



A CRITICAL STUDY OF ABUSE OF (DUE) PROCESS OF LAW

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ABSTRACT

We human beings live in a society and because of the nature of humans this society is highly complicated. This is due to the fact that the goal of a human being cannot be deemed to be suitable one, for all the other people who live in the society. Hobbes, a political philosopher, held the belief that whenever two or more individuals seek the same thing, they automatically become enemies to one another and attempt to destroy one another. What is optimal for one person could not be at all suitable for another. The restricted resources have proven to be a challenge for the fulfillment of the human desire to always have more, which is a characteristic that is shared by all humans. As a result, interpersonal conflict is practically inevitable among the people who live in the society. In order to prevent situations like this from occurring, laws have been enacted so that society can operate efficiently. The protection of an individual's right in their life, their liberty and their property, protection from unlawful invasion of those rights by another individual, group, or government entity is one of the primary goals of our legal system. On the other hand, it has been noticed that the same law is abused in order to legally intimidate an individual in order to harass and control them. The purpose of the court system and the legal process is to assist us in finding solutions to the difficult issues that plague our society. We need to address the wrong practices also that occurs by abuse of legal processes and procedures of law.

Keywords: *Malicious, prosecution, Abuse, criminal, society*

INTRODUCTION

This research investigates the social implications of laws and how they are implemented, with a particular emphasis on the irreparable decline of the institution of marriage in India and other Asian nations. This inquiry was prompted by the increasing acceptance of irretrievable breakdown as a valid cause for divorce, which necessitated a better knowledge of its ramifications on both the legal and social landscapes. The premise for this investigation rests in the rising acknowledgment of irretrievable breakdown as a ground for divorce. In this pursuit, the laws of India and other Asian nations pertaining to the irretrievable collapse of marriage will be analyzed, along with the social backdrop and the role that the media played in the process of creating these laws. It will investigate the impact of these regulations, paying particular attention to gender dynamics, monetary considerations, and custody arrangements for children. The efficiency of the existing legal provisions and the manner in which they are implemented will be evaluated. It may help for enhancing the legal structure as well as the manner in which it is carried out. The irretrievable dissolution of a marriage is a complicated legal and social problem that necessitates an in-depth consideration of both the legal framework in which it exists and the social ramifications of this framework. This pursuit investigates the legal structures that are in place in India and other Asian nations in relation to the irretrievable collapse of marriages, as well as the social implications of this phenomenon.

Act Of Deliberately Prosecuting

Abuse of prosecution refers to the act of maliciously commencing unsuccessful criminal, bankruptcy, or liquidation processes against another individual when there are no reasonable or probable grounds for doing so. Malicious prosecution can also refer to the act of intentionally beginning failed civil proceedings. This tort provides a balance between two seemingly incompatible goals, namely the right that everyone should have to bring criminals to justice and the need that every effort be made to prevent laying false allegations against those who are not guilty. This tort strikes a balance between these two ideals. Malicious prosecution occurs when a court's process is exploited by inappropriately applying the law to a criminal charge. This can lead to wrongful convictions. This is a clear instance of abusing the system. As a means of providing comfort to individuals whose lives have been negatively impacted by a malicious occurrence, it is intended to encourage the subversion of the machinery of justice on behalf of the just cause.

Section 489-A of the Indian penal code was created in 1983 to safeguard women from spouses and relatives. The 1983 IPC modification introduced Section 498A, which defines marital cruelty. IPC 498A is punitive and deters other Code of Civil Procedure provisions. If the victim or designated relatives submit a police complaint, the offence is cognizable without investigation or warrants, non-bailable, and non-compoundable. The 1983 Indian Penal Code 498A punishes husbands or relatives of husbands who abuse women with three years in jail and penalties. Cognizable, non-compoundable, non-bailable crime.

The concept of cruelty includes purposeful conduct that may cause suicide, significant injury, or harm to a woman, as well as harassment that tries to pressure her or her family to fulfil unlawful property or valued security demands.

