
Malicious Prosecution: A Tort Against Unjust Prosecution

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Abstract

Malicious prosecution is the important area of tort law. It is concerned with redressing those wrongfully and unjustifiably placed under litigation. The instances it covers are where court procedures are brought about for ulterior motives, without serving justice, but as a way of harassing or injuring the person under litigation; they are usually prompted by malice or vindictive motives. Malicious Prosecution Tort is directed towards the limitations of the misuse of judicial procedure and making sure the proportion of a right to relief granted as against evil resulted by the litigation proceedings on baseless grounds. Paper Explores the Key Elements of the cause of action for Malicious Prosecution comprising Lack of Probable Cause, Malice, and Favorable Termination of the Proceeding. This paper looks into landmark cases and statutory provisions regarding common law jurisdictions in the Indian legal system. This helps to establish judicial standards, evidentiary challenges, and possible remedies for the victims. Additional policy considerations: This paper argues for reform based on a more feasible policy of making it possible not to hinder access to justice while preventing vexatious litigation.

Keywords

Malicious prosecution, Tort law, Legal remedy, Wrongful litigation, Judicial interpretation, Damages

Introduction

Malicious prosecution is derived from a very significant need to avoid the misuses of the judicial system. It aims at making those liable who misuse the processes of the law to harass or injure

another person. Unlike other forms of torts, malicious prosecution is a specific action aimed at launching unfounded criminal or civil cases against an individual; this usually has the purpose of damaging their reputation, finances, or personal peace.¹

This tort falls under the objectives of tort law to redress wrongdoing but also to avert its future reoccurrences. The standards set in most jurisdictions for malicious prosecution are there so that people should not be discouraged from using courts. This research paper dives into elements, legal standards, and jurisdiction connected with malicious prosecution. It brings out a general analysis of how courts treat such an issue.²

Definition and Elements of Malicious Prosecution

Malicious prosecution is that tort that protects individuals against wrongful instituting of criminal or civil proceedings, which arises when one party deliberately and without just cause puts another to litigation and the causes harm or damage to the accused.³ In essence, this serves to alleviate the wrongful victims who are dragged through courts, suffering reputational damage, emotional distress, or financial loss in the process. This writ of malicious prosecution vindicates integrity in the judicial process by deterring litigants from using courts for personal vendettas or matters without reasonable justification.

For an action for malicious prosecution successfully to be brought against a defendant, certain elements must be satisfied. There are four of them: to prevent only genuinely wrongful uses of the process from constituting this tort, so that rights of those seeking redress are protected at the same time as spurious or unsupported allegations of malicious prosecution are precluded. Each such element is dealt with in detail below.⁴

1. Initiation or Continuation of Legal Proceedings:

¹ W.V.H. ROGERS, WINFIELD AND JOLOWICZ ON TORT 10–12 (19th ed. 2010).

² TONY WEIR, AN INTRODUCTION TO TORT LAW 45–47 (2d ed. 2006).

³ HILAIRE BARNETT, UNDERSTANDING PUBLIC LAW AND TORT LAW 89–91 (2008).

⁴ R.F.V. HEUSTON & R.A. BUCKLEY, SALMOND AND HEUSTON ON THE LAW OF TORTS 405–407 (20th ed. 1992).

The first one is that the defendant has instituted or continued a legal proceeding against the plaintiff. Generally speaking, this will mean that the defendant either filed a criminal complaint or commenced civil proceedings. The defendant should be proved to be liable to institute or have the process continued. The defendant cannot be made liable for malicious prosecution if the third party, like the police, chooses to prosecute on its own volition. This requirement is satisfied, for example by provisions imposing criminal sanctions, if the defendant gave false evidence or caused any prosecuting authority to institute proceedings without good cause.⁵

2. Lack of Reasonable and Probable Cause:

Core requirement of malicious prosecution is that the proceeding was brought without reasonable and probable cause. This means an honest belief, founded upon such evidence as would warrant a reasonable person to believe that the accused is likely to be guilty or liable. Such causation, then, must consist of an actual basis, grounded in fact, to believe in the guilt or liability of the accused.

