudence; (ii) Protective measures, Grepe vs. Loam; (iii) An extended Grepe vs. Loam order as passed by Neuberger J approved by the Court of Appeal in Ebert vs. Vervil 1999(3) WLR 670; (iv) Protective measures under sec 42; (v) Exceptional orders in Att Gen vs. Ebert 2002(2) All ER 789; (vi) restraining the litigant from entering the Royal Courts or from interfering with the Court or its staff, and (vii) only paper procedure (i.e. no oral hearing) as in Taylor Landrena (2000) QB 528.

An extended Grepe vs. Loam order (extended civil restraint order) is one as passed in Ebert vs. Vervil, where the Court of Appeal restrained all such activity by the person before the Court of Appeal, or in any Division of the High Court or in any county Court. A High Court may make a similar order in respect of any Division of the High Court or County Court. At the

Country Court level, it could be done by a designated Judge. Lord Phillips summarized the law as follows: (para 33)

“It is, therefore, well established on authority that

- (i) This Court, like any Court, has an inherent jurisdiction to protect its process from abuse;
- (ii) The categories of abuse will never be closed;
- (iii) No litigant has any substantive right to trouble the Court with litigation which represents an abuse of its process;
- (iv) So long as the very essence of a litigant’s right to access the Court is not extinguished, a Court has a right to regulate its processes as it thinks fit (absent any statute or rule or practice direction to the contrary effect) as its remedies are proportionate to the identified abuse (whether it is existing or threatened);
- (v) One way in which a Court may legitimately regulate its processes is by directing that the procedure be conducted in writing (rather than by giving an oral hearing).

So far as the last of these matters is concerned, if a litigant persistently makes applications or institutes actions that are devoid of merit, then by his conduct, he will be disentitled to the hearing that would otherwise be available as of right. We know of no reasonable suggestion that the equivalent procedures in the House of Lords... or the European Court of Human Rights itself, are not ECHR compliant.”

Human Rights and restricting an existing right of appeal (ECHR and UK):

This question of giving a right to appeal arises because several statutes debar an appeal against an order declaring a person as a vexatious litigant. Or where leave is refused for filing fresh actions.

In Bhamjee vs. David Fordstick 2000(1) WLR 88, Lord Phillips referred to the Strasbourg principles in Belgian Linguistics case 1 EHRR 252, (283)(Para 9) where it was held that Art 6 did not guarantee a right of appeal but that where it was granted there should be no discrimination unless there was legitimate reason. The European Court had observed in that case as follows:

“Art 6 of the Convention does not compel States to institute a system of appeal courts. A State which does set up such courts consequently goes beyond its obligations under Article 6. However, it would violate that Article, read in conjunction with Art 14, were it to debar certain persons from these remedies without a legitimate reason while making them available to others in respect of the same type of actions.”

Lord Phillips said that where a litigant can be shown to have persistently abused the processes of the court by making applications and instituting proceedings which have been adjudged to be totally devoid of merit, despite earlier restraints, this is a legitimate reason why the time should come when he is limited to one chance of showing that the new action he wishes to bring, or the new application he wishes to make, is not totally devoid of merit. If it arguably has merit, then of course, it should be

permitted to proceed in the usual way. Such a procedure of giving only one chance and not allowing a second chance in appeal is valid. In Ebert vs. Official Receiver 2001 EWCA (civ) 340: 2002(1) LR 320 (CA) the court held that the equivalent statutory procedure in sec 42(4) of the 1981 Act was convention compliant. Compare the approval of the European Commission on Human Rights in H vs. K (1985) 45 D&R 281, which Buxton LJ cites in para 8 of the judgment in Ebert vs. Official Receiver".

Lord Phillips then referred to the situations in which an appeal could be foreclosed by judicial order (under section 42(4) refusing leave to appeal) He said:

"If a litigant subject to an extended civil restraint order or a general civil restraint order, continues to make the requisite applications pursuant to that order which are customarily dismissed on the grounds that they are totally devoid of merit, a Judge may, if he thinks fit, direct that if any further application is dismissed on the same grounds, the decision will be final.... Thereafter the appeal court will have no jurisdiction to grant permission to appeal against any subsequent refusal of permission..."

Such restrictions will be Strasbourg compliant, Lord Phillips held.

(i) Ebert Series of cases:

We shall now refer to the Ebert series of cases leading to the applicant being banned from entry into Royal Courts for three years. The cases decided at different stages are also reported judgments.

Mr. Ebert was adjudicated bankrupt on 22nd July 1997. Since then he directed himself, with great energy, to get the order annulled or to show, by collateral litigation that he was a victim of conspiracy.

(i) As his repeated applications in regard to the same subject were vexatious, the Court initially passed a Grepe vs. Loam order asking him to obtain leave before filing a new action. These orders were upheld by the Court of Appeal on 30th March 1999 (see Ebert vs. Venvil: 1999(3) WLR 670 (Lord Woolf, Otton & Aldous JJ. Fresh applications for leave were refused by Neuberger J and they were rejected on 26.8.99 (Ebert vs. Midland Bank PLC: 1999 EWCA (civ) 2108).

(ii) It was at that stage that the Attorney General applied and the Court felt compelled to pass a sec 42 order. Lewis and Silbert JJ in HM Attorney General vs. Ebert 2000 EWHC Adnil 286 (7th July, 2000) passed orders under sec 42 of the Supreme Court Act, declaring Mr. Ebert as a vexatious litigant. A long series of vexatious cases initiated by Mr. Elbert were listed out and an order was passed declaring him as a vexatious litigant and requiring him to obtain prior leave for all future actions. (The oral arguments which are also reported show how vexatious Mr. Ebert was).

(iii) Then in Ebert vs. Official Receiver 2001 EWCA (Liv) 209 (15.2.2001), two applications for leave to file appeal were rejected. The

Court observed that the patience with which Neuberger J dealt with a series of applications of Ebert was fair and open-minded. The Court of Appeal heard and refused leave.

(iv) Yet another application for leave to appeal was rejected by the Court of Appeal in Ebert vs. Official Receiver: (2001) EWCA (Liv) 305 (20th Feb. 2001).

(v) The human rights angle was gone into in Ebert vs. Official Receiver: 2001 EWCA (Liv) 340 and it was held that sec 42 of the Supreme Court Act, 1981 did not violate the right to access to courts and fair trial under Art 6 of the Human Rights Convention.

(vi) Thereafter, an order of considerable rarity was passed on 21 Sep. 2001 in Attorney General vs. Ebert: 2002(2) All ER 789, by Brooke and Harrison JJ under inherent powers restraining Ebert from entering the Royal Courts of Justice without permission. It was directed as follows:

“The Court’s supervising role extended beyond the mere regulation of litigation and of litigants who had submitted themselves to the compulsory jurisdiction of the Court, and included the regulation of the manner in which the Court process could, in general, be utilized. in the exercise of inherent jurisdiction, the court had the power to restrain litigants from wasting the time of court staff and disturbing the orderly conduct of Court processes in a completely obsessive pursuit of their own litigation, taking it forward by one unmeritorious

application after another and insisting that they should be afforded priority over other litigants.”

Holding that the Grepe vs. Loam orders and sec 42 were not sufficient, the Court held that a separate order was necessary to prevent Ebert from disturbing the conduct of court business. It said:

“In the light of past conduct, there was no reason why Ebert should be permitted to enter any part of the Royal Courts of Justice except to the extent allowed for, in the injunction that would be granted. That injunction would be limited to three years in the first instance. An order limited in time would be a proportionate response to the nuisance of which the Attorney-General made complaint.”

As for precedents the Court referred to Ex p Leachman (16th Jan 1998) where Simon Borph LJ had directed that the litigant in that case should stop writing letters to the staff for his case hearings and should write only to a designated officer. In Binder vs. Binder (2000 CA) (9th March, 2000), orders were passed protecting Court staff from harassment. Declaring a person as a vexatious litigant was different from protecting the integrity of court proceedings and protection of court staff. On facts, it was held that an injunction for 3 years would be proportionate to the occasion.

(vii) Finally, Kennedy & Treacy JJ in Attorney General vs. Ebert: 2004 EWHC 1838 (Adm) allowed a further application by the Attorney General to restrain Mr. Ebert from switching his activities to the criminal courts. An application was filed by the Attorney General under sec 42 of Supreme Court

Act, 1981 and was allowed as Mr. Ebert had started vexatious prosecutions too. The Court passed a “Criminal Proceedings Order” of indefinite duration.

(ii) Bhamjee series:

Ismail Abdullah Bhamjee cases: This was another vexatious litigant in UK whose cases are widely reported. These cases involving Bhamjee are similar to those relating to Mr. Elbert.

(i) In Bhamjee vs. Fordstick (2003) EWCA 799 Brooke and Carnworth JJ (14th May 2003) were dealing with nine applications by Mr. Bhamjee including the one for permission to appeal for an extension of time within which to appeal against an order made by Park J on 27th Jan 2003 in relation to these cases filed by Mr. Bhamjee. The history of Bhamjee litigation which started in Dec 99 was referred to. The dispute was with regard to orders of the planning department refusing permission to allow him to use his rear yard for car-washing; against the insurance company, Secretary of State, five barristers, etc.