Only the wife/daughter-in-law or a relative can use 498A. The majority of Sec 498A accusations are bogus extortion efforts by the lady or her family in a problematic marriage. Most 498A allegations end with an extortion demand to pay out of court.

Courts On Abuse of Process of Court

It is important to highlight that throughout the course of the years, the courts in a variety of countries have made significant measures to address concerns over the misuse of the judicial system. Similar to the situation in the United Kingdom, Australia, the United States of America, and most crucially in our own jurisdiction Nigeria, civil and criminal proceedings are treated similarly. The following cases provide some insight into the reasoning behind the court's decisions in Nigeria:

Aduba is a case involving The Living Christ Mission. The appellant in this case had filed a claim in the Magistrate's Courts against the respondents for ownership of land property and mesne earnings. The respondents had been named as the defendants. The respondent, on the other hand, eventually filed a writ against the appellants in the High Court, asking for relief that was more than what had been granted in the Magistrate Court. The question that needed to be decided by the court was whether or not the conduct that followed constituted an improper use of the court's processes. The Most High Where there are now two processes going on in court A and Court 8', the one in court 'A' pertaining to a number of questions; only one of which is mentioned in the proceedings in court '8'; and where the proceedings in court 8' are focusing on a single question. it is preferable and more convenient for that one question in court 8' to be dealt with in court 'A', which is capable of resolving all of the issues, including the questions in court 8'. It is impossible for the opposite to be true.

Abuse Of Discretion

The phrase "abuse of discretion" is sometimes used interchangeably with "failure to exercise a sound, reasonable, and legal discretion." It is a severe legal term signifying that the appeal court is of the view that there was committed of an error of law by the trial court. The phrase "error of law" comes from the Latin

phrase which translates to "err in the law." It does not imply an intentional wrong, bad faith, or misconduct, nor does it cast any reflection on the judge; however, it does connote a clearly erroneous conclusion and judgements such that are clearly against logic and the effect of such facts as are presented in support of the application or against the reasonable and probable derivation to be drawn from the facts disclosed upon the hearing or an improvident exercise of discretion or an error in law 111. It is also an unjustified divergence from precedents that have been reviewed and established judicial custom, which is an error in the law. Abuse may be defined as the rendering of a judgement or conclusion by an administrative agency or court that is not supported by either the facts or the law. Any action that is irrational, unconscionable, or arbitrary that is done by a trial court without appropriate examination of the facts and the law that apply to the subject matter is considered an abuse of the court's discretion. However, it is essential to note that any judgement or decision made by a trial court or an administrative agency upon evidence submitted before it will never amount to abuse, even if it was discovered later that the disposition or submission was with certain disabilities that are not to the knowledge of the court or the administrative agency. This is because any such judgement or decision will always be based on the evidence that was presented before the court or the administrative agency.

OBJECTIVE OF THE STUDY

1. To Study of Abuse of Process of Law.
2. To Study Malicious Prosecution and Misuse of Certain legal Provisions.

THE DARK SIDE OF RIGHTS AND THE CONCEPT OF ABUSE

Because of the frequency with which references to rights are made, in particular in the context of efforts to advance worldwide guarantees for human rights or basic rights, concerns have been raised over the possibility of a global inflation of such rights or of rhetoric that is only hollow words. However, the proliferation of right-defining laws has not led to a decrease in the likelihood of violations¹, but rather an increase in this likelihood. On the one hand, practically all of the attempts to restrict people's rights have used deceptive or misleading language. The theory for the emergence of rights has frequently shown individualistic foundations rather than an innate drive towards justice amongst persons. In addition, it is becoming increasingly difficult to organise individual rights within the confines of any kind of objective legal 'order.' This is due to the fact that individual rights are growing more complex. The assertion of rights reveals rights' artificial and political nature, rather than their direct connection to a universal rationale. Evidently, there is no way to differentiate between pro-rights intervention, careful assessment of the 'consequences,' and awareness of the ethical and institutional values that these rights entail in concrete terms. This is because all three are inextricably linked.