This requirement is satisfied when the case was brought based on suspicion, spite, or flimsy evidence no reasonable person would rely upon. In *Glinski v. McIver* in 1962, the House of Lords defined that the probable cause is more than suspicion; it involves facts that would warrant a reasonable person to bring the case.⁶

3. Malice or Improper Motive

The plaintiff must demonstrate that the defendant acted with malice, meaning he or she had some ulterior or improper purpose to his or her actions aside from bringing a party into court. Malice has been defined as intentional misuse of litigation which generally involves personal revenge, harassment, or gaining an unfair advantage. Although malice is difficult to prove it is inferred from circumstances showing malice on the part of the defendant or from evidence indicating a

⁵ MICHAEL A. JONES, CLERK & LINDSELL ON TORTS 1052–1055 (23d ed. 2020).

⁶ *Glinski v. McIver* [1962] A.C. 726, 741–742 (H.L.) (U.K.).

personal vendetta. This shows that the purpose of the action of the defendant was to cause injury as opposed to having a fair judicial outcome.⁷

4. Amicable Termination of Proceedings:

The litigations must be in favor of the plaintiff. With a criminal suit, it will mean that the plaintiff was acquitted or dismissed. For civil cases, it means judgment or ruling in favor of the plaintiff, marking that the lawsuit filed initially had no merit. This will prevent only those who were victimized by malicious legal action from filing redress, but the claims that the defendant would have won out get filtered through.⁸

5. Evidence of Damage:

He also has to establish that there was malicious prosecution on their case. Any damage suffered can be of any character, which could be loss of reputation, mental distress, or financial loss. In the courts' discretion, they could also give punitive damages against the defendant for deterring similar conduct. The courts could award compensatory damages in case actual financial losses, reputational damage, or other measurable wrongs have been suffered.⁹

Every element ensures that prosecution for unlawful reasons takes place without jeopardizing the right to access justice. Courts, protecting all these elements while maintaining the very delicate balancing act between avoiding judicial abuse and furthering the right use of legal avenues, preserve them.

Legal Framework and Judicial Interpretation

⁷ Naeem A. Ali, *Malicious Prosecution: Legal Framework and Judicial Interpretation*, 7 INT'L J.L. & POL'Y REV. 35, 39–40 (2018).

⁸ W.V.H. ROGERS, WINFIELD AND JOLOWICZ ON TORT 412–414 (19th ed. 2010).

⁹ MICHAEL A. JONES, CLERK & LINDSELL ON TORTS 1058–1060 (23d ed. 2020).

The law governing malicious prosecution has a great deal of common law that differs from one jurisdiction to the other and can be influenced by either statutory or case law structures. It is a tort concerning abuses of procedure, and courts generally balance protection against empty litigation with a right to a fair litigation of genuine claims. The malicious prosecution cases are dealt with under specific legal standards in both criminal and civil jurisdictions like India, the United States, and the United Kingdom to ensure that only cases of genuine abuse lead to liability.¹⁰

Legal Framework: Common and Statutory Law Impact Malicious prosecution is one of the torts that English common law has given to other common law jurisdictions to develop. Generally speaking, case law applies these essentials: initiation of proceedings, lack of reasonable cause, malice, favorable termination, and proof of damages.¹¹

Malicious prosecution claims in India are based mainly on precedents from the English courts; however, no particular statute of malicious prosecution exists and provisions under the IPC and CPC incidentally deal with the matter of wrongful litigation. Thus, Section 211 of the IPC criminalizes knowingly false charges, which rather vindicates the malicious prosecution notion of preventing unjustifiable legal proceedings.¹²

Malicious prosecution varies under the laws of the states in the United States but contains elements that are roughly the same across jurisdictions. Many states also recognize separate claims for "abuse of process," which apply to cases where legal processes are misused after proceedings have begun, providing additional remedies against wrongful litigation.¹³

¹⁰ Edward Perkins, *Abuse of Legal Process and Malicious Prosecution in Comparative Law*, 73 MOD. L. REV. 592, 595–597 (2010).

¹¹ R.F.V. HEUSTON & R.A. BUCKLEY, SALMOND AND HEUSTON ON THE LAW OF TORTS 400–402 (20th ed. 1992).

¹² Indian Penal Code, 1860, § 211 (India).