The court referred to statistics of increase in cases relating to vexatious litigation coming before the courts filed with court fee exemption, as follows (para 23)”

“Mr. Bhamjee is not alone in making persistent applications to this court with the benefit of court fee exemptions. The court has been handed a report by the Civil Appeals Office which identifies the litigants in person by a letter. A litigant I will call “A” has made 23

applications in the period since 1 January 2000. All of them have been unsuccessful, all of these have been with benefit of fees exemption. Litigant 'B' has made 28 applications, 23 unsuccessful, 3 undetermined, all with the benefit of fee exemption. Litigant 'C' has made 12 applications, 11 of them unsuccessful, 1 undetermined and all 12 with benefit of fee exemption. Litigant 'D' has made 31 applications, 31 unsuccessful, 30 with the benefit of fee exemption. Litigant 'E' has made 15 applications, one of them successful, 13 unsuccessful, one undetermined, all with the benefit of fee exemption. Litigant 'F' has made 47 applications, one of them successful, 28 unsuccessful, 18 undetermined, with fee exemption 40 times. Litigant 'G' has made 22 applications, 19 unsuccessful, three undetermined, with a fee exemption on each occasion.”

Parliament altered the Access to Justice Act 1999 (which relates to legal aid) with express purpose, as explained in Tanfern Ltd vs. Cameron – MacDonald: 2000(1) WLR 1311 (1319-20) of the need for preserving the resources of the Court – namely skilled Judges, lawyers and staff. The Court observed: (para 26)

“two Deputy Masters of the Court have to spend two hours each day on Registry work determining and dealing with appellants’ notices.”

Such applications have been increasing and totalled 200 in a year as stated in Matlaszek vs. Bloom Comillan: 2003 EWCA (Civ) 154. The Court of Appeal then passed a restraint order against Bhamje as follows:

“I would order stay on all his current applications to this Court and any applications he may lodge in future with the court until that further hearing takes place.”

While dismissing the three applications filed by Bhamjee for leave and directing as above, the learned Judges Brooke and Carnworth directed that the case be further referred to three Judges for deciding whether any other sort of injunction should be issued to control Mr. Bhamjee’s future activities.”

(ii) Bhamjee vs. Forsdick: 2004(1) WLR 88(CA) (25th July, 2003)

This case came before three Judges as directed in the last Judgment. We have already referred to this judgment by Lord Phillips MR and two other learned Judges in extenso. Here we shall refer to the factual part of the case and to other aspects.

In this case, the Court of Appeal passed an order, in addition to those passed earlier, namely an ‘extended civil restraint order, on an application by five Barristers, whom Bhamjee had impleaded as respondents. Their only fault was that they represented the opposite party successfully in the earlier stages of the litigation.

After referring to the historical development of the ‘inherent’ power jurisdiction to curb vexatious actions which amounted to abuse of the process of the Court (vide Cocker vs. Tempest (1840-41) 7 M&W 501, Connelly vs. DPP 1964 A.C 1254, Bremcu Vulcan etc. vs. South India

Shipping Corpn. 1891 AC 909, Taylor vs. Lawrence 2002(3) WLR 640), the Court referred to the statement of Brooke J in AB and others vs. John Wyeth & Brother Ltd. 1997(8) Med L.R 57 to the effect that the identification of the classes of vexatious litigation is never closed. He referred to Taylor vs. Lawrence 2003 QB 528 wherein it was held that it was open to the court, under its inherent power, to re-open an earlier decision of the Court. The Court of Appeal advocated to the step by step proceedings in paras 38, 39-40, 41-42, 43-47. 48-51 – and these were summarized again in para 53. These final guidelines can be briefly stated as follows:

- (a) initially, an order could be passed under CRP 3.3 striking out the action or applications, on the Courts own initiative, if it appears to be totally devoid of merit.
- (b) then, if number of applications were dismissed as being without merit, an order called the Grepe vs. Loam order could be passed that no further applications in those proceedings without first obtaining leave of the Court be filed. If no such leave is sought for, such fresh applications could be dismissed.
- (c) If, there is persistent vexatious behaviour, a Judge of the Court of Appeal or High Court or a designated Civil Judge in the County Court should consider whether ‘an extended civil restraint order’ could be passed to be in force for a period of 2 years, restraining him from instituting proceedings or making applications in the Courts identified in the order or concerning any matters involving or relating to or touching upon or leading to proceedings in which it is made without permission of a Judge identified in the order.

Any application should be made on paper and will be dealt with on paper.

- (d) If such an order as stated in cl (c) is not found effective, a Judge of the High Court or a designated Civil Judge in the County Court should consider whether the time has come to make a 'general civil restraint order' against him. Such an order will have the same effect as an extended civil restraint order except that it will cover all proceedings or applications in the High Court, or in the identified county court, and as the case may be,- where the relief is claimed in a disguised fashion with a view to contend that it is not covered by the order in cl (c) above. This could be for a period of 2 years.
- (e) If such an 'extended civil restraint order' or a 'general civil restraint order' are not effective, and he is still moving applications which are rejected as devoid of merit, the High Court or the identified County Court may consider whether it is appropriate to make any subsequent refusals of permission 'final'. Thereafter, any subsequent refusal of permission – on the ground of the proceedings or application being devoid of merit – will not be applicable unless the Judge who refuses permission himself grants permission for appeal. These are under inherent powers.
- (f) The other party may indeed apply for the passing of any such orders as stated above.
- (g) Finally, the Attorney General could move for a sec 42 order to declare him as a vexatious litigant, get it published in Gazette. Thereafter sec 42 order will govern.

After laying down the above guidelines, the Court of Appeal referred to the plea of the five Barristers. The Court held that the application of Mr. Bhamjee for action against the lawyers for allegedly misleading the Court was 'totally devoid of merit'. The Court heard the counsel appearing for the Barristers and Mr. Bhamjee. It was shocking that Mr. Bhamjee, instead of trying to sustain his plea against the five Barristers, threatened to file cases against the counsel who were appearing for these Barristers. The Court thus said it was a fit case for 'an extended civil restraint order'. It gave seven directions:

- (1) For two years, claimant shall not make any further application or take steps in the Court of Appeal, High Court or District Registry or County Court against these five Barristers and/or their representative in or out of or concerning any matters involving or relating to or touching upon or leading to these proceedings, without permission as stated in para (2),.
- (2) He will apply to Master Bowman for permission to initiate them and it will be dealt with on paper alone.
- (3) If he wishes to appeal against the decision of the Bowman, he must seek permission from (a) Master Bowman, and thereafter (b) from Park J, by following same procedure and if they refuse leave, no application for leave will lie to the Court of Appeal.
- (4) Any amendment or discharge of this order could be made only by Park J, after initially writing to Master Bowman. Disposal will be on paper alone.

- (5) Anything done by Mr. Bhamjee against the five Barristers can be ignored by them.
- (6) Mr. Bhamjee is not to apply before Master Bowman under para (2) or seek permission to appeal as per para (3), without giving notice Barlow Lydl & Gilbert, six clear days in advance.
- (7) If Master Bowman and/or Park J are not available for some reason, another Master and/or Judge may be assigned by the Vice-Chancellor
- (8) A penal notice should be incorporated
- (9) The above order will remain until an order is made under sec 42 and an order is passed under that section,- unlimited in time.

These various steps were referred to in order that the procedure did not contravene the principle of ‘access to justice’ contained in Art 6 of the Convention.

(iii) Alexander case:

HM Attorney General vs. Anthony Alexander: 2003 EWHC (Admn) 3076.

This was an application filed under sec 42 of the Supreme Court Act, 1981 by the Attorney General after Mr. Alexander went on filing repeated applications on the same subject without end even after Grepe vs. Loam orders were passed. In para 42, Maurice Kay Mackay JJ observed:

“It comes as no-surprise, against all this, to be told by Mr. Alexander, as we have been today, that he has attended over 750 hearings in this

building and has appeared before 50 High Court Judges and 29 Lord Justices on Appeal.”

Brooke LJ had described that Mr. Alexander was “a menace..... to the proper administration of Justice”.

The Court of Appeal then passed an order under sec 42 without limitation of time.

(4) John Pepin case: In H.M. Attorney General vs. John Pepin: 2004 EWHC 1246 (Admn) the learned Judges, after referring to the innumerable cases filed by Mr. Pepin held that only one specified case against Mr. P.C. Walls was to be continued but that all the other options referred to in Bhamjee’s case are otherwise not suitable at this stage and the only order should be a civil proceedings order, under sec 42(1A) (a), (b) and (c) without limit of time; and the grant of permission to continue the particular proceeding against Mr. P.C. Walls is conditional on a senior counsel certifying and agreeing to argue the case. In respect of all others, his remedy is to seek permission under sec 42.

Conclusion: The above case law and statute of 1981 in UK (as amended in 1985) shows the care with which even vexatious litigants are dealt with after the Courts were required to apply Art 6 of the European Convention. Various steps have to be taken in UK as stated by Lord Phillips in Bhamjee’s case and it is only, as a last resort that section 42 orders can be passed. These cases are certainly good guidance before any order could be passed under the legislation proposed in this Report.

Chapter V

Curbs on vexatious litigation – USA

We have selected statutes of a few States in USA, which are intended to prevent vexatious litigation, with a view to understand the general nature of such statutes in different States in USA.

In USA, there are provisions made requiring surety, or requiring prior leave of Court, or for taking action for contempt of Court, if action is filed disobeying the earlier orders requiring leave.

The statutes also provide for grant of stay pending the furnishing security or the decision on the question whether a person is to be declared a vexatious litigant.

The statutes also require that at least five cases on the subject must have been lost by the litigant in the preceding seven years.