On the other hand, the 'dark side' of rights emerges in many different areas: at an international level, in humanitarian interventionism; in democratic multicultural societies; in democracies in transition: the denial of rights in the name of rights is spreading under many different forms, including through the paternalism that, for example, forbids women from wearing the hijab in official buildings in countries like France or Turkey. This is an example of how protecting the substantial political rights of some persons can result in the denial of the substantial political rights and equality⁴ of other individuals. A similar set of difficulties are produced by affirmative actions, which enforce quotas for women in the lists of candidates for general elections. Furthermore, another and distinct as well as continually re-emerging phenomenon is the denial of rights in the name of the rule of law.

GENERAL CHARACTERISTICS OF THE ABUSE OF A RIGHT OR A POWER

The most common form of 'abuse' researched in Europe is the violation of an individual's rights. When viewed against the backdrop of absolute and overriding subjective rights, the topic of the abuse of rights brings to light the breaking of an old paradigm, this is due to the fact that the abuse of rights has a tendency to limit the exercise of rights through notions that even have the potential to void rights of their meaning. It does this by

setting the goals to be fulfilled by exercising a right as opposed to the social interest by which the right is determined, the function it should perform, the purpose and the "typical" goals that would justify, alone, its enjoyment, and so on.

However, the misuse of rights might at least point to a basic concept of law, which states that "a legal system defines norms in order for them to be enforced, not instrumentalized."¹³ In that case, the law would only give the impression of being "a screen or a cover for arbitrary conduct." We may begin by identifying a typical trait of the abuse, which is that it is not a violation at first glance of the legal limits that are set for the exercise of the right itself (in that case, we would be talking about an excess, and not an abuse), but rather it is "the apparent compliance of the holder's behaviour with the content of his or her right; accordingly, to abuse a right, should mean concealing, under the guise of the law, an act that one would have the Indeed, the seeming validity or legality of an activity, which would secure its legal safeguard¹⁶, is the primary factor that differentiates an abuse from a mere excess. This is because an abuse goes beyond what is considered acceptable. In other words, it must be a sanctioned action and not a behaviour that is expressly or tacitly prohibited by some other set of guidelines. This view is supported by a decision that was handed down by the Spanish High Court on February 14, 1944. In this decision, the court stated that there are limits "in addition to the legal ones," and that these limits have "a moral, teleological, and social nature."

RULES, PRINCIPLES AND ABUSE

When compared to rules, principles have been given a variety of various interpretations, despite the undeniable fact that they are fundamental components of the legal regimes that underpin our constitutional democracies. For instance, principles are defined for the purpose of Atienza and Manero's theory of "Ilcitos atpicos"²³ as a guide for the conduct of those who, through careful weighing (of principles), have the power-duty to issue a norm (of judicial, legislative, or administrative type). In this context, principles serve as a guide for the behaviour of those who, through careful weighing (of principles), have the power-duty to issue a norm. Some people think of principles as defining ultimate values that should be realized and that should be used as parameters for the assessment of the factual consequences determined by the issue of norms. On the other hand, other principles, of a lesser degree of abstraction, are directives, and they do not indicate ultimate values; rather, they aim at the realization of commodities or states of fact, while still possessing a justifying function of decisions. Regardless of the definition and purpose that we assign to principles, the fact remains that they provide the criteria that are required to evaluate the violation of rights.

In essence, it is the concept that leads to the identification, among conceivable examples of exercise authorized by a norm (defining, for example, an individual right, or entrusting a power or a function), of those that are unlawful because they exceed the "justified area" of the rule. This identification is accomplished by comparing the available cases of exercise with the norm in question. This is also the case in matters concerning basic rights, such as the right to strike or the application of procedural protections in legal proceedings.