¹³ Edward Perkins, *Abuse of Legal Process and Malicious Prosecution in Comparative Law*, 73 MOD. L. REV. 592, 600–602 (2010).

Judicial Interpretation and Key Case Law

Therefore, judicial interpretation of malicious prosecution developed through landmark cases that defined the elements, particularly in regard to "reasonable and probable cause" and malice. Courts impose stringent proof of all elements under the facade of caution lest it deter legitimate claimants from seeking justice.

Reasonable and Probable Cause: In *Glinski v. McIver* (1962), the House of Lords laid down seminal decision which held that reasonable and probable cause requires a good-faith belief about the guilt or liability of the accused coupled with factual bases sufficient to support a reasonable person's reliance upon such bases. This case found that probable cause meant more than mere suspicion but was a justifiable belief predicated upon facts. This standard is utilized by courts so that actions brought with a good-faith belief in the defendant's wrongdoing are not labeled malicious prosecution.¹⁴

Malice: This is also not easy to prove since it deals with subjective intent. The courts interpret malice from the underlying motives of the defendant. In *Brown v. Hawkes*, 1891, malice was presumed from circumstances proving that personal spite was the moving impetus¹⁵ of prosecution rather than pursuit of justice.¹⁶ It was also remarked in the case that there should be no direct malice but must constitute some improper motive such as harassing or intimidating one or gaining some advantage over the accused to act in bad faith.

Favorable Termination: Courts expect that the proceedings must culminate in favor of a litigant accused with an indication that the first action had no foundation. It has been vindicated by Indian context in cases like *West Bengal State Electricity Board v. Dilip Kumar Ray* (2007),

¹⁴ *Glinski v. McIver* [1962] A.C. 726, 741–742 (H.L.) (U.K.).

¹⁵ *Brown v. Hawkes* [1891] 2 Q.B. 718 (Eng.).

¹⁶ Naeem A. Ali, *Malicious Prosecution: Legal Framework and Judicial Interpretation*, 7 INT'L J.L. & POL'Y REV. 35, 39–40 (2018).

wherein it was held that the malicious prosecution action is sustainable only when the plaintiff is acquitted or charges against him get dismissed.¹⁷

Damages: Judicial development of damages in the tort of malicious prosecution also enabled recovery of loss of money, harm to reputation, and mental suffering. Courts in cases such as *Savile v Roberts* (1698) have confirmed that damages embrace loss other than financially¹⁸ so full effect of wrongful litigation on a person's life is grasped.¹⁹

Challenges in Proving Malicious Prosecution

First, malicious prosecution is no easy thing to prove because courts have set strict requirements meant to prevent frivolous claims and the right to access justice. Indeed, each aspect of this tort - initiation of proceedings, lack of reasonable cause, malice, favorable termination, and proof of damages - must all be proved by the plaintiff with great care. Courts take considerable care to sift through only the wrongful litigation cases that are correct, hence posing several unique challenges for claimants in their quest for redress.²⁰

1. *Proving Lack of Reasonable and Probable Cause:*

A necessary ingredient that has to be proved most stringent is the lack of reasonable and probable cause in a case concerning malicious prosecution. The plaintiff has to show proof that no factual or reasonable basis existed on which he acted to initiate proceedings against the defendant. For this, therefore, both the subjective and the objective standards are considered by the courts, requiring proof that the defendant neither had an honest belief about the guilt of the plaintiff nor reasonable evidence justifying his suspicion. The subjective requirement demands

¹⁷ W.B. State Elec. Bd. v. Dilip Kumar Ray, (2007) 1 S.C.C. 1, 6-7 (India).

¹⁸ *Savile v. Roberts* (1698) 1 Ld. Raym. 374 (Eng.).

¹⁹ MICHAEL A. JONES, CLERK & LINDSELL ON TORTS 1058-1060 (23d ed. 2020).

