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# Section 209 of I.P.C.: An Inherent Power of The Courts in Disciplining the Litigants and Preserving Justice

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## ABSTRACT

*This Research paper deals with the issue of tremendous increase in the institution of false and frivolous cases and claims and the scope of Section 209 of I.P.C in punishing and disciplining the litigants who institute false cases. The National Crime Records Bureau(NCRB) Report 2013, 2016 and 2018 portrays great concern for the nation and upon the public policy. The conviction rate therein represented are gradually very low and the major percentage of accused are acquitted by Courts on the context of false cases or mistake of fact. Section 209 was inculcated within the Indian Penal Code after a recommendation was made by the Law Commission of India who was preparing the said draft. They recommended in there Clause 196 that – there must be provision in the Indian Penal Code for punishing those who institute false cases and make false claims. Therefore, the said clause was transformed and thereby inculcated in the Indian Penal Code as Section 209. The Section 209 of I.P.C act as a hunter used by Courts in disciplining those litigants who intents to waste the time of the Hon'ble Courts and for an undue advantage causes injury to other persons. The main reason for criminalizing false claims and false defenses plead is that the plaintiff as well as the defendant can't abuse the process of law and prevent the course of justice. Therefore, apart from the eleven fundamental duties enshrined in our Constitution of India, there is one more legal duty which is universally accepted in all countries,i.e, "The legal duty to never institute any frivolous litigation or claims before any Court of law or Adjudicating body" and if such legal duty is breached, the Hon'ble Courts by invoking Section 209 of I.P.C., punish such litigants and dig out the truth.*

**Keywords:** Indian Penal Code, Section 209, Frivolous cases.

## I. INTRODUCTION

“Thou shalt not bear false witness against thy neighbour”<sup>1</sup> is the ninth Commandment which God gave to Moses. This Commandment is the foundation and reflection of Christianity which ideally symbolizes two things: “Do not lie testifying in court” and “Do not lie at all”. When we walk away from the truth, we walk away from the God. There are often consequences

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to lying, whether or not we get caught.

Apart from the eleven fundamental duties enshrined in our Constitution of India, there is one more legal duty which is universally accepted in all countries, i.e., “The legal duty to never institute any frivolous litigation or claims before any Court of law or Adjudicating body” and if such legal duty is breached, the Hon’ble Courts by invoking Section 209 of I.P.C., punish such litigants. The basic objective behind such punishment is that, such frivolous litigations or claims have adverse effects on both, i.e., the Courts of law as well as the individual or public at large. It wastes the precious time of the Courts as well as causes harassment to the one(s) against whom it is instituted.

Initially when an F.I.R has been lodged an Investigating Officer is appointed who conducts the investigation and thereby takes the cognizance. The Investigating Officer prepares a case diary in which the charges framed against the accused, the statement of the informant/complainant, the statements of the witnesses and other relevant things are mentioned. This case diary is then presented before the concerned jurisdictional court under whose jurisdiction the case has been instituted. Hence, the hearing and the trial begins there from. Since, it is one of the principles of Natural Justice “Audi Alteram Partem” which means “no man shall be condemned unheard”, the accused too gets the opportunity to place his side in defence. While utilizing such opportunity such accused shall start from proving the allegations and claims made against him as false and thereby adduce all the evidences in support of his counter allegations. If the Court is satisfied that that such case or claims have been falsely implicated, then by invoking Section 209 of I.P.C it will punish such litigant.

In the case of **H.S.Bedi v. NHAI, 220 (2015) DLT 179**, the Hon’ble Delhi Court while dealing with this case expressed great concern over frivolous litigation and a tremendous increase in false claims. The Hon’ble Delhi High Court further for preserving justice, immediately issued a set of rules to all the lower Courts for initiating prosecution under Section 209 of I.P.C if any false claim is found being made by the litigant as well as his representative lawyer. The Bench of Justice J.R. Midha while dealing with the above mentioned case said that “false claims in courts are a menace which delays the justice and compromises with the sanctity of the court of justice”.

## **II. HISTORICAL BACKGROUND BEHIND INCLUSION OF SECTION 209 IN I.P.C**

The history of introducing Section 209 in the Indian Penal Code lays down its roots in 1835. In 15th June 1835, the Governor General of India gave the Law Commission of India to draft the I.P.C. The Commission comprised of Lord T.B. Macaulay, J.M. Macleod, G.W. Anderson

and F. Millett, who submitted their report to George Lord Auckland Governor General of India on 14th October, 1837 along with it the Law Commission of India gave a recommendation stating that there should also be a provision added to the I.P.C relating to “punishment of those litigants who institutes a false case against another and subsequently makes false pleas and false claims“. The Law Commission of India in it’s further recommendation also stated that “there should also be a punishment in the I.P.C for false pleading because all the false evidences emerges from the false pleading only”.