California

In the State of California, provisions of sec 39 of the Code of Civil Procedure refer to ‘vexatious’ litigation.

Section 391(a) defines ‘litigation’ as civil litigation commenced in a State or federal Court. Clause (b) defines vexatious litigant as follows:

“(b) ‘Vexatious Litigant’ means a person who does any of the :
following:

(1) In the immediately preceding seven-year period, has commenced, prosecuted, or maintained in propria persona at least five litigations other than in a Small Claims Court that have been

(i) finally determined adversely to the person, or

(ii) unjustifiably permitted to remain pending at least two years without having been brought to trial or hearing.

(2) After a litigation has been finally determined against the person, repeatedly re-litigates or attempts to litigate, in propria persona, either

(i) the validity of the determination against the same defendant or defendants as to whom the litigation was finally determined, or

(ii) the cause of action, claim, controversy, or any of the issues of fact or law, determined or concluded by the final determination against the same defendant or defendants as to whom the litigation was finally determined.

(3) In any litigation while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay.

(4) Has previously been declared to be a vexatious litigant by any State or federal Court of record in any action or proceeding based upon the same or substantially similar facts, transaction, or occurrence.

Section 391(c) defines ‘security’ as an undertaking to assure payment which may be reasonably incurred by the opposite party. Section 3(d) defines ‘plaintiff’ and sec 391(e) defines ‘defendant’.

Section 391.1 permits a defendant to move the Court for an order requiring the plaintiff to furnish ‘security’ on the ground that plaintiff is a vexatious litigant and that there is not a reasonable probability that he will prevail in the litigation against the moving defendant.

Section 391.2 provides that, at the hearing upon such motion, the Court shall consider such evidence, oral or written, by witnesses or affidavit, as may be material to the ground of the motion. No determination made by the Court in determining or ruling the motion shall be or be deemed to be a determination of any issue in the litigation or of the merits thereof.

Section 391.3 states that if, after such hearing, the Court determines that the plaintiff is a vexatious litigant and that there is no reasonable probability that the plaintiff will prevail in the litigation against the moving defendant, the Court shall order the plaintiff to furnish, for the benefit of the moving defendant, security in such amount and within such time as the Court shall fix.

Section 391.4 states that if security is not furnished, the litigation shall be dismissed as regards the moving defendant for whose benefit the security was ordered.

Section 391.6 provides for stay of the litigation till the above procedure is followed.

Section 391.7(a) says that, in addition to any other ruling provided in this title, the Court may, on its own motion or the motion of any party, enter

a pre-filing order which prohibits the vexatious litigant from filing any new litigation in the Court of the State in propria persona without first obtaining leave of the presiding Judges of the Court where the litigation is proposed to be filed. Disobedience of the order by a vexatious litigant may be punished as a contempt of court.

Section 391.7(b) states that the presiding Judge shall permit the filing of that litigation only if it appears that the litigation has merit and has not been filed for the purposes of harassment or delay. The presiding Judge may condition the filing of the litigation upon the furnishing of securities for the benefit of the defendants as provided in sec 391.3.

Section 391.7© states that the clerk may not file any litigation presented by a vexatious litigant subject to a pre-filing order, unless the vexatious litigant first obtains an order from the presiding Judge permitting the filing. If the clerk mistakenly files the litigation without the order, any party may file with the clerk and serve on the plaintiff and other parties, a notice stating that the plaintiff is a vexatious litigant subject to a pre-filing order set forth in sub clause (a). The filing of the notice shall automatically stay the litigation. The litigation shall be automatically dismissed unless the plaintiff, within 10 days of the filing of that notice, obtains an order from the presiding Judge permitting the filing of the litigation as set forth in sub clause (b). If the presiding Judge issues an order permitting the filing, the stay of the litigation shall remain in effect, and the defendants need not plead, until 10 days after the defendants are served with a copy of the order.

Section 371.7(d) states that ‘for the purposes of this section, ‘litigation’ includes any petition, application, or motion other than a discovery motion, in a proceeding under the Family Code or Probate Code, for any order.

Section 371.7(e) states that the clerk of the Court shall provide the Judicial Council, a copy of any pre-filing orders issued pursuant to sub division (a). The Judicial Council shall maintain a record of vexatious litigants subject to those pre-filing orders and shall annually disseminate a list of those persons to the clerks of the Courts of ‘this’ State.

Texas

The Civil Practice and Remedies Code, deals with ‘vexatious litigant’ in Chapter 11.

Section 11.001(1) defines defendant, clause (2) defines ‘litigation’; clause (3) defines ‘Local Administrative Judge’; Clause (4) defines ‘moving defendant’; clause (5) defines ‘plaintiff’.

Section 11.051 refers to ‘Motion for determining plaintiff a vexatious litigant and requesting security. It states that in a litigation in the State, the defendant may, on or before the 90th day after the date the defendant files the original answer or makes a special appearance, move the Court for an order:

- (1) determining the plaintiff is a vexatious litigant; and
- (2) requiring the plaintiff to furnish security.

Section 11.052(a), refers to ‘stay of proceeding on filing of motion. It states that on the filing of a motion under sec 11.051 the litigation is stayed and moving defendant is not required to plead:

- (1) if the motion is denied, before the 10th day after the date it is denied; or

- (2) if the motion is granted, before the 10th day after the date the moving defendant receives notice that the plaintiff has furnished the required security.

Section 11.052(b) states that on the filing of a motion under sec 11.051, on or after the date the trial starts, the litigation is stayed for a period the Court determines.

Section 11.053 refers to the hearing where evidence is taken orally or by affidavit. It reads as follows:

“Section 11.054: Criterion for finding plaintiff a vexatious litigant: It states that a Court may find a plaintiff a vexatious litigant if the defendant shows that there is not a reasonable probability that the plaintiff will prevail in the litigation against the defendant and that:

- (1) the plaintiff, in the seven year period immediately preceding the date the defendant makes the motion under sec. 11.051, has commenced, prosecuted, or maintained in propria persona, at least five litigations other than in a small claims court that have been

- (A) finally determined adversely to the plaintiff;
- (B) permitted to remain pending at least two years without having been brought to trial or hearing; or
- (C) determined by a trial or appellate court to be frivolous or groundless under the state or federal laws or rules of precedence.

- (2) After a litigation has been finally determined against the plaintiff, the plaintiff repeatedly re-litigates or attempts to re-litigate, in propria persona, either:

- (A) the validity of the determination against the same defendant as to whom the litigation was finally determined; or
 - (B) the cause of action, claim, controversy or any of the issues of fact or law determined or concluded by the final determination against the same defendant as to whom the litigation was finally determined; or
- (3) the plaintiff has previously been declared to be a vexatious litigant by a state or federal court in an action or proceeding based on the same or substantially similar facts, transaction, or occurrence.”

Section 11.055 refers to the court ordering ‘security’ and sec 11.056 to the dismissal for failure to furnish security.

Section 11.057 refers to dismissal on merits and says that if the litigation is dismissed on merits, the moving defendant can have recourse to the security furnished by the plaintiff in an amount determined by the Court.

Then comes the procedure for ‘prohibiting filing of new litigation’. This is stated in sec 11.101. It provides for punishment for contempt also. It reads as follows:

“Section 11.101 Prefiling order: contempt:

(a) A court may, on its own motion or the motion of any party, enter an order prohibiting a person from filing, in propria persona, a new litigation in a Court in this State, if the Court finds, after notice and hearing as provided by sub chapter B, that:

- (1) the person is a vexatious litigant; and
- (2) the local Administrative Judged of the Court in which the person intends to file the litigation has not granted

permission to the person under sec 11.102 to file the litigation.

(b) A person who disobeys an order under sub section (a) is subject to contempt of Court”

Section 11.102 mentions when permission may be granted by the Judge. It states:

“Section 11.102: Permission by Local Administrative Judge

(a) A local Administrative Judge may grant permission to a person found to be a vexatious litigant under sec 11.101 to file a litigation only if it appears to the Judge that the litigation;

(1) has merit; or

(2) has not been filed for the purpose of harassment or delay.

(b) The local Administrative Judge may condition permission on the furnishing of security for the benefit of the defendant as provided in sub Chapter B.”

Section 11.103 refers to ‘Duties of Clerk: mistaken filing’ which is on the same lines as in the California statute.

Section 11.104 refers to notice to office of Court Administrator and dissemination of list of vexatious litigants to the clerks of the Courts of the State.

It will be seen that the peculiarity of the statutes in US is to combine a provision for ordering security from the plaintiff, in addition to declaring him as a vexatious litigant. The statute gives a detailed definition of a vexatious litigant, unlike the general provision under the UK Act of 1981.

Another feature is about stay of proceedings. The statutes provide for dismissal of the litigation if security ordered is not furnished. They also provide for dismissal of case on merits. If the plaintiff who has been declared a vexatious litigant and has been required to obtain prior permission from a Judge before filing a fresh action, disobeys it and files a case without such permission, he can be punished for contempt of Court. Though the order declaring a person a 'vexatious litigant' is circulated to other Courts, it is possible that by mistake or oversight, the court staff registers a fresh case filed by him without his obtaining prior permission, the said mistake can be rectified and the plaintiff be required to obtain permission, staying the matter. The US statutes also provide recognition of an order passed by Court in another State, declaring a person as a vexatious litigant. These are the special features of the laws relating to vexatious litigation in the States in USA.