²⁰ Naeem A. Ali, *Malicious Prosecution: Legal Framework and Judicial Interpretation*, 7 INT'L J.L. & POL'Y REV. 35, 42-44 (2018).

the defendant's personal belief regarding the culpability of the plaintiff, whereas the objective requirement demands whether a reasonable person, under such circumstances, would have initiated the action. Balancing between both standards is difficult and creates contradictions because to one, what would be "reasonable" is not to another. The courts are careful in dealing with probable cause especially not to deter meritorious legal actions from being prosecuted.²¹

According to this, even if the prosecution would be unsuccessful or later found to lack basis, it should be deemed to have had probable cause if the bases of such at the time of its commencement are reasonable.

2. Establishing Malice or Improper Motive:

Malice, or improper motive, is probably the most difficult element to prove in malicious prosecution. The plaintiff has the burden of showing that the defendant acted not with a desire to see justice served but with an ulterior motive-personal spite, revenge, or intent to injure the plaintiff.²²

However, malice has elements that are subject to individual assessment and proof, for instance, considering the defendant's state of mind and intentions, of which very few will openly confess.

Malice is usually inferred by the courts from unclear circumstantial evidence; that's why determining malice is pretty subtle, as plaintiffs are supposed to prove that no reasonable justification or lawful intention was taken in the actions of the defendant. On other occasions, the defendants can provide alternative, legally valid reasons for their actions and thus further complicate the case of the plaintiff. In this context, the burden of proving malice rests frequently on a fragile balance between circumstantial evidence and judicial inference.

3. Requirement of Favorable Termination of Proceedings:

²¹ MICHAEL A. JONES, CLERK & LINDSELL ON TORTS 1056–1058 (23d ed. 2020).

²² Anirudh Pathak & Priya Singh, *Malicious Prosecution: Balancing Rights and Safeguarding Justice*, 3 INDIAN J. LEGAL STUD. 89, 93–95 (2019).

This dictates that the malicious prosecution would depend on the original proceedings having resulted in a favorable disposition for the plaintiff. That way, this is a good limitation to the action in that it only applies to persons found innocent at the final analysis. However, this becomes difficult particularly when the proceedings were dismissed based on procedural reasons without it having been given a final judgment.

For example, dismissal of the case because of settlement, insufficiency of evidence, and non-projection of charges would not meet a favorable termination even on the fact that the plaintiff is guiltless. Other different court jurisdictions also define in varied ways "favorable termination". In some cases, jurisdictions require a very obvious declaration of plaintiff's innocence. However, other jurisdictions allow claims because the case already terminated with no conviction. The end is a confusion among the plaintiffs and ambiguity might affect their claims over favorable termination.²³

4. Difficulty in Proving Damages:

The plaintiff must further prove that he has suffered actual damage or loss arising from it, whether financial loss, reputation damage, or emotional distress. Non-economic damages such as reputation damage or emotional distress cannot be measured on balance, and for them to be recovered, there must be concrete proof through psychological tests or witness testimony. Courts have always been wary of awarding malicious prosecution damages because malicious prosecution claims are always examined with great detail to ensure they are necessary and proportionate.²⁴

Remedies and Damages for Malicious Prosecution

This tort of malicious prosecution allows wrongful victims of legal action to seek remedies and damages. It is not only a compensatory remedy but also a deterrent that will prevent wrongful

²³ W.V.H. ROGERS, WINFIELD AND JOLOWICZ ON TORT 415–417 (19th ed. 2010).

²⁴ TONY WEIR, AN INTRODUCTION TO TORT LAW 50–52 (2d ed. 2006).

litigation by holding the defendant liable. The courts can grant him compensatory and, in appropriate cases, punitive damage depending on the nature of the harm, the degree of intent of the defendant, or the susceptibility of the victim. Below is an overview of the types of damages available and the approach courts commonly take in malicious prosecution cases:²⁵

1. Compensatory Damages

Compensatory damages are presumed to restore the plaintiff to a position that the plaintiff would have occupied if such wrongful prosecution had not taken place. These include all of the following:

Special Damages: These are measurable losses in terms of dollars. Such may include the cost incurred by plaintiff for lawyers and loss of wages or other financial losses he could also have suffered as a direct result of the malicious prosecution. Lost business opportunities or business losses in consequence of wrongful prosecution are other examples.

General damages: Address the non-economic injuries in terms of mental anguish, reputation, humiliation, and stress. Unlike special damages that can be easily quantified, general damages are very important because they take account of the emotional injury and the reputational damage incurred through wrongful prosecution. Courts will, therefore, take into account the time taken in the prosecution, the social status of the plaintiff, and how much the wrongful act affected their mental comfort and reputation in society.