RULES AND THE ABUSE OF THE RULE OF LAW

To put it more plainly, utilizing the resistance of formal principles as a shield to mask intentions that are incompatible with the legal system can surely appear to be an abuse of the rule of law, as will be addressed more completely in the next sections of this article. In this specific circumstance, my opinion is that immoral concerns are not to blame for the damage that was done because of the actions that were taken. As a consequence of this, it is not essential to have a discussion about the moral significance of the advantages of the rule of law in order to have an understanding of the idea of abuse. Because of this, the major focus of our discourse has been on the fact that a deviation from the application of a rule does not depend on a direct comparison between that norm and the substantive value to which it should yield (freedom of expression, protection of health, equality, etc.). It is not acceptable to restrict the applicable reach of the rule in issue unless

it has first been possible to strike a balance, on the same plane, between the applicable substantive principle and the formal principles that demand careful consideration for the final character assumed by the rules. This is the sole method through which a restriction on the rule's relevant scope can be given the go-ahead for authorization. In a well-known manifesto of the ideas he adheres to as a Justice on the United States Supreme Court, Antonin Scalia has highlighted the dichotomy between compliance with the 'general rule of law' (as a 'law of rules') and the effects of abandoning that parameter, namely the 'personal discretion to do justice' that would consequently be granted to courts. Scalia's manifesto can be found here. Antonin Scalia is the one who brought up both of these options.

FROM THE RULE OF LAW TO THE ABUSE OF THE POWER

At the level of general theory, there are characteristics of continuity between concepts such as the misuse of public powers and a specific expression of the excess of authority, such as the abuse of rights. This continuity may be seen in the way that these concepts are related to one another. The violation of legal rights is one illustration of this ongoing pattern of behaviour. This idea has come under fire and been questioned⁵³, but it has also garnered support, most notably within the context of the French legal institutionalism⁵⁴, which connects abuse with detournement of power. In Europe, the term "administrative law" refers to instances in which public power is misused and abused to accomplish a purpose that was not initially meant for it to do. In other words, the public authority is used to achieve a goal that it was not initially intended to achieve. When there is an incidence of abuse, one ought to make reference to the principles, as was just stated, as was done in the previous sentence. According to what Atienza and Manero have stated, in order to assess whether or not conventional legal purposes have been "vulnerabilized," it is essential to turn to principles that justify both the rule that grants the authority and the regulative norms that define the use that is authorized. This is done in order to establish whether or not conventional legal purposes have been "vulnerabilized."

ABUSE THROUGH PROSECUTION

Under common law, malicious prosecution is an intentional tort that relates to circumstances in which one person causes harm to another by abusing the procedures of the legal system. This type of conduct is considered to be in violation of the duty of care owed to the victim. According to Black's Law Dictionary, a malicious prosecution is a judicial proceeding that is instituted against a person out of the prosecutor's malice and ill-will, with the intention of injuring him, and without probable cause to sustain it, with the process and proceeding being regular and formal, but not justified by the facts. In other words, a prosecutor brings a malicious prosecution against a person with the intention of injuring him. When the prosecutor has the intention to do harm to the defendant, even in the absence of probable reason to support the case, this is an example of malicious prosecution. As a result of the damage that has been caused, there is a course of action that may be conducted in the case; this course of action is known as an action of malicious prosecution.

CIVIL PROCEEDINGS ANALOGOUS TO MALICIOUS PROSECUTION

The term "malicious prosecution" may create the sense that it is not apparent what it means because its literal meaning indicates that its use is limited to issues related to criminal law. This might contribute to the perception that the term is confusing. That, on the other hand, is not a necessary prerequisite. The terms "vexatious litigation" and "malicious prosecution" are typically interchangeable with one another and can be used in the same context. An action that is analogous to malicious prosecution may be undertaken for civil proceedings that are brought without reasonable and acceptable reasons, according to the decision of Waliullah, J. An action that is analogous to malicious prosecution may be brought for civil actions that are brought without reasonable and adequate grounds. The phrase "such proceedings" refers to those that, at the time that they are commenced, have the potential to do injury to the person who is the subject of them. Throughout the entirety of the inquiry, they were referred to as a "malicious abuse of civil proceedings,"

which is an extremely serious charge. Therefore, the laws that restrict such acts are the same as those that apply in circumstances of malicious prosecution; the phrase "mutatis mutandis" refers to how the rules are applied differently in each situation. This is due to the fact that similar behaviours adhere to the same rules and regulations.