Chapter VI

Curbs on Vexatious Litigation in Australia and New Zealand

In this Chapter, we shall refer to the efforts made in Australia and New Zealand to prevent vexatious litigation.

Australia

In Australia, the High Court Rules of 1952 have a provision in Rule 63.6 to the following effect:

“Rule 63.6: Vexatious proceedings:

- (1) Upon the application of a Law Officer, or the Australian Government Solicitor or of the Principal Registrar of the Court, the Court or a Justice, if satisfied that a person, or another person in concert with that person, frequently and without reasonable ground has instituted vexatious legal proceedings, may, after hearing that person or that other person or giving him an opportunity of being heard, order that he shall not, without the leave of the Court or a Justice, begin any action, appeal or other proceeding in the Court.
- (2) Leave shall not be given under this rule unless the Court or a Justice is satisfied that the proceedings are not an abuse of the

process of the Court and that there is prima facie ground for the proceedings.”

Western Australia

In Western Australia, they have the ‘Vexatious Proceedings Restriction Act, 2002’. It contains 13 sections and a Schedule.

Section 3 defines ‘Court’ as meaning the Supreme Court or a Judge of the State Supreme Court, the District Court, or a District Judge.

Section 3 also defines the words ‘institute proceedings’ as including:

- “(a) in the case of civil proceedings, the taking of a step or the making of an application which may be necessary in a particular case before proceedings can be commenced against a party;
- (b) in the case of proceedings before a tribunal, the taking of a step or the making of an application which may be necessary in a particular case before proceedings can be commenced before the tribunal;
- (c) in the case of criminal proceedings, the commencement of ‘prosecution’ or the obtaining of a warrant for the arrest of an alleged offender; and
- (d) in the case of civil or criminal proceedings, or proceedings before a tribunal, the taking of a step or the making of an application which may be necessary to commence an appeal in relation to the proceedings or to a decision or determination made in the course of the proceedings.”

‘Proceedings’ are also defined as including:

- “(a) any cause, matter, action, suit, proceeding, trial, or inquiry of any kind within the jurisdiction of any Court, including a Court of summary jurisdiction, or a tribunal;
- (b) any proceedings, including interlocutory proceedings, taken in connection with or incidental to proceedings pending before a Court, including a Court of summary jurisdiction or a tribunal; and
- (c) an appeal from a decision or determination, whether or not a final decision or determination, of a Court, including a Court of summary jurisdiction, or a tribunal.”

Then, the words ‘vexatious proceedings’ are defined as meaning the following:

- “(a) which are an abuse of the process of a Court or a tribunal;
- (b) instituted to harass or annoy, to cause delay or detriment, or for any other wrongful purpose;
- (c) instituted or pursued without reasonable ground; or
- (d) conducted in a manner so as to harass or annoy, cause delay or detriment, or achieve any other wrongful purpose.

This definition does not use the words ‘habitually’ or ‘persistently’ or ‘frequently’ litigatory as in UK or USA etc. This definition appears to be much wider and appears also to cover ‘frivolous cases’.

Section 4 refers to ‘Restriction of vexatious proceedings’ and reads as follows:

“4(1) If a Court is satisfied that –

- (a) a person has instituted or conducted vexatious proceedings (whether before or after the commencement of this Act); or
- (b) it is likely that the person will institute or conduct vexatious proceedings,

the Court may make either or both of the following orders -

- (c) an order staying any proceedings, either as to the whole or part of the proceedings, that have been instituted by that person;
- (d) an order prohibiting that person from instituting proceedings, or proceedings of a particular class, without the leave of a Court or tribunal, as the case requires, under sec 6(1)

(2) An order under subsection (1) may be made by the Court on its own motion or on the application of -

- (a) the Attorney General;
- (b) the Principal Registrar of the Supreme Court or the Principal Registrar of the District Court; or
- (c) with leave of the Court –
 - (i) a person against whom another person has instituted or conducted vexatious proceedings, or
 - (ii) a person who has a sufficient interest in the matter.

(3) The Court must not make an order under subsection (1) -

- (a) staying any proceedings that have been instituted by a person, either as to the whole or part of the proceedings; or
- (b) prohibiting a person from instituting proceedings, or proceedings of a particular class; without hearing that person or giving that person an opportunity of being heard.

The section 5 mentions the ‘Effect of an order to stay proceedings or to prohibit the institution of proceedings without leave’. It states:

“Section 5:

- (1) Proceedings are not to be instituted in contravention of an order under sec 4(1)(d).
- (2) If –
 - (a) despite subsection (1), proceedings are instituted in contravention of an order under sec 4(1)(d); and
 - (b) those proceedings are struck out by a Court or tribunal in the purported exercise of a power to strike out the proceedings, the Court or tribunal has the power to award costs to the same extent as if the proceedings had been brought and had been struck out by the Court or tribunal.
- (3) Costs awarded under subsection (2) are recoverable in the same manner as if the proceedings would have been instituted in the Court or tribunal and had been struck out by the Court or tribunal.
- (4) A subpoena, summons to a witness, warrant, or process procured to be issued by a person in any proceedings stayed by an order under section 4(1)(c) or instituted by a person in contravention of an order under section 4(1)(d) is of no force or effect in law”.

We have seen that in USA, in some State statutes, on such situations where a vexatious litigant files a case without seeking leave, he can be punished for contempt of Court. But here, costs can be imposed.

Section 6 deals with ‘leave to institute proceedings’. It reads thus:

“Section 6:

(1) An application for leave to institute proceedings, or proceedings of a particular class (in this section called ‘the proceedings’), that is requested by an order under section 4 (1)(d) is to be made –

(a) in the case of proceedings in the Supreme Court, to the Supreme Court or a Judge;

(b) in the case of proceedings in the District Court, to the District Court or a District Court Judge;

(c) in the case of proceedings before a local Court, to a local Court Judge; or

(d) in the case of proceedings in a Court of summary jurisdiction, to a Magistrate; or

(e) in the case of proceedings before a tribunal, to the tribunal,

and is to be accompanied by an affidavit in support of the application.

(2) The Court or tribunal to which the application for leave is made may dismiss the application even if the applicant does not appear at a hearing of the application.

- (3) The affidavit accompanying the application for leave is to list all the occasions on which the applicant has made an application for leave under subsection (1) and to disclose all facts material to the application, whether supporting or adverse to the application, that are known to the applicant.
- (4) Neither the application nor the affiant are to be served on any other person unless the Court or tribunal orders under subsection (6) that they are to be served on another person.
- (5) The Court or tribunal is to dismiss the application for leave if it considers that –
- (a) the affidavit does not disclose everything required by subsection (3) to be disclosed;
 - (b) the proceedings are vexatious proceedings; or
 - (c) there is no prima facie ground for the proceedings.
- (6) Before the Court or tribunal grants an application for leave, it is to
- (a) order that a copy of the application and accompanying affidavit be served on –
 - (i) the person against whom the proceedings are to be instituted;
 - (ii) any person who made an application under sec. 4(2)(c) in relation to the applicant; and
 - (iii) the Attorney General;and
 - (b) give those persons an opportunity to oppose the application for leave.

(7) Leave is not to be granted unless the Court or tribunal is satisfied that -

(a) the proceedings are not vexatious proceedings; and

(b) there is a prima facie ground for the proceedings.

(8) The applicant and persons referred to in subsection (6)(a) are to be given an opportunity to be heard at the hearing of the application for leave.

(9) At the hearing of the application for leave, the Court or tribunal may receive as evidence any record of evidence given or affidavit filed in connection with an application for leave mentioned in subsection (3).

(10) The Court or tribunal may dispose of the application for leave by –

(a) dismissing the application; or

(b) granting leave to institute the proceedings, subject to such conditions as the Court or tribunal thinks fit.

Section 7 provides for the situations under which the order under sec. 4(1) staying or prohibiting a person, could be rescinded or varied. It says:

“Sec. 7: On the application of –

(a) a person in respect of whom there is in force an order under sec. 4(1) -

(i) staying any proceedings either as to the whole or part of the proceedings, that have been instituted by that person; or

- (ii) prohibiting that person from instituting proceedings, or proceedings of a particular class, without the leave of the Court or tribunal; or
- (b) a person referred to in sec. 4(2), the Court or a Judge of the Court in which the order was made, may rescind or vary the order.

Section 8 deals with the question as to what would be that procedure if Court/tribunal in one State passes an order against a person and he proposes to go to the Court/tribunal in another State. Its title is “Restriction on a person who is a vexatious litigant in a Court other than a Court of this State”.

“Sec. 8(1) This section applies if, in the High Court or the Federal Court of Australia, or in another State or a Territory –

- (a) there is in force in respect of a person a declaration that the person is a vexatious litigant; or
- (b) there is in force in respect of a person an order that the person must not, without the leave of a Court, institute proceedings, or proceedings of a particular class, in a Court or tribunal or that any proceedings instituted by the person in a Court or tribunal must not be continued by the person without the leave of a Court or tribunal.