Thus, the clause 196 of the Law Commission of India’s recommendation was modified to Section 209 and introduced to Indian Penal Code.

Clause 196 read as *“Whoever, fraudulently, or for the purpose of annoyance, institutes any civil suit knowing that he has no just ground to institute such suit, shall be punished with imprisonment of either description for a term which may extend to one year, or fine, or both*  
*Explanation: It is not necessary that the party to whom the offender intends to cause wrongful loss or annoyance should be the party against whom the suit is instituted.”*<sup>2</sup>

### **III. OBJECTIVE BEHIND INCLUSION OF SECTION 209 IN I.P.C**

The main reason for criminalizing false claims and false defenses plead is that the plaintiff as well as the defendant can’t abuse the process of law and prevent the course of justice. That, the objective of introducing Section 209 of I.P.C is to save the other party to suit from getting defrauded and experience injustice and therefore even if a part of claim is found false still Section 209 of I.P.C will be invoked and the accused litigant will be punished.

Such frivolous litigations or claims have adverse effects on both, i.e, the Courts of law as well as the individual or public at large. It wastes the precious time of the Courts as well as causes harassment to the one(s) against whom it is instituted.

In the case of **H.S.Bedi v. NHAI, 220 (2015) DLT 179**, Hon’ble Justice J.R. Midha showed great concern regarding the false and frivolous cases which pollutes the stream of justice and it misguides the Courts into passing of harmful judgements. Therefore by punishing the said litigant under Section 209 of I.P.C., who has instituted a false claim or case, an example can be set that the judicial system is warning the litigants stating: “we will have a hunter in one hand and a spade on the other, with the hunter we will discipline the litigant from making false claims and with the spade we will dig out the truth“.

### **IV. EXPLANATION OF SECTION 209 OF I.P.C AND ITS ESSENTIALS**

The Chapter 11 of the Indian Penal Code has provisions for offences against public justice. The

Section 209 of I.P.C is a part of the Chapter 11. This Section 209 of I.P.C is vested on the Hon'ble Courts and is subsequently invoked by them for saving the other party from getting defrauded and in maintaining the sanctity of the Court.

Section 209 of I.P.C lays down that:

*“any litigant if fraudulently or dishonestly makes false claims in the Court of Justice with the intent to injure or annoy any other person thereby having the knowledge that his/her claims are false, will be punished with imprisonment which may extend to 2 years and fine”*<sup>3</sup>

Let's understand the application of Section 209 of I.P.C with the help of an example:- Suppose, 'B' files a complaint case in the Magistrate Court against 'A' and 'C' stating therein that on the relevant date, time and place, both of them had beaten him mercilessly and injured him.'B' also stated that 'C' snatched his gold chain from his neck. Latter on the defense counsel proved before the Magistrate that, the day before the occurrence of the offence, 'C' had undergone a eye surgery and was hospitalized for seven days after the surgery and this was subsequently proved by the hospital admission documents, prescriptions and other relevant documents and evidences.

Thus 'B' plea was declared false by the Hon'ble Magistrate Court because the foundation of the claim was itself fraudulent and false and the Court exercised the power under Section 209 of I.P.C and punished 'B' for instituting false claim against 'C'.

That the nature of Section 209 of I.P.C is non-cognizable,i.e, the police can't arrest the accused without the warrant and the nature is also non-compoundable,i.e, the parties to suit can't compromise and in such case the punishment to the wrongdoer is given mandatorily.

The offence of false claim under Section 209 of I.P.C is completed or can be said to be committed as soon as when any litigant institutes a false claim or false defense plea in the Court of Justice.

*That the essential ingredients for invoking Section 209 of I.P.C are as follows:-*

- a) The accused litigant must have made a claim ;
- b) Such claim must have been made before the Court of Justice ;
- c) The claim made therein must be either partly or wholly false ;
- d) The litigant making the claim must have the knowledge about the claim being made is false ;
- e) The claim made therein must be fraudulent and dishonest with a intention to cause injury and

annoy the other person.

*Let us analyze the above mentioned essentials one by one:-*

- a) The accused litigant must have made a claim – The first essential for invocation of Section 209 of I.P.C is that the accused litigant must have made claim. The word ‘claim’ under Section 209 of I.P.C means -the existence of a fact or a set of facts on which a party to a case seeks an outcome from the Court based on the substantive law and it’s application to facts as established. Thus the word ‘claim’ only includes the foundation on which the case is being instituted or fought against,i.e, the outcome or the relief the party is seeking. The Courts are of the opinion that Section 209 of I.P.C can only be invoked when the foundation of the claim made by the litigant or the plea made for defense is false and fraudulent.