There are a great number of different scenarios in which a claim analogous to that of malicious prosecution may be brought forth, such as the following examples:

1. When the filing of a lawsuit does, as a necessary result, include a harm to property, which cannot be compensated by the awarding of costs in the action; 2. When the awarding of costs in the action cannot pay for the injury to property; and 3.
2. When the unlawful behaviour of the defendant in the suit might constitute the foundation for an action for general damages in addition to the loss of property actually sustained by the plaintiff as a consequence of the improper attachment of the plaintiff's property.
3. when a deliberate attempt is made to have a person labelled as a lunatic when the attempt itself is of a malevolent nature.
4. When someone fraudulently obtains an arrest or attachment in the course of carrying out a decree.
5. When legal action is taken against a legal practitioner with the intent to do harm and there is no reasonable or probable grounds for the action to be taken; this is professional misconduct.

When an unjustified and malicious attempt has been made to have a business declared bankrupt and put out of business.

BURDEN OF PROOF

Lord Justice Bowen presented a very clear and persuasive explanation of the age-old problem of who is responsible for bearing the burden of proof in the case of *Abrath vs. North Eastern Rly. Co.* In relation to the topic at hand, he shared the following insight with regard to it: "Whenever litigation exists, somebody must go on with it, the plaintiff is the first to begin, and if he does nothing, he fails; if he makes a prima facie case, and nothing is done to answer it, the defendant fails." It is evident that as the dispute that is the subject of the lawsuit progresses, the parties may, at any given time, reach points at which the burden of evidence shifts, and the Tribunal will have to rule that if the case stops then, it must be determined in a specific manner if it is to be decided at all. This is something that will happen moment to moment.... In order to determine which party has the burden of proof, one must first question themselves which side will prevail in the event that no evidence is presented or if no more evidence is presented.

RELIGIOUS SCRIPTURES

India is the country that is credited with being the origin of the idea that a person has an increasing right to their reputation. This idea dates back to ancient times. The Holy Scriptures of a number of faiths underlined the significance of a person's reputation and personal dignity, as well as the need for that person to behave in a way that is both kind to oneself and good to others. This was done so as a condition for salvation.

• HINDUISM

In many of the Hindu literary works, reputation is given a level of importance that cannot be equaled by any other notion. This significance is unrivalled. This exemplifies the significant weight that is placed on a man's reputation in both the culture and society in which we live as well as the society in which we live. The Bhagavad Gita makes a statement to the effect that...

The following is what the passage from the previous paragraph looks like when it is literally translated into

अहिंसा सत्यमक्रोधस्त्यागः शान्तिरपैशुनम्।

दया भूतेष्वलोलुप्त्वं मार्दवं ह्रीरचापलम् ॥१६- २॥

English: "Non-violence in thought, word, and deed; truthfulness and geniality of speech; absence of anger even in the face of provocation; disclaiming doership in respect to actions; quietness or composure of mind." An abstinence from malicious gossip, compassion for all beings, a lack of attachment to the objects of senses even during their interaction with the senses, mildness, a sense of shame in transgressing against the scriptures or usage, and an abstinence from frivolous activities are all aspects of bodhisattva behaviour that are emphasised in Buddhist teachings. Abstaining from frivolous activities is also an important aspect of bodhisattva behaviour.