(2) While a declaration or order is in force -

- (a) any proceedings, or proceedings of the particular class referred to in the order, as the case may be, instituted by that person in a Court or tribunal of this State are stayed and the

provisions of this Act (other than sec. 7) apply, with all necessary modifications, to and in relation to that person as if an order staying any proceedings or proceedings of the particular class referred to in the order, either as to the whole or part of the proceedings, that have been instituted by that person had been made under sec. 4(1)(c);

(b) the person is prohibited from instituting or proceedings of the particular class referred to in the order, as the case may be, in a Court or tribunal, as the case requires, under sec. 6 and the provisions of this Act (other than sec. 7) apply, with all necessary modifications, to and in relation to that person as if an order prohibiting that person from instituting proceedings, or proceedings of that particular class, as the case may be, without the leave of a Court or tribunal had been made under sec. 4(1)(d); and

(c) on the application of

(i) a person in respect of whom a declaration has been made;

(ii) a person in respect of whom an order has been made;

or

(iii) a person referred to in sec. 4(2)

the Supreme Court may, in relation to the institution of proceedings in a Court or tribunal of this State –

(iv) rescind the declaration; or

(v) rescind or vary the order”

It appears that under sec 8, declarations or orders of the High Court or Federal Court of Australia can be rescinded or modified by the State Supreme Court, though in Australia, the State Supreme Court is subordinate to the High Court.

Section 9 refers to publication of section 4(1) orders or rescission/variation orders under sec 7 or 8(2)(C) IN THE Gazette. It states:

“Section 9:

- (1) If an order is made under sec 4(1), the Principal Registrar of the Supreme Court or the principal Registrar of the District Court, as the case may be, must publish a copy of the order in the Gazette.
- (2) If an order is rescinded or raised under section 7 or 8(2)(c), the Principal Registrar of the Supreme Court or the Principal Registrar of the District Court, as the case may be, must give notice of the rescission or variation in the Gazette.

Section 10 permits the Government to make Regulations, sec 11 deals with repeal of the 1930 Act on the same subject and sec 12 deals with ‘Saving and transitional’ issues.

Section 1 deals with consequential amendments in the District Court of Western Act, 1969, Liquor License Act, change in terminology.

Queensland:

In Queensland, the relevant Act is the ‘Vexatious Litigants Act 1981.’

Section 2(1) of the Act defines ‘legal proceedings’ as being ‘any cause, matter, action, suit or proceeding of any kind within the jurisdiction of any court or tribunal and includes any proceedings taken in connection with any such legal proceedings pending before any Court or tribunal. Section 2 also defines ‘person declared to be a vexatious litigant’ as including a person in respect of whom there is in force an order of a description first specified in sec 7.

Section 2(1) also defines ‘register’ as one kept at the registry of the Supreme Court at Brisbane under sec 6.

Section 2(2) states that legal proceedings include an appeal, challenge, review or the calling into question in anyway, a decision made under sec 9A (6).

The following applications are not to be taken as legal proceedings –

- (i) an application for variation mentioned in sec 3(3),
- (iii) an application for revocation mentioned in sec 4.
- (iv) an application for leave mentioned in ss 8, 9.

‘Declaration of vexatious litigants upon application by public officials’ is covered by sec 3. Sec 3(1) provides that if the Supreme Court or a Judge is satisfied that a person is ‘frequently and without reasonable ground’ instituted vexatious legal proceedings or procured vexatious subpoena, summons to a witness, warrants or process to be issued or that any person acting in concert with such a person has, without reasonable ground, instituted vexatious legal proceedings or procured vexatious subpoena,

summonses to a witness, warrants or process to be issued, the Supreme Court or such Judge may, after hearing such person and, if the case requires it, such other person, or giving him or her or them an opportunity of being heard, by its, his or her order, declare such person and such other persons to be a vexatious litigant.

Section 3(2) says that such an order under sec 3(1) shall be made only upon the application of the Attorney General, the Solicitor-General, the Crown Solicitor or the Registrar of the Supreme Court, Brisbane etc.

Section 3(3) states that the Supreme Court or a Judge thereof may make an order under sec 3(1) so as to contain such conditions or qualifications or to have such limited application as appear to it, him or her to be appropriate and may, upon application of an official specified in sec 3 (2) or of the person declared to be a vexatious litigant vary the order so made, by varying or rescinding the conditions or qualifications or limits to which such an order is for the time being subject.

Section 4 deals with revocation of an order made under sec 3 and sec 5 provides for reinstatement of a declaration made under sec 3, within a period of 5 years from the revocation order, legal proceedings are stayed, dismissed or struck out, or being the issue of a subpoena, summons to a witness, warrant or other process, are set aside as being vexatious, oppressive, frivolous or are abuse of procedures of the Court/tribunal.

Section 6 refers to notification of the orders by Gazette and sec 7 says that Court orders shall be deemed as declaration under the Act.

Section 8 requires the person declared as a vexatious litigant to seek leave before instituting or taking any legal proceedings. Sec 8(1A) says that proceedings instituted or taken in contravention of sec 8(1) shall be invalid and of no force or effect in law.

Section 8(2) prohibits, in such an event, the continuance of proceedings already instituted. Section 8(2A) states that the section does not apply to proceedings already started with leave. Otherwise, proceedings already commenced require leave under sec 3.

Sections 8(4), (4A) deal with extension of period of limitation for action if any application for leave is filed within the time limited..

Section 9 lays down the procedure to be followed by vexatious litigants to obtain leave from the Supreme Court, or a Judge thereof or a District Judge or a Magistrate or a tribunal. Section 9A refers to the documents or steps to be taken before filing an application for leave in a Court or tribunal.

Section 10 permits the Judge or Magistrate or other person hearing an application for leave under sec 8 or 9 to impose conditions as to security for costs, etc.

Section 11 says that leave shall not be granted under ss 8 or 9 unless it is established that there is prima facie ground, or sufficient reason and there is no abuse of process. Security for costs could also be ordered.

Section 13 refers to the mode of service of document by or on behalf of the vexatious litigant or person acting in concert. In the proceedings taken by or against a vexatious litigant, service has to be effected by a solicitor, or his employee or duly appointed bailiff etc.

Section 15 states that documents in contravention of the Act are not required to be accepted.

Section 16 deals with issue of bench warrants and sec 17 with setting aside proceedings ex parte.

Other sections of the Act are not being referred to as they are not that important.

New Zealand:

Section 88A of the Judicature Act, 1908 relates to “Restriction on institution of vexatious actions” and reads as follows:

“Section 88A: (1) If, on an application made by the Attorney-General under this section, the High Court is satisfied that any person has persistently and without any reasonable ground instituted vexatious legal proceedings, whether in the High Court or in any inferior Court, and whether against the same person or against different persons, the Court may, after hearing that person or giving him an opportunity of being heard, order that no civil proceeding or no

civil proceeding against any particular person or persons shall, without the leave of the High Court or a Judge thereof, be instituted by him in any Court and that any civil proceeding instituted by him in any Court before the making of the order, shall not be continued by him without such leave.

(2) Leave may be granted subject to such conditions, (if any) as the Court or Judge thinks fit and shall not be granted unless the Court or Judge is satisfied that the proceeding is not an abuse of the process of the Court and that there is prima facie ground for the proceeding.

(3) No appeal shall lie from an order granting or refusing leave.”

We may also refer to sec 477 of the High Court Rules (Part 5) relating to stay or dismissal. That section reads:

“Section 477: Summary stay or dismissal:

When in any proceeding, it appears to the Court that in relation to the proceeding generally or in relation to any claim for relief in the proceeding –

(a) No reasonable cause of action is disclosed, or

(b) The proceeding is frivolous or vexatious, or

(c) The proceeding is an abuse of the process of the Court,

the Court may order that the proceeding be stayed or dismissed generally or in relation to any claim for relief of the proceeding.”

The Harassment Act, 1997: (NZ)

Section 32 of this Act again deals with vexatious proceedings. It reads thus

“Section 32 – Vexatious Proceedings:

- (1) A Court may dismiss any proceedings before it under this Act if it is satisfied that they are frivolous or vexatious or are abuse of the procedure of the Court.
- (2) If a Court is satisfied that a person has persistently instituted vexatious proceedings under this Act (whether against the same person or against different persons) the Court may make an order prohibiting that person from commencing any proceedings under this Act, or proceeding of any special kind or against any specified person, without leave of the Court.
- (3) A Court must not make an order under subsection (2) prohibiting a person from commencing proceedings without giving that person an opportunity to be heard.
- (4) Nothing in this section applies in respect of criminal proceedings;
- (5) Nothing in this section limits any other power of the Court to dismiss proceedings.

New Zealand Law Commission:

We may here refer to the fact that in May 2000, the New Zealand Law Commission has given an exhaustive Report (42 pages) on the subject of ‘Costs in Criminal Cases’. We are not going into details as it is not necessary for the purpose of the present Report.

Chapter VII

Curbs on Vexatious Litigation in Canada

In Canada there are specific statutory provisions in the Federal system which deal with prevention of ‘vexatious proceedings’.

Section 40 of the Federal Courts Act (R.S. 1985, (F-7) reads as follows:

“Section 40: (1) If the Federal Court of Appeal or the Federal Court is satisfied on application, that a person has persistently instituted vexatious proceedings or has conducted a proceeding in a vexatious manner, it may order that no further proceedings be instituted by the person in that Court or that a proceeding previously instituted by the person in that Court not be continued, except by leave of that Court.

(2) An application under sub section (1) may be made only with the consent of the Attorney General of Canada, who is entitled to be heard on the application and on any application made under subsection (3).

(3) A person against whom a Court has made an order under sub section (1) may apply to the Court for rescission of the order or for leave to institute or continue a proceeding.

(4) If an application is made to a Court under sub section (3) for leave to institute or continue a proceeding, the Court may grant leave

if it is satisfied that the proceeding is not an abuse of process and that there are reasonable grounds for the proceeding.