The word ‘claim’ under Section 209 of I.P.C also included the false denial and defense pleas adopted by a defendant in the suit. Thus, the ‘claim’ includes both: the affirmative of existence of the facts made by a plaintiff, writ petition or application, and the non-existence and denial of the averred fact by the defendant in a counter reply or counter affidavit. <sup>4</sup>

- b) Such claim must have been made before the Court of Justice – The second essential is that the said claim shall be made before the Court of Justice. According to Section 20 of the I.P.C, “Court of Justice” denotes a Judge or a body of Judges who is/are empowered by law to act judicially alone.
- c) The claim made therein must be either partly or wholly false – The third essential is that such claim made therein must either be partly or wholly false. The burden of proof is upon the said person against whom such claim has been made. Therefore, for invoking the said Section, such person must adduce all evidences and prove before the Court of Justice that the said claim is false. Even if such claim is partly false it will be sufficient for invocation of Section 209 of I.P.C against the accused litigant.
- d) The litigant making the claim must have the knowledge about the claim being made is false – The fourth essential is that the litigant trying to prove that the claims made by the opposing litigant is false shall also prove that the litigant making such false claims also had knowledge that the claims made therein the case are false and even then he proceeds with such claims.
- e) The claim made therein must be fraudulent and dishonest with a intention to cause injury and annoy the other person – The fifth and last essential is that such claim made must be fraudulent and made with an dishonest intention to cause injury or annoy or defame the other person.

## V. INVOCATION OF SECTION 209 OF I.P.C IN MATRIMONIAL OFFENCES (U/S 498A)

Section 498 A of I.P.C relates to the punishment for cruelty committed either by the husband or his relatives. Section 498 A was added in the Indian Penal Code with the view of punishing the husband and his relatives who harass or torture the wife to coerce her or her relatives to satisfy unlawful demands such as dowry. The present scenario has changed drastically wherein, Section 498 A of I.P.C that was provided to wives for their protection, has thereby started using them as a weapon against their husbands.

### 498A: Women shield becomes weapon?<sup>2</sup>

Year	Cases filed	Cases false/ bad in law
2011	99,135	10,193
2012	1,06,527	10,235
2013	1,18,866	10,864

From the report of the National Crime Records Bureau(NCRB) Report 2016 total cases registered U/s 498 A of I.P.C were 1,10,378 out of which the conviction ratio shown was only 12.2% that reflects that only 13,466 approximately accused were convicted while the rest 96,912 were either acquitted based on false cases/mistake in law.

Likewise in the report of National Crime Records Bureau(NCRB) Report 2018 more than one lakh cases were registered U/s 498 A of I.P.C out of which the conviction ratio shown was only 13% while the rest were either acquitted based on false cases/mistake in law.

### Conclusion drawn from the Reports

That, from the said reports of the National Crime Records Bureau(NCRB) we can conclude that the institution of false cases U/s 498 A of I.P.C by women are at a peak while on the other hand the men suffer from grave distress. The conviction ratio enumerated as above in the various years provides that apart from few percentage of accused as reflected, the major percentage of accused are acquitted based on false cases instituted or cases where there are mistake in fact.

### Lets analyze the definition of cruelty as defined U/s 498 A of I.P.C:-

The term “cruelty” has been defined under section U/s 498 A of I.P.C as:-

*Any willful conduct which is of such nature that is likely sufficient to drive the woman to commit*

<sup>2</sup> National Crime Records Bureau(NCRB) Report 2013

*suicide or to cause grave injury or damage to life, limb or health (whether physical or mental) of the woman or;*

*Harassment of the woman or torturing her to coerce her or her relatives to satisfy unlawful demands such as dowry.*

**Punishment:** The punishment for cruelty is imprisonment for a term which is extendable till 3 years and fine.

## **VI. LEGAL OPINION IF FALSE CASE HAS BEEN INSTITUTED UNDER SECTION 498 A OF I.P.C AND THE INVOCATION OF SECTION 209 OF I.P.C AS COUNTER**

From the abovementioned chart and conviction ratio optioned from the reports of the NCRB, we can solely find out that women are misusing the shield of Section 498 A as a weapon and instituting false cases against their husband and the husband's relatives in order to move out from the matrimonial home or removing the husband's parents or relatives from the matrimonial homes. In such cases where an F.I.R has been lodged the Police can arrest for conducting a preliminary enquiry, however due to the intervention of the Hon'ble Supreme Court now the present scenario is that the Investigating Officer is now required to send a notice U/s 41 A of Crpc to make the accused appear before him/her. If from the appearance of the accused and his cooperation the Investigating Officer is satisfied then as long as the accused appear and cooperate, the accused will not be arrested.

Therefore it is advised that the accused comply with the 41 A notice and thereby cooperate. While appearing the accused shall adduce all the evidences which will help him strengthen his case as all those propositions will be laid down in the case diary.