- **ISLAM**

Slandering other people is prohibited in every religious text, including the Holy Quran. A person is guilty of the sin of blasphemy when they call another person disparaging names, make false allegations against another person, or say things about another person that are disrespectful or terrible. Because this has a direct reference in one of the verses of the holy Quran, namely in Surah, Aayaat, you are likely to discover it in that section. The following is the English translation of this verse: "Let not some men among you laugh at others: it may be that the (latter) are better than the (former): nor defame nor be sarcastic to each other; nor call each other by (offensive) nicknames; ill-seeming is a name connoting wickedness, (to be used of one) after he has believed; and those who do not desist are (indeed) doing wrong."

- **CHRISTIANITY**

The Holy Bible, in its various texts, emphasises how important it is to be honest with others. Additionally, it indicates that perversity in the tongue, which means that the words and accusations that you make will destroy the spirit of life. In this regard as well, the right to life and the damaging of one's character or reputational standing are directly connected to one another. This particular mention may be seen in the book of Proverbs in the Bible. The same proverb has been given an English version, which reads as follows: "A soft answer turns away wrath, but a harsh word stirs up anger." Knowledge is distributed by the tongue of the wise, while foolishness is expelled from the lips of idiots.

WRITERS AND PHILOSOPHERS.

The great English author William Shakespeare has, on several occasions, brought to light the significance of reputation, both in terms of its role in society and of an individual's existence within that community. These kinds of allusions may be found in the majority of his published works. It is possible to say that Othello and Richard II include some of his finest allusions. In Othello, Shakespeare gives the following interpretation of character and reputation: "Whoever steals my purse steals trash; 'tis something, nothing; it was mine, 'tis his, and has been slave to thousands; but he that filches from me my good name robs me of that which not enriches him, and makes me poor indeed."

While simultaneously elevating the value of his individual fame, Shakespeare reached the pinnacle of his creative potential in Richard II, the culmination of which is the following passage: "The purest Treasure mortal times afford." [Richard II] Is a flawless reputation; stripped of it, men are nothing more than painted clay or gilded mud. A courageous spirit can be found in a faithful breast like a diamond in a chest that has been barricaded ten times over. Mine honour is my life, and both of them develop together; if you take away my honour, you have ended my existence.

LEGISLATIONS & INTERNATIONAL COVENANTS

A number of international treaties have placed a focus on the significance of a person's dignity and reputation throughout their lifetime. This is something that has been done for a number of reasons.

THE HUMAN RIGHTS ACT,

The Human Rights Act is a piece of legislation that was expressly enacted with the intention of safeguarding each and every one of the rights that are grouped together as a part of the overarching concept that is referred

to as "human rights." The term 'human right' is given the following definition in section (d) of this act: "Human rights means the rights relating to life, liberty, equality, and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India."

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS,

In the month of December, the United Nations General Assembly met at the Palais de Chaillot in Paris, France, to conduct its third session. During this particular meeting, the Assembly cast their votes to officially adopt the Universal Declaration of Human Rights. In spite of the fact that it is not a treaty in and of itself, the Declaration of Human Rights was specifically authorised for the purpose of explaining the meaning of the phrases "fundamental freedoms" and "human rights" that appear in the Charter of the United Nations, which is legally compulsory on all member states. This approval was made for the goal of clarifying the meaning of the terms "fundamental freedoms" and "human rights" that appear in the Charter of the United Nations. As a consequence of this, the United Nations regards the Universal Declaration of Human Rights as being among its most essential and foundational documents.

THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS.

The International Covenant on Civil and Political Rights also makes it a point that a person's freedom to expression should be in consonance with the protection of other people's right to reputation, public order, and public morality. This is a point that the International Covenant on Civil and Political Rights makes. As a result, the reputation of an individual is given more weight in accordance with this Covenant than the right of others to express themselves freely. Article of the Covenant includes this clause as one of its provisions. It states that everyone must have the freedom to hold ideas without having their beliefs interfered with in any way.

Everyone shall have the right to freedom of expression; this right must include the freedom to seek, receive, and disseminate knowledge and ideas of any type, regardless of boundaries, verbally, in writing or printing, in the form of art, or by any other media of his choosing. This right shall include the freedom to seek, receive, and impart information and ideas of any kind, regardless of frontiers.