Reputational Damages: Since malicious prosecution involves reputational injury, reputational damages are usually capable of being claimed as part of general damages. This is more so where the plaintiff's social and professional reputations are damaged. A wrongful criminal accusation leading to public shame or loss of credibility, for instance, often falls in this category.²⁶

²⁵ HILAIRE BARNETT, UNDERSTANDING PUBLIC LAW AND TORT LAW 92–94 (2008).

²⁶ R.F.V. HEUSTON & R.A. BUCKLEY, SALMOND AND HEUSTON ON THE LAW OF TORTS 410–412 (20th ed. 1992).

2. Punitive (or Exemplary) Damages

Punitive damages, also referred to as exemplary damages, is an award by a jury that punishes the defendant for his malicious conduct and deters future similar behavior on his part. When the defendant's conduct was particularly malicious, intentional, and reflected an utter disregard for plaintiff rights, courts will issue punitive damage awards. These damages prove a deterrent, as abuse of the judicial system will not be tolerated under the law.

General Comment Punitive damages, however, are reserved for extreme cases of malice or intentional misconduct and are left to the discretion of the trial court for only the most egregious defendant conduct.²⁷

3. Legal Costs and Expenses

All these costs and expenses of legal defense are granted to the innocently prosecuted plaintiffs, along with recompense and punitive damages. Attorney fees, court costs, and other costs pertaining to and directly connected to the malicious prosecution may also be charged to the defendant by the trial court. This is particularly advantageous for them because it provides them with a refund for whatever they suffered from the wrongful prosecution.

4. Injunctions

The court only occasionally grants injunctive relief to stop the harassment or vexatious litigation against the defendant. By the injunction, the defendant would be restrained from bringing further malicious cases against the plaintiff or might be restrained from harassing the plaintiff through litigation. Although infrequently invoked, in those cases, this remedy does provide the Plaintiff long term protection where it is very evident that the defendant has indeed been indulging in malicious litigation.

²⁷ MICHAEL A. JONES, CLERK & LINDSELL ON TORTS 1060–1062 (23d ed. 2020).

Comparative Analysis with Other Jurisdictions

Laws regarding malicious prosecutions vary significantly from jurisdiction to jurisdiction though common law states such as India, the United Kingdom, and the United States share core principles but differ on some applications and procedural nuances.

In **India**, malicious prosecution claims are primarily guided by English common law as there is no specific statute for the tort. The Indian courts apply stringent standards so that plaintiffs prove each element, so keeping an eye on deterrence of frivolous claims and protecting individuals from the wrong hands of litigation.²⁸

Malicious prosecution is well established in the law of the **United Kingdom**. It remains important that the courts in England underpin the principle of probable cause and malice as epitomized in the case of *Glinski v. McIver* 1962, and vindicated a very high bar in proving these two elements. The UK would not condone overt damage to "deter a legitimate claim, although it will award punitive damages in egregious cases".²⁹

Malicious prosecution laws vary among states in the **United States**, but generally speaking, they have requirements consistent with English common law. Besides, most U.S. states also allow for "abuse of process" claims, which cover misuse of litigation procedures other than initiation of a lawsuit. Thus, over time, claims for malicious prosecution are balanced carefully to ensure they do not interfere with the rights to petition the government-protected activity under the First Amendment.³⁰

²⁸ Anirudh Pathak & Priya Singh, *Malicious Prosecution: Balancing Rights and Safeguarding Justice*, 3 INDIAN J. LEGAL STUD. 89, 96–98 (2019).

²⁹ *Glinski v. McIver* [1962] A.C.726, 741–742 (H.L.) (U.K.).

³⁰ Edward Perkins, *Abuse of Legal Process and Malicious Prosecution in Comparative Law*, 73 MOD. L. REV. 592, 605–607 (2010).