(5) A decision of the Court under sub section (4) is final and is not subject to appeal.”

In addition, in the Codes of Procedure, there are provisions similar to Order 7 Rule 11 of the Indian Code of Civil Procedure. For example, in British Columbia, Rule 19(24)(9) of the British Columbia Rules of Court permit the Court to strike off or direct amendment of the whole or any part of an endorsement, pleading, petition or other document in certain circumstances. It reads as follows:

“Rule 19(24): At any stage of a proceeding, the Court may order to be struck out or amended the whole or any part of an endorsement, pleading, petition or other document on the ground that

- (a) it discloses no reasonable claim or defence as the case may be, or
- (b) it is unnecessary, scandalous, frivolous, or vexatious, or
- (c) it may prejudice, embarrass or delay the fair trial or hearing of the proceeding, or
- (d) it is otherwise an abuse of the process of the Court and may grant judgment or order for the proceedings to be stayed or dismissed and may order the costs of the application to be paid as between solicitor and client.

In Ontario, Rule 21.01 of the Rules of Civil Procedure, (O.Reg. 560/84) states as follows:

“Rule 21.01: (1) A party may move before a Judge,

- (a) for the determination, before trial, of a question of law raised by a pleading in an action where the determination of the question may dispose of all or part of the action, substantially, shorten the trial or result in a substantial saving of costs; or
- (b) to strike out a pleading on the ground that it discloses no reasonable cause or action or defence.

and the Judge may grant an order or grant judgment accordingly.

(2) No evidence is admissible on a motion,

- (a) under clause (1)(a), except with leave of a Judge or consent of the parties;
- (b) under clause 1(b).

In Carey Canada Inc vs. George Earnest Hunt 1990(2) SCR 959, the Canadian Supreme Court referred to the rulings under the English law in regard to striking out frivolous and vexatious pleadings or where no cause of action is shown. Wilson J observed that:

“the Court has a right to stop an action at this stage if it is wantonly brought without a shadow of an excuse, so that to permit the action to go through its ordinary stages upto trial would be to allow the defendant to be vexed under the form of legal process where there could not, at any stage, be any doubt that the action was baseless.”

Chapter VIII

Recommendations for Preventing Vexatious Litigation in India

We have already referred in Chapter II, to the existing laws on prevention of vexatious litigation in the former State of Madras and in the State of Maharashtra, namely, the Madras Vexatious Litigation (Prevention) Act (Act 8 of 1949) and the Maharashtra Vexatious Litigation (Prevention) Act (Act XLVIII of 1971). The title of the Madras Act of 1949 has been amended vide Tamil Nadu Adaptation of Laws Order, 1969 and now known as Vexatious Litigation (Prevention) Act, 1949 (TN Act 8 of 1949). In other chapters, we have referred to the statutory position and case law in other countries. In the 189th Report on Revision of Court Fee Structure, the Law Commission recommended (Recommendation No.10) for enacting a Central legislation on the subject. Now, we will discuss various provisions necessary in that Act. We shall now refer to particular aspects of the various legislations and formulate our recommendations.

(1) Both the Madras and Maharashtra Acts referred to above, apply to initiation of civil as well as criminal proceedings. While the Madras Act does not apply to seeking leave for continuation of pending proceedings, the Maharashtra Act requires leave to be obtained to continue pending proceedings also, in case a person is declared a vexatious litigant during the pendency of such proceedings. In fact, in other countries too, the laws prescribe the need for leave for continuing pending proceedings. This being the current position, we are of the view that once a person is declared to be a vexatious litigant, the proposed law should require leave not only to initiate

civil or criminal proceedings but for continuing any civil or criminal proceedings which had already been commenced before the person was declared a vexatious litigant. In such pending proceedings, the person who is declared vexatious litigant, shall have to apply seeking leave to continue the said proceedings.

(2) So far as the Court to which application can be made for declaring a person as a vexatious litigant, the Madras Act requires that application be made to the High Court. In Maharashtra, sec. 2(1) of the Act of 1971 refers to the High Court while Rule 7 of the Rules of 1976 made by the Bombay High Court, requires the application to be filed on the Appellate side of the Bombay High Court and that it shall be heard by a Division Bench.

We are of the view that the application in this regard should be filed in the High Court and be dealt with by the High Court in a Division Bench.

(3) As to the grounds to be alleged and established for declaring a person as a vexatious litigant, both Acts use the words 'habitually and without reasonable ground instituted vexatious proceedings'. They do not use the word 'persistent', which word is used in sec. 42 of the UK Act of 1981 and in other countries.

In UK (see Chapter IV), sec. 42 of the Supreme Court Act, 1981 (as amended by sec. 24 of the Prosecution of Offences Act, 1985) uses the words "habitually and persistently and without reasonable ground".

This is one aspect to be considered.

In the States in USA another method is employed (see Chapter V). In California, it is required to prove that in the preceding ‘seven year period’, the person has commenced, prosecuted or maintained propria persona at least five litigations other than in a small claims Court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least for two years without having been brought to trial or hearing.

In Texas, the provision is similar but with a further condition that such litigations must have been ‘determined by a trial or appellate Court to be frivolous or groundless under the State or federal laws or rules of procedure’.

In Australia (see Chapter VI), the High Court Rules, 1952 (Rule 6.3.0) require proof that the person ‘frequently and without reasonable ground has instituted vexatious legal proceedings’.

In Western Australia, sec. 3 of the Vexatious Proceedings Prevention Act, 2002, defines vexatious proceedings as those

- “(a) which are an abuse of the process of a Court or tribunal;
- (b) instituted to harass or annoy, to cause delay or detriment, or for any other wrongful purpose;
- (c) instituted or pursued without reasonable cause; or
- (d) conducted in a manner so as to harass or annoy, cause delay or detriment, or achieve any other wrongful purpose”

In Queensland, sec. 3 of the Vexatious Litigant Act, 1981 requires proof that the person had ‘frequently and without reasonable ground instituted vexatious legal proceedings’.

In New Zealand, sec. 88A of the Judicature Act, 1908 uses the words ‘persistently and without any reasonable ground’.

In Canada, sec. 40 of the Federal Courts Act, 1985 uses the words ‘persistently instituted vexatious proceedings’.

After examining the above statutes, we are not inclined to go by the test of seven cases in five years as adopted in some States in USA. So far as the Supreme Court Act of 1981 (UK) is concerned, it uses the words ‘habitually and persistently and without reasonable ground’ while Western Australia gives some examples of vexatious litigation as stated in sub-paras (a) to (d) of sec. 3 of the Vexatious Proceedings Prevention Act, 2002.

Question is whether, in addition to the word ‘habitually’, we should also use the word ‘persistently’. We have seen in Chapter IV that Lord Bingham has explained the meaning of the words ‘habitually and persistently’ in Attorney General v. Banker: 2000 (1) FLR 759 while interpreting sec. 42 of the Supreme Court Act, 1981 as follows:

“The hallmark usually is that the plaintiff sues the same party repeatedly in reliance on essentially the same cause of action, perhaps with minor variations, after it has been ruled upon, thereby imposing on defendants the burden of revisiting claim after claim; that the

claimant relies on essentially the same cause of action, perhaps with minor variations, after it has been ruled upon, in actions against successive parties who, if they were to be sued at all shall be joined in the same action; that the claimant automatically challenges every adverse decision on appeal, and that the claimant refused to take any notice of or give effect to orders of Court. The essential vice of habitual and persistent litigant is keeping on and on litigating where earlier litigation has been unsuccessful and where on any rational and objective assessment the time has come to stop”

After considering the matter in depth, we are not inclined to add the word ‘persistently’ for the reasons we propose to give. In our view, the words ‘habitually’ and ‘persistently’ convey more or less the same meaning. In the very case in P.H. Mawle (AIR 1965 SC 1827), decided with reference to the Madras Act of 1949, the Supreme Court observed (para 7):

“The Act, which was passed by the Madras Provincial Legislature in 1949 conferred jurisdiction upon the Madras High Court to deal with cases of habitual litigants who were persistently filing vexatious actions and were guilty of an abuse of the process of Court”

Further, in Vijay Narain Singh v. State of Bihar: 1984 (3) SCC 14, dealing with sec. 2(d)(iv) of Bihar Control of Crimes Act, 1981, the majority held that the word ‘habitually’ also means ‘persistently’. The Court observed:

“The expression ‘habitually’ means ‘repeatedly’ or ‘persistently’. It implies a thread of continuity stringing together similar repetitive acts. Repeated, persistent and similar, but not isolated, individual and dissimilar acts – are necessary to justify an influence of habit. It connotes frequent commission of acts or omissions of the same kind referred to in each of the said sub-clauses or an aggregate of similar acts or omissions..... Because the idea of ‘habit’ involves an element of persistence and tendency to repeat the acts or omissions of the same class or kind, if the acts or omissions in question are not of the same kind or even if they are of the same kind when they are committed with a long interval of time between them, they cannot be treated as habitual ones”

The above interpretation of the word ‘habitual’ has been followed in a number of cases by the Supreme Court, the latest being in Vijay Amba Das Diware v. Balakrishna Waman Dande: 2000 (4) SCC 126, where while considering sec. 13(3) of the C.P. and Berar Letting of Houses and Rent Control Order, 1948, the learned Judges relied on the meaning of the words ‘habitually’ in Ramanatha Iyer’s Law Lexicon (2nd Ed). In the said Lexicon, the meanings of the words ‘habit’ and ‘habitual’ are stated as follows:

“Habit: Settled tendency or practice; mental constitution. The word ‘habit’ implies a tendency or capacity resulting from frequent repetition of the same acts. The word by ‘habit’ and ‘habitually’ imply frequent practice or use.

