

# STRATEGIC USE OF FALSE ALLEGATIONS IN HIGH-CONFLICT DIVORCE

*Legal Framework, Evidentiary Analysis, and Strategic Analysis in a Comparative and International Perspective: Israel – India*

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## ABSTRACT

The response of judicial systems worldwide to Intimate Partner Violence (IPV) represents a cornerstone in safeguarding human rights, protecting the well-being of minors, and securing personal safety. However, alongside the paramount necessity for expedited emergency mechanisms (such as *ex parte* protective orders and restraining orders issued on an immediate basis), a complex phenomenon has emerged within high-conflict divorce proceedings: the strategic and tactical deployment of false allegations. This paper examines and analyzes the legal, evidentiary, and strategic dynamics of false allegations concerning physical, psychological, or sexual violence filed during marital dissolution and child custody proceedings. It scrutinizes the inherent tension between the judiciary's principle of preventative caution and the preservation of the respondent's fundamental rights to due process, reputation, and continuous parental relationships with their children. Furthermore, this paper proposes a strategic defense architecture for legal practitioners and advocates, accompanied by a comparative analysis of civil, tortious, and criminal remedies at the international level.<sup>[2]</sup>

## 1. INTRODUCTION AND THEORETICAL FRAMING

Divorce proceedings and custody battles are frequently accompanied by intense emotional distress, transforming the dynamic between litigants from standard civil adjudication into a "Zero-Sum Game" model. Within this framework, emergency statutory mechanisms—originally designed to shield genuine victims of domestic violence from tangible and immediate danger—are exposed to strategic fluidity and bad-faith exploitation.

### 1.1 The Systemic Dilemma: Balance of Risks

Judicial systems across both Civil Law and Anglo-American (Common Law) legal traditions operate under extreme caution regarding allegations of domestic violence. As part of a judicial policy focused on disaster prevention, the typical inclination of judges reviewing applications for *ex parte* protective orders is to grant interim relief—stemming from the perception that the harm resulting from the temporary, erroneous removal of a suspect is lower than the catastrophic harm caused by failing to issue an order in a case where actual violence occurs.

While this preventive caution is normatively understandable and essential, it creates a tactical loophole: it enables one party to enlist the coercive power of the state to alter the balance of power immediately, bypassing the necessity for a rigorous evidentiary threshold at the preliminary stage.

## 2. THE TACTICAL MECHANISM: OBJECTIVES AND MOTIVES BEHIND FALSE ALLEGATIONS

In high-conflict disputes, a false allegation is rarely an isolated, spontaneous step; rather, it is typically a calculated component within a broader litigation strategy:

**a. Status Quo Creation Regarding Custody and Parenting Time:** Removing a parent from the marital residence and severing contact with the children for a period of 30 to 90 days establishes a unilateral custodial routine. Upon expiration of the temporary order, the displaced parent is forced to litigate not for equal joint custody, but rather to re-establish a damaged parental bond, while the accusing party pleads "child stability."

**b. Unilateral Exclusion from the Marital Home:** A protective order grants the accuser exclusive occupancy of the shared residence, imposing a double financial burden on the excluded spouse (paying housing costs or alternative rent alongside continuing to bear existing household expenses).

**c. Constructing a "Dangerous Parent" Narrative within Welfare and Diagnostic Frameworks:** Filing a police report or instituting emergency judicial proceedings creates an official primary record. Even if the criminal file is ultimately closed, the residual evidentiary taint can negatively influence reports by social workers and parental fitness evaluations.

**d. Gaining Leverage in Financial and Property Negotiations:** Threatening criminal proceedings or exerting severe emotional and financial pressure serves as a tool to extort concessions regarding maintenance, property division, or asset balancing.

### 3. COMPARATIVE LEGAL AND JURISPRUDENTIAL FRAMEWORK

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A legal analysis of false allegations requires distinguishing between three parallel operational planes: Criminal, Civil-Tortious, and Family-Procedural.

