

AS INTRODUCED IN THE RAJYA SABHA
ON THE 11TH MARCH, 2016

Bill No. XI of 2016

THE VEXATIOUS LITIGATION (PREVENTION) BILL, 2016

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BILL

to prevent the institution or continuance of vexatious proceedings, in civil and criminal matters in the High Courts and Courts subordinate thereto and for matters connected therewith and incidental thereto.

BE it enacted in the Sixty-Seventh Year of the Republic of India as follows:—

1. (1) This Act may be called the Vexatious Litigation (Prevention) Act, 2016.

(2) It shall extend 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
5 in the Official Gazette specify.

Short title,
extent and
commencement.

Declaration of a person as a vexatious litigant.

2. (1) An application for declaring a person as a vexatious litigant, may be filed in the appropriate High Courts,—

(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 5

(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 application having been filed under sub-section (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 sub-section (1) of section 3: 10

Provided that if an application is filed by any person referred to in clause (b) or (c) of sub-section (1), the Advocate General or, in the absence of such an officer a Senior Advocate nominated by the High Court in this behalf, as the case may be, shall also be heard on the application. 15

(3) The Application filed under sub-section (1) shall be heard by the High Court in a Division Bench.

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

3. (1) Subject to the provisions of sub-section (2) when the High Court under sub-section (2) of section 2 or under sub-section (2) of section 6 declares a person as a vexatious litigant, it shall also order that,— 20

(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 appropriate Judge. 25

(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 instituted a proceeding in the appropriate Court of before the appropriate Judge for the purpose of obtaining leave; 30

(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. 35

Explanation.— For this section and for 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; 40

(b) the District and Sessions Judge, in the case of proceeding in any other Court subordinate to the High Court.

(3) Leave under sub-section (1) 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. 45

Explanation.—For 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. (1) A copy of every order made,—

under sub-section (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.

Publication and Communication of Order.

(2) Every order referred in sub-section (1) shall also be communicated to all the courts subordinate to the High Court which passed such order.

5. (1) Any proceedings, civil or criminal, instituted or continued in any court by a person against whom an order under sub-section (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.

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

(2) The court while dismissing the proceedings under sub-section (1) shall, in addition, further direct such vexatious litigant to pay costs.

(3) Every person referred to in sub-section (1) who has instituted or continued any proceedings without leave as aforesaid, may also be liable for punishment for contempt of the High Court which had passed the order under sub-section (1) of section 3.

Declaration and order by more than one High Court.

6. (1) Where any person against whom an order under sub-section (1) of section 3 has been made by a High Court, institutes or continues any proceedings, civil or criminal, in another High Court or in a Court subordinate to such High Court, then the person referred to in sub-section (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 sub-section (1), the High Court is satisfied that any person has been declared as a vexatious litigant under sub-section (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 sub-section (1) of section 3.

(3) Where an application under sub-section (1) is filed, the provisions of sub-sections (2) and (3) of section 2, and sections 3, 4 and 5 shall apply in relation to such application.

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

Power to make Rules.

8. 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.

Saving.

STATEMENT OF OBJECTS AND REASONS

Frivolous and vexatious litigations are the cause of concern for the courts for quite some time. Often, this matter has been highlighted by various courts and the Law Commission as well which favoured for a check on the filing of frivolous and vexatious proceedings. At times, it has been seen that many persons abuse the process of law and indulge in the habitual and intentional filing of frivolous and vexatious civil or criminal proceedings to harass other persons without any reasonable ground. It has also been observed by the courts that some persons habitually and persistently file cases on the issues, which have already been decided once or more than once against some parties or their successors or against different parties. Besides the harassment, filing of such proceedings also leads to wastage of the precious time of the law courts which are already burdened. Such frivolous litigation cause unnecessary and avoidable strain on the States' resources in the area of dispensation of justice.

There is no denying of the fact that every person has right to file civil or criminal proceedings against any other person, but a check is necessary to allow the court to examine the *bona fide* of a person filing the proceeding. Many countries in the world, like the USA, the UK have enacted a law on the filing of frivolous and vexatious litigation. In our country also, there is a law on the subject in two States, *i.e.*, Tamil Nadu and Maharashtra. In view of the concern expressed by the courts, it is necessary that a central law be enacted to prevent the filing of frivolous and vexatious complaints by declaring such a person as vexatious litigant, who may thereafter be barred from filing or continuing any such complaint without the permission of the High Court or the appropriate court. It is also felt that if a person is declared as vexatious litigant, provision should also be made to punish him for the contempt of the court besides directing him to pay the cost.

The Bill seeks to achieve the above objectives.

BHUPENDER YADAV

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 7 of the Bill empowers the concerned High Court to make rules for carrying out the purposes of the Bill. The rules will relate to matters of details only as such the delegation of legislative powers is of normal character.

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(Shri Bhupender Yadav, M.P.)