Habitual – constant, customary; addicted to a special habit”.

The Court thereafter observed: (para 9)

“Therefore, the expression ‘habitual’ would mean repeatedly or persistently and implies a thread of continuity stringing together similar repeated acts. An isolated default of rent would not mean that the tenant was a habitual defaulter”.

Thus, we find that the word ‘habitually’ includes a ‘persistent’ behaviour.

So far as the word ‘persistently’ is concerned, Ramanatha Iyer in his Law Lexicon says:

“ ‘Persistently’ connotes some degree of continuance or repetition. A person may persist in the same default or persistently commit a series of defaults: Re Arctic Engineering Ltd 1986 (2) All ER 346 (Ch. D)”

In the light of the above discussion, we are of the view that it is not necessary to use both the words ‘habitually and persistently’. The words which have been used in the Madras and Maharashtra Acts, namely, ‘habitually and without reasonable cause’ are sufficient.

(4) In the Maharashtra Act, it also uses the words “habitually and without reasonable ground instituted vexatious proceeding civil or criminal, in any court whether against the same person or against different person”. The

Madras Act of 1949 does not use the words, 'whether against the same person or different person'. The UK Act (sec. 42) also uses these words.

In our view, it will be more appropriate to use these words also, i.e. 'whether against the same person or different person'.

(5) As to who should file an application in the High Court to declare a person as a vexatious litigant, the Madras and Maharashtra Acts permit the Advocate General to file the application in the High Court.

In England, under sec. 42 of the Supreme Court Act, 1981, the application is to be filed by the Attorney General.

In Australia, as per the High Court Rules, 1952, the application can be filed by a Law Officer, or the Australian Government Solicitor or the Principal Registrar of the Court.

In Western Australia, sec. 4(2) of the Vexatious Proceedings Prevention Act, 2002 provides that an application can be filed by (a) the Attorney General, (b) Principal Registrar of the Supreme Court or the Principal Registrar of the District Court, or (c) with leave of Court by a person against whom another person has instituted or conducted vexatious proceedings, or (ii) a person who has a sufficient interest in the matter.

In New Zealand, under sec. 88A of the Judicature Act, 1908, the application has to be filed by the Attorney General.

In US, in California, under sec. 391.1 of the Code of Civil Procedure, even 'the defendant' can move the Court but that is for an order requiring security on the ground that plaintiff is a vexatious litigant.

In Texas, sec. 11.051 of the Civil Practice and Remedies Code is on the same lines as in California.

In Canada, under sec. 40(2) of the Federal Courts Act, 1985, the application may be made only with the consent of the Attorney General of Canada, who is entitled to be heard on the application.

In the light of the above provisions, the question arises as to what recommendations have to be made to enable applications to be filed for declaring a person as a vexatious litigant. We are of the view that the Advocate General of the State and in the absence of an office of Advocate General (as in Delhi High Court), a Senior Advocate nominated by the High Court, should be entitled to file the application.

We are also of the view that the Registrar General of the High Court should also be empowered to file an application. In addition, we are also of the view that a person against whom another person has instituted or conducted vexatious proceeding must also be entitled, with leave of the Division Bench of the High Court, to file an application to declare the opposite party as a vexatious litigant. In such cases, the Court must also hear the Advocate General or the Senior Counsel nominated by it (where there is no office of Advocate General). The Court must also hear the person against whom the application is made.

(6) Next question is as to what type of orders the High Court should pass in the applications. The High Court will, in such an application, after hearing the parties referred to above, no doubt decide whether the opposite party is a vexatious litigant. But it shall also have to direct that the person so declared shall not initiate any civil or criminal proceedings, or if already instituted, shall not continue the same in the High Court or in any Court under the supervisory jurisdiction of the High Court without obtaining leave. (This will cover cases where a High Court has jurisdiction over more than one State/Union Territory). The order will include a direction that no civil or criminal proceedings shall be instituted or continued by a vexatious litigant –

- (a) in the case of proceedings in the High Court, without leave of the High Court, and
- (b) in the case of proceedings in the District and Sessions Court or in any Court under the supervisory jurisdiction of the High Court, without the leave of the District and Sessions Judge.

The above Courts are described as ‘appropriate Courts’ in the further discussion in this Chapter.

But, in the following cases, it shall not be necessary for the vexatious litigant to obtain leave for instituting or continuing the proceedings:

- (a) where the vexatious litigant proposes to institute a proceeding in the appropriate court for the purpose of obtaining leave;

- (b) where in any matter instituted against the vexatious litigant, such litigant proposes to file or continue any recourse by way of defending himself;
- (c) where in a proceeding instituted or continued by such vexatious litigant after obtaining leave from the appropriate court, the said litigant proposes to file or take appropriate further proceedings.

(7) We shall now refer to the circumstances under which leave can be granted or refused. We find the following procedures in various jurisdictions.

In the Madras Act, 1949, it is stated in sec. 3 that leave shall not be given in respect of any proceeding which may be filed by the vexatious litigant unless the Court before which the leave application is filed finds a 'prima facie' ground for such proceedings.

The Maharashtra Act, 1971 refers to two conditions. Sec. 2(2) states that leave shall not be given unless the Court is satisfied that the proceedings are (a) not an abuse of the process of the Court, and (b) there is prima facie ground for the proceedings.

Sec. 42(3) of the UK Supreme Court Act, 1981 uses the words 'unless the High Court is satisfied that the proceedings or applications are not an abuse of the Court in question and that there are reasonable grounds for the proceedings or application.

In USA, in California, sec. 391.7(b) uses the words ‘only if it appears that the litigation has merit and has not been filed for the purposes of harassment or delay’.

In Texas, sec. 11.102 also requires leave to be granted only if the case has merits or has not been filed for the purpose of harassment or delay.

In Australia, sec. 63.6 of the High Court Rules, 1985 uses the words ‘unless the Court of Justice is satisfied that the proceedings are not an abuse of the process of the Court and that there is prima facie ground for the proceedings’.

In Western Australia, sec. 6(7) of the Act of 2002 states that the Court must be satisfied that the proceedings are not vexatious and there is prima facie ground. ‘Vexatious’ is defined in sec. 3 as being either abuse of process or instituted to harass or annoy or to cause delay or detriment or for any wrongful purpose or without reasonable ground or conducted in a manner to harass or annoy or cause delay or detriment.

In Queensland, sec. 11 of the Act of 1981 refers to prima facie ground or sufficient reason and also that there is no abuse of process of Court.

In New Zealand, sec. 88A(2) of the 1908 Act says leave is to be granted only if the Court is satisfied that the proceeding is not an abuse of process of Court and there is prima facie ground in the proceedings.

In Canada, in the 1985 Act, sec. 40(4) also refers to the proceedings not being an abuse of process of Court and there being reasonable grounds for the proceedings.

On a consideration of the above statutes, we prefer the words in the Maharashtra Statute of 1971 which says that leave shall not be granted unless the Court is satisfied that the proceeding is not an abuse of process of Court and there are also reasonable grounds for the proceedings. (The Madras Act, 1949 does not refer to the other condition that the proceeding should not be an abuse of process of Court).

(8) A provision for modification or rescission of an order declaring a person as vexatious litigant is not contained in the Madras and Maharashtra Acts. Question arises whether it is necessary to have a separate provision.

In sec. 7 of the Western Australia Act of 2002, it is stated that where, in respect of a vexatious litigant, a proceeding is stayed as he is prohibited from filing fresh cases, except with leave, the Court may, on the application of the said vexatious litigant, 'rescind or vary' the order.

We do not think such an express provision is necessary inasmuch as the Court which passed an order declaring a person as a vexatious litigant can always rescind or modify it, if there is change of circumstances under its inherent power and in that case it has to hear the party at whose instance the person was declared vexatious litigant, as also the Advocate General or other Senior Counsel nominated by the High Court (where there is no office of Advocate General).

(9) Question arises as to the consequences of filing a case or continuing a case without obtaining leave.

It has been debated as to what action is to be taken against a person (who is declared as a vexatious litigant and who is directed to obtain prior leave for initiating or continuing an action) but who violates the order and either initiates or continues a case, in violation of the order, without obtaining leave and without disclosure of the existence of an order against him.

Sec. 4 of the Madras Act of 1949 states that such proceedings be dismissed. The only exception where leave has not to be obtained is an application seeking leave.

Sec. 3 of the Maharashtra Act, 1971 is also on identical terms.

There does not appear to be any specific provision in the UK Act of 1981 but in USA, in California, sec. 391.7 of the Code of Civil Procedure permits the Court to take action for contempt of Court. In Texas, sec. 11.101 of the Civil Practice and Remedies Code also permits the Court to take proceedings for contempt of Court.

In Western Australia, sec. 5 of the Act of 2002 permits imposition of costs and the striking out of the proceedings.

We are of the view that in such a situation as mentioned above, the Court in which the proceedings are so instituted or continued without obtaining leave in spite of an earlier direction to obtain leave, the Court should have power to dismiss the proceedings and also award costs against the person who is in such violation. This is the action that can be taken by the Court in which the person has instituted a case or is continuing a case without leave. But, the High Court which declared the person as a vexatious litigant and which imposed the condition that he should obtain prior leave, must take action for contempt of Court for violation of its order.