The accused shall after this if have concrete evidence can always go before the Hon'ble High Court for the quashing of F.I.R U/s 482 of Crpc. If not the accused shall move and anticipatory bail petition U/s 438 of Crpc before the concerned Court. After this the trial will commence, during the trial period initially the Court in order to mediate the dispute between the accused and his wife send the matter in the mediation center where the mediation would take place. If the mediation is successful then the case will be disposed off on such merit whereas if not the case will continue.

That, the accused shall adduce all the evidences and witnesses before the Court of law and shall challenge the maintainability of the allegation made therein under section 498A of I.P.C. After which if the Court is satisfied that the allegations made are false and fabricated and introduced for an ulterior motive, the said accused shall pray for the invocation of Section 209 of I.P.C and



thereby punishing the wife for such false claims.

## **VII. IMPORTANT CASE LAWS**

- 1) Ramnandan Prasad Narayan Singh v. Public Prosecution, Patna (1921) 22 Cr LJ 467 -

The Hon'ble Patna High Court held that if the plaintiff fails to prove his claims in the civil suit due to lack of evidence, then the plaintiff will not be held liable under Section 209 of I.P.C.

- 2) Kishore Samrite v. State of U.P.(2013) 2 SCC 398 -

The Hon'ble Supreme Court in the stated that "the Courts should have a hunter in one hand and a spade on the other, with the hunter the Court can discipline the litigant from making false claims and with the spade the Court can dig out the truth".

- 3) H.S.Bedi v. NHAI, 220 (2015) DLT 179 -

The Hon'ble Delhi Court while dealing with this case expressed great concern over frivolous litigation and a tremendous increase in false claims. The Hon'ble Delhi High Court further for preserving justice, immediately issued a set of rules to all the lower Courts for initiating prosecution under Section 209 of I.P.C if any false claim is found being made by the litigant as well as his representative lawyer. The Bench of Justice J.R. Midha while dealing with the above mentioned case said that "false claims in courts are a menace which delays the justice and compromises with the sanctity of the court of justice".

Justice J.R. Midha in the afore mentioned judgement concluded by stating that:-

"16.1 Section 209 of the Indian Penal Code, is a salutary provision enacted to preserve the sanctity of the Courts and to safeguard the administration of law by deterring the litigants from making the false claims. However, this provision has been seldom invoked by the Courts. The disastrous result of not invoking Section 209 is that the litigants indulge in false claims because of the confidence that no action will be taken.

16.2 Making a false averment in the pleading pollutes the stream of justice. It is an attempt at inviting the Court into passing a wrong judgment and that is why it has been treated as an offence."

## **VIII. CONCLUSION**

The Christian ninth Commandment "Thou shalt not bear false witness against thy neighbour" teaches us two things: "Do not lie testifying in court" and "Do not lie at all". When we walk away from the truth, we walk away from the God. There are often consequences to lying, whether or not we get caught. Section 209 of I.P.C is an ideal of such law/commandment laid

down by Moses who was enriched by the wisdom of light of God.

The history of introducing Section 209 in the Indian Penal Code lays down its roots in 1835. In 15th June 1835, the Governor General of India gave the Law Commission of India to draft the I.P.C. On 14th October, 1837 the Law Commission of India gave the draft to the Governor General of India along with a recommendation that “punishment of those litigants who institutes a false case against another and subsequently makes false pleas and false claims“. Thus, the clause 196 of the Law Commission of India’s recommendation was modified to Section 209 and introduced to Indian Penal Code.

The main reason for criminalizing false claims and false defenses plead is that the plaintiff as well as the defendant can’t abuse the process of law and prevent the course of justice. Section 209 of I.P.C is solely invoked by the Courts for punishing the litigants who institutes false cases and claims.

The Hon’ble Supreme Court in case *Kishore Samrite v. State of U.P.(2013) 2 SCC 398* stated that “the Courts should have a hunter in one hand and a spade on the other, with the hunter the Court can discipline the litigant from making false claims and with the spade the Court can dig out the truth “.

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**IX. REFERENCES**

- 1) THE INDIAN PENAL CODE of 1880 ;
- 2) THE CODE OF CRIMINAL PROCEUDRE of 1973
- 3) THE HOLY BIBLE (Exodus 20:16 - “Thou shalt not bear false witness against thy neighbour” ;
- 4) NATIONAL CRIME RECORDS BUREAU (NCRB) REPORTS of 2013,106 and 2018 ;
- 5) H.S. Bedi v. NHAI, 220 (2015) DLT 179 ;
- 6) Ramnandan Prasad Narayan Singh v. Public Prosecution,Patna (1921) 22 Cr LJ 467
- 7) Kishore Samrite v. State of U.P.(2013) 2 SCC 398

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