#### False Allegation in Domestic Violence

| The Criminal Sphere                                           | The Tort Sphere                                                             | The Family Sphere                                                                |
|---------------------------------------------------------------|-----------------------------------------------------------------------------|----------------------------------------------------------------------------------|
| Filing False Information<br>Perjury<br>Obstruction of Justice | Prohibition of Defamation<br>Tort of Negligence<br>Breach of Statutory Duty | Punitive / Real Costs<br>Parental Fitness Audit<br>Parental Alienation / Refusal |

#### 3.1 The Criminal Sphere

Across most legal systems—both Common Law and Civil Law—submitting a false report to law enforcement authorities constitutes a criminal offense involving filing false information, perjury, or obstruction of justice. In practice, however, public prosecution policy in many countries exhibits minimal enforcement of these sections. The primary rationale cited is the fear of creating a "chilling effect" that might deter genuine victims from filing complaints.

#### 3.2 The Civil-Tortious Sphere

When the criminal system refrains from enforcement, the primary burden of redress shifts to civil law:

- **Defamation / Libel Laws:** Filing a police complaint constitutes a "publication." However, statutory frameworks often extend conditional privileges to reports made to competent authorities (e.g., good-faith defense). To overcome this immunity, the plaintiff must satisfy a heightened evidentiary threshold proving actual malice or knowledge of falsity.
- **The Tort of Negligence:** Examining whether both a general and specific duty of care was breached in submitting the complaint, evaluated alongside judicial policy considerations.

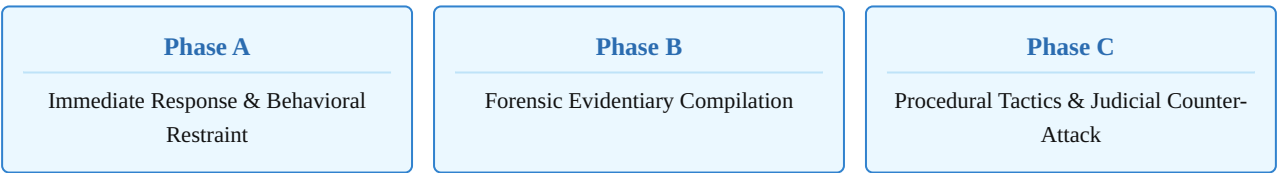
3.3 The Family and Procedural Sphere

Family courts exercise inherent jurisdiction to impose exemplary and punitive legal costs on litigants who submit frivolous applications. Furthermore, false allegations are recognized in international jurisprudence as a primary indicator of an attempt to damage the relationship between the child and the other parent, directly impacting the evaluation of the "Friendly Parent Doctrine" in parenting time claims.

4. STRATEGIC DEFENSE FRAMEWORK FOR CASE MANAGEMENT

Managing the defense in a case involving fabricated allegations requires precision, high discipline, and systematic evidentiary work from day one.

Phased Strategic Defense Architecture



Phase A: Immediate Crisis Management and Behavioral Restraint

- 1. Strict Compliance with Interim Orders:** Even if an order was issued on the basis of complete fabrication, violating it constitutes an independent criminal offense that will destroy the defense strategy. Full compliance must be maintained while acting strictly within the legal sphere.
- 2. Complete Disengagement and Zero Friction:** Cessation of all verbal or face-to-face communication with the accuser. Transition exclusively to written, documented, concise communication restricted strictly to urgent matters regarding the children.
- 3. Meticulous Preparation for Police Interrogations:** Guiding the client prior to police questioning: maintaining composure, presenting a detailed positive version of events, insisting on accurate transcription of answers, and submitting initial documentary evidence at the earliest investigative stage.

Phase B: Forensic Evidentiary Compilation

Exposing falsehoods relies not on "version against version," but on objective, physical, and digital evidence:

- 1. Digital Communication Audit Trail:** Extraction of messaging history (WhatsApp, SMS, emails, call recordings, voice notes). Particular focus is placed on communications sent immediately before, during, or after the alleged incident, demonstrating a normal communicative atmosphere, lack of fear, or explicit extortion (e.g., *"If you don't sign the agreement, I will tell the police that yesterday was domestic abuse"*).
- 2. Alibi Evidence and Geolocation Tracking:** Cellular tower triangulation data, credit card records, CCTV footage, and workplace logs proving physical absence from the alleged scene.
- 3. Neutral Third-Party Witnesses:** Securing affidavits from eyewitnesses (neighbors, educational staff, colleagues) who can attest to an objective real-time picture.