Of course, it must be made clear that no leave is required for filing an application for leave.

(10) As to the right of appeal against an order declaring a person as a vexatious litigant and directing him not to initiate/continue proceedings without leave, inasmuch as we are recommending that such orders shall be passed only by a Division Bench of the High Court, it is not necessary to provide for any further right of appeal. Parties can always move the Supreme Court under Art. 136 of the Constitution of India.

(11) Almost all statutes provide for a gazette publication of the order of the Court declaring a person as a vexatious litigant. But, when in some States the subordinate Courts are in hundreds, it is possible that all the Courts do not have access to the gazettes. We are, therefore, of the view that whenever the Division Bench of the High Court passes such an order as stated above, a copy of the order must be communicated to all the subordinate Courts within its supervisory jurisdiction. In addition to a

Gazette notification, it may also be permissible for the High Court to give directions for publication of its order in any other manner it deems fit.

(12) As to extension of period of limitation, the Madras and Maharashtra Acts make no special provision. If the High Court restrains a person from initiating a proceeding, and the person has to apply for leave before the appropriate Court as stated above, there may be cases where the suit may, in some cases, get barred by limitation by the time leave is granted.

Question is whether any special exemption or extension of time is necessary.

Sec. 15(1) of the Indian Limitation Act, 1963 provides that 'in computing the period of limitation for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded'.

Likewise, under sec. 470(2) of the Code of Criminal Procedure, 1973, it is stated that where the institution of the prosecution in respect of an offence has been stayed by an injunction or order, then, in computing the period of limitation, the period of the continuance of the injunction or order, the day on which it was issued or made and the day on which it was withdrawn, shall be excluded.

In view of the above provisions, we are of the view that it is not necessary to make any special provision for exemption or extension of time in the proposed Act.

(13) Cases in more than one State can raise problems. Let us assume that the High Court in State A has passed an order declaring a person as a 'vexatious litigant' and prohibited him from initiating or continuing any case, civil or criminal, in any Court subordinate to it, without obtaining leave from the appropriate Court. Can the person so declared and so prohibited by injunction, bring or continue an action in any Court which is under the supervisory jurisdiction of another High Court?

In such a situation, in our view, the opposite party against whom the case, civil or criminal, has been initiated or is being continued in another State, or the Advocate General or the Registrar General of the High Court can move the High Court in which such proceeding is instituted or continued or instituted or continued in a Court which is subordinate to the High Court, to pass a similar order declaring the person concerned as a vexatious litigant and to direct him to seek leave for continuing that case or for initiating any fresh case in any Court within the supervisory jurisdiction of that High Court.

(14) Before concluding, we may advert to certain exceptions such as where a person who has been declared as vexatious litigant, wants to move for anticipatory bail or is arrested and wants to file an application for habeas corpus or for bail. To require a person to seek prior leave in such cases would, in our view, be violative of basic right to liberty as guaranteed in Art.

21 of the Constitution of India. In order to see that such cases are not covered by the word ‘criminal proceeding’, we recommend that a definition of ‘criminal proceeding’ be inserted to the effect that a criminal proceeding means the commencement or institution or continuation of a proceeding seeking prosecution by way of complaint. Likewise, in so far as civil proceedings are concerned, we should exclude proceedings under 226 of the Constitution of India, because basically our intention is to stop vexatious civil litigation which start with suits.

We recommend accordingly.

In order to concretize our recommendations in legislative form, a Draft Bill, namely, the Vexatious Litigation (Prevention) Bill, 2005 is appended as Annexure I in this Report.

We place on record the valuable assistance rendered by Dr. S. Muralidhar, Part-time Member of the Law Commission.

(Justice M. Jagannadha Rao)
Chairman

(Dr. K.N. Chaturvedi)
Member-Secretary

Dated: 7th June, 2005

The Vexatious Litigation (Prevention) Bill, 2005

A

BILL

to prevent the institution or continuance of vexatious proceedings, civil and criminal, in the High Courts and Courts subordinate thereto.

Whereas, it is expedient to prevent the institution or continuance of vexatious proceedings, civil and criminal, in the High Courts and in the courts subordinate to the High Courts;

BE it enacted in the Fifty-Sixth Year of the Republic of India as follows:-

1. Short title, extent and commencement:

- (1) This Act may be called “The Vexatious Litigation (Prevention) Act, 2005”.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette specify.

2. Declaration of a person as a vexatious litigant:

(1) An application under sub-section (2) for declaring a person as a vexatious litigant, may be filed -

(a) by the Advocate General or in absence of office of Advocate General, by a Senior Advocate nominated by the High Court in this behalf; or

(b) by the Registrar General of the High Court; or

(c) with the leave of the High Court, by a person against whom another person has instituted or conducted proceedings, civil or criminal.

(2) If, on an application filed under subsection (1), the High Court is satisfied that any person has habitually and without any reasonable ground instituted vexatious proceedings, civil or criminal, in any court whether against the same person or against different persons, the High Court may, after giving the person who has instituted such proceedings, an opportunity of being heard, declare that person as a vexatious litigant and shall also order as stated under subsection (1) of section 3.

(3) When an application is filed by any person referred to in clause (b) or (c) of subsection (1), the Advocate General or, in the absence of such an office, a Senior Advocate nominated by the High Court in this behalf, as the case may be, shall also be heard on the application.

(4) Application filed under subsection (1) shall be heard by the High Court in a Division Bench.

3. Leave of Court necessary for vexatious litigant to institute or continue any civil or criminal proceedings:

(1) Subject to the provisions of subsection (2), when the High Court under subsection (2) of section 2 or under subsection (2) of section 6 declares a person as a vexatious litigant, it shall also order that -

(a) no proceeding, civil or criminal, shall be instituted by the said person in the High Court or any other court subordinate to that High Court; and

(b) no proceeding, civil or criminal, if already instituted by the said person in the High Court or any other court subordinate to that High Court, shall be continued by him,

without obtaining leave of the appropriate Court or Judge referred to in subsection (3).

(2) It shall not be necessary for the person declared as a vexatious litigant to obtain leave in the following cases:

(a) where such person is instituting a proceeding in the appropriate Court or before the appropriate Judge for the purpose of obtaining leave;

(b) where, in any matter instituted against him, such person proposes to file or take appropriate proceedings to defend himself;

- (c) where, in a proceeding instituted or continued by such person after obtaining leave from the appropriate Court or the Judge, the said person proposes to file or take appropriate further proceedings.
- (3) In this section and in section 5, the “appropriate Court or appropriate Judge” means -
- (a) the High Court, in the case of a proceeding proposed to be filed or continued by the person declared as a vexatious litigant in the High Court;
- (b) the District & Sessions Judge, in the case of proceeding in any other Court subordinate to the High Court.
- (4) Leave shall not be granted unless the appropriate Court or the appropriate Judge, as the case may be, is satisfied that the proceedings are not an abuse of the process of the Court and that there is prima facie ground in the proceedings proposed to be instituted or continued by the person declared as a vexatious litigant.

Explanation: In this section and section 5, -

- (a) institution or continuation of civil or criminal proceedings does not include proceedings instituted or continued under Article 226 of the Constitution of India.
- (b) institution or continuation of “criminal proceedings” means the commencement or institution or continuation of a proceeding seeking ‘prosecution’ by filing a complaint before a Criminal Court.

4. Publication and Communication of Order:

- (1) A copy of every order made, -
under subsection (2) of section 2, declaring any person as a vexatious litigant,
shall be published in the Official Gazette and may also be published in such other manner as the High Court may direct.
- (2) Every order referred in subsection (1) shall also be communicated to all the courts subordinate to the High Court which passed such order.

5. Proceedings, civil or criminal, instituted or continued without leave of the appropriate Court to be dismissed and other consequences:

- (1) Any proceedings, civil or criminal, instituted or continued in any court by a person against whom an order under subsection (1) of section 3 has been made without obtaining the leave required to be obtained from the appropriate Court or appropriate Judge, shall be dismissed by the said court.
- (2) The court while dismissing the proceedings under subsection (1) shall, in addition, further direct such vexatious litigant to pay costs.
- (3) Every person referred to in subsection (1) who has instituted or continued any proceeding without leave as aforesaid, may also be

liable for punishment for contempt of the High Court which had passed the order under subsection (1) of section 3.

6. Declaration and order by more than one High Court:

- (1) Where any person against whom an order under subsection (1) of section 3 has been made by a High Court, institutes or continues any proceeding, civil or criminal, in another High Court or in a Court subordinate to such High Court, then the persons referred to in subsection (1) of section 2 may make an application to such High Court for declaring such person as a vexatious litigant.
- (2) If, on an application filed under subsection (1), the High Court is satisfied that any person has been declared as a vexatious litigant under subsection (2) of section 2, by another High Court, the High Court may after giving an opportunity of being heard to the person who has instituted or continued any proceeding, civil or criminal, declare that person as a vexatious litigant and shall also order as stated under subsection (1) of section 3.
- (3) Where an application under subsection (1) is filed, the provisions of subsections (3) and (4) of section 2, and sections 3, 4 and 5 shall apply in relation to such application.

7. Power to make Rules:

The High Court may frame rules for the purpose of implementing the provisions of this Act.

8. Saving:

The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law providing for striking out vexatious pleadings or prevention of abuse of process of law, or which require consent, sanction or approval in any form of any other authority for the institution or continuance of any civil or criminal proceeding.