THE EUROPEAN CONVENTION FOR PROTECTION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS

His Convention was initially made open for signatures in, and at that point it already had the force of law behind it. This international agreement also emphasises, in the same vein as the International Covenant on Civil and Political Rights, that the preservation of a person's reputation should take precedence over the right of others to express themselves. This is in keeping with the International Covenant on Civil and Political Rights. In the very first article of the convention, this is stated in a clear and obvious manner.

THE SUPREME COURT OF INDIA AND RIGHT TO REPUTATION

The Supreme Court of India, which is the country's highest court, has shown support for the concept of the "Right to Reputation" on many occasions. However, before discussing the seminal rulings that were handed down by the Supreme Court of India, it is essential to first discuss the historic case that occurred in the United States and was known as *D.F. Marion v. Minnie Davis*. This court case was a significant watershed moment in the fight for equal rights for women in the United States. This specific case has been referenced as an important precedent by the Supreme Court of India in a number of its rulings addressing the "right to reputation," and the court has done so rather frequently. In this specific case, it was determined that: "The right to enjoyment of a private reputation, unassailed by malicious slander is of an ancient origin, and is necessary to the functioning of human society." The right to the unrestricted enjoyment of one's life, liberty, and property is protected by the Constitution in the same manner that a good reputation is an important component of personal safety. The Constitution also guarantees the right to the unrestricted enjoyment of

one's life. The Supreme Court has, on several occasions, utilised the judicial principles that were articulated in this case as a source of ideas and direction while making its decisions. This judgement is noteworthy not just because it highlights the value of a person's reputation; rather, it is significant because it indicates that every individual enjoys the right to be protected and vindicated from a maliciously begun prosecution. In other words, this ruling is significant because it demonstrates that every individual possesses the right to be protected and vindicated.

DAMAGES AS ESSENCE OF ACTION FOR ABUSE OF PROSECUTION

When a person sues another for malicious prosecution, the focus of the case is on the damages that the plaintiff suffered as a direct result of the activities of the defendant. Malicious prosecution, which is considered to be an intentional tort, is essentially the one that serves two distinct purposes. The individual who has been the target of a malicious accusation and legal procedure should be paid for any losses that they have incurred as a result of the process, which serves as one component of the purpose. In addition, the individual should be given the opportunity to defend themselves against the malicious allegation and legal procedure. Another objective of this project is to act as a barrier or obstacle for processes that are hostile or harmful. As a result of this, a claim for malicious prosecution must invariably include some kind of compensation for the losses that were sustained. It had been held by Holt, C.J. as far back as in, and this position was supported by the Privy Council as well as by Bhagwati, J.: "There are, says Lord Holt, three kinds of damages; anyone of which would be sufficient ground to support an action for malicious prosecution are: The damage to a man's fame, as if the matter whereof he is accused be scandalous; the second kind of damages which would support such an action are, are the ones where a man is put in danger to lose his life or limb, or liberty, which has always been allowed as good foundation of such action; and the third kind of damages which have always been allowed

CONCLUSION

According to the words of Professor Winfield, the prosecution "had to make its way between two competing principles the freedom to action that every man should have in bringing criminals to justice and the necessity for checking lying accusation of innocent people." In other words, the prosecution "had to find a middle ground." When it came to the question of whether or not they should discourage a genuine accuser or an unfair one, the courts were unable to reach a decision for some time.² A very significant piece of legislation is the one that prohibits malicious prosecution. This rule is so crucial because it works to ensure that legal safeguards are applied fairly. Two examples of the legal safeguards that are accessible are the ability to file a lawsuit for damages and the privilege of being exempt from claims of defamation. Under a system that is based on people's rights, all of them are treated in the same manner. Legislators and judges have put forth a lot of effort to find a middle ground between the rights of citizens and the restrictions that have been imposed on their capacity to seek redress via the legal system.

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