This comparative analysis brings out common elements but also shows nuances in the differences through which each jurisdiction defines legally cognizable access to justice and the prevention of abuse of the legal system.³¹

Policy Considerations and Suggested Reforms

Policy considerations of malicious prosecution Balancing the goal of protection from wrongful litigation with an acute interest in access to justice. Protective considerations need courts to beware of not undermining legitimate access to court; however, an unchecked misuse of the process undermines public confidence and burdens individuals as well as courts.

Deterrence and access to justice are also in delicate balance. Unsettled, too easy claims of malicious prosecution may make the practice of overbroad application too great a deterrent to bringing cases in court; yet too strict of standards may leave people subject to unfounded accusations with too little ability to appeal for redress and thus require clarity and fairness in procedure.³²

Suggested Reforms:

Clearer Standards for Malice and Probable Cause: What malice and probable causes are can be standardized on criteria to rid vagueness and provide a clear-cut application in every case. This reform will lead the plaintiffs and defendants, and malicious prosecution claims will not go frivolous.

Streamlined Mechanisms for Legal Costs Recovery: The provision for streamlined recovery of legal expenses in wrongful litigation would alleviate innocent parties' financial costs and help discourage baseless prosecutions.

³¹ Naeem A. Ali, *Malicious Prosecution: Legal Framework and Judicial Interpretation*, 7 INT'L J.L. & POL'Y REV. 35, 45–47 (2018).

³² Anirudh Pathak & Priya Singh, *Malicious Prosecution: Balancing Rights and Safeguarding Justice*, 3 INDIAN J. LEGAL STUD. 89, 99–101 (2019).

Increased Use of Alternative Dispute Resolution (ADR): Encouraging the use of ADR in disputes likely to give rise to malicious prosecutions would decrease court congestion and provide a quicker less adversarial route to a resolution.³³

Such reforms would thereafter strengthen protections against frivolous litigation while keeping avenues open to legitimate claims in order to strengthen judicial integrity and public trust.

Conclusion

The institution of malicious prosecution stands as one important legal safeguard against misuses of judicial processes to protect wrongfully litigated parties from litigation driven by malice or without probable cause. Only true abuse falls within the threshold for compensation because of the rich requirements the courts prescribe for the elements, namely malice, probable cause, and favorable termination. However, evidentiary difficulties in proving malicious prosecution, as well as policy concerns over deterrence of valid claims, do suggest the need for more refined legal standards and greater access to remedy by damaged litigants. Such reforms would include clearer definitions of malice and probable cause and streamlined ways of recovering costs as well as greater alternative dispute resolution, which seeks balance fairness in preventing judicial abuse and in maintaining access to justice. These measures serve to protect the rights of the individual but also ensure that the system remains a proper forum for genuine grievances and adequate redress.

References

1. R.F.V. HEUSTON & R.A. BUCKLEY, SALMOND AND HEUSTON ON THE LAW OF TORTS (20th ed. 1992).
2. MICHAEL A. JONES, CLERK & LINDSELL ON TORTS (23d ed. 2020).
3. W.V.H. ROGERS, WINFIELD AND JOLOWICZ ON TORT (19th ed. 2010).

³³

Id. at 100–102.

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4. Naeem A. Ali, *Malicious Prosecution: Legal Framework and Judicial Interpretation*, 7 INT'L J.L. & POL'Y REV. 35 (2018).
5. Glinski v. McIver, [1962] A.C. 726 (H.L.) (U.K.).
6. HILAIRE BARNETT, UNDERSTANDING PUBLIC LAW AND TORT LAW (2008).
7. TONY WEIR, AN INTRODUCTION TO TORT LAW (2d ed. 2006).
8. Anirudh Pathak & Priya Singh, *Malicious Prosecution: Balancing Rights and Safeguarding Justice*, 3 INDIAN J. LEGAL STUD. 89 (2019).
9. Edward Perkins, *Abuse of Legal Process and Malicious Prosecution in Comparative Law*, 73 MOD. L. REV. 592 (2010).
10. Code of Civil Procedure, 1908 (India); Indian Penal Code, 1860 (India).
11. W.B. State Elec. Bd. v. Dilip Kumar Ray, (2007) 1 S.C.C. 1 (India).
12. Savile v. Roberts (1698) 1 Ld. Raym. 374 (Eng.).
13. Brown v. Hawkes [1891] 2 Q.B. 718 (Eng.).