Phase C: Litigation Tactics in Court

- 1. Timeline Cross-Examination:** Constructing a precise timeline comparison overlaying the exact date of the false complaint with parallel legal steps (e.g., divorce filings, emergency property motions, or custody applications). Demonstrating temporal synchronization between the complaint and a tactical legal maneuver proves ulterior motive.

2. **Court-Appointed Experts and Psychological Evaluations:** Demanding the appointment of court-appointed experts (clinical/occupational psychologists) to evaluate credibility, personality patterns, and potential parental alienation or pathological attachment dynamics.
3. **Grounds for Police File Closure:** In the criminal domain, defense counsel must actively petition prosecution units to ensure the investigation is closed specifically under the grounds of "Lack of Criminal Fault" rather than "Insufficient Evidence." This distinction is critical for establishing subsequent civil damage actions.

## 5. POST-EXONERATION REMEDIES AND POLICY FORMULATION

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To establish normative deterrence and curb bad-faith litigation, a combination of active post-exoneration remedies must be deployed following acquittal:

- a. Filing a civil defamation claim for libel and intentional harm to reputation.
- b. Tort claims for emotional distress, financial loss, and legal expenses.
- c. Petitioning the family court for punitive cost awards.
- d. Re-adjusting parenting time structures due to compromised parental fitness.

## 6. TORTIOUS ACTIONS

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Filing damage claims for emotional distress, loss of income, reputational harm, and legal expenses. Courts worldwide have begun awarding substantial damages where malicious intent and bad faith are conclusively established.

**a. Modification of Parenting Time:** Utilizing the submission of false claims as proof of compromised parental capacity and harm to the best interests of the child. A parent willing to falsely accuse the other—at the cost of severing the child's bond with their father or mother—exhibits a fundamental moral and educational deficit justifying the transfer of primary residential care and parenting time to the victimized parent.

### **b. International Legislative Recommendations:**

- Mandatory inter-partes hearings within an extremely short timeframe (within 48–72 hours) of granting an *ex parte* emergency order to minimize tactical harm.
- Increased utilization of judicial authority to impose real and punitive costs against false accusers at preliminary procedural stages.
- Streamlining administrative mechanisms for closing police files under "Lack of Fault" when objective fabrication is established.

## 7. COMPARATIVE PERSPECTIVE: LESSONS FROM THE SUPREME COURT OF INDIA'S BATTLE AGAINST "LEGAL TERRORISM"

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While high-conflict divorces in Western jurisdictions frequently involve tactical emergency protective orders, Indian statutory and judicial jurisprudence offers one of the most profound case studies globally regarding the systemic response to the misuse of domestic violence legislation.

To combat severe societal issues such as dowry-related violence and bride-burning, the Indian Parliament enacted stringent protective provisions, chief among them Section 498A of the Indian Penal Code (IPC) [now

Section 85 of the Bharatiya Nyaya Sanhita (BNS), 2023], alongside the Protection of Women from Domestic Violence Act (PWDVA, 2005). Section 498A classified cruelty by a husband or his relatives as a non-bailable and cognizable offense, allowing immediate arrest. However, lacking preliminary evidentiary screening mechanisms, these protective laws rapidly mutated from a protective shield into a lethal tactical weapon in marital disputes.

### 7.1 Judicial Recognition of "Legal Terrorism"

Confronted with widespread false complaints designed to extract financial settlements, dispossess husbands, and sever paternal contact, the Supreme Court of India adopted an unprecedented activist stance. In the landmark judgment *Sushil Kumar Sharma v. Union of India* (2005), the Supreme Court articulated the core systemic failure: while the law was intended to protect genuine victims, bad-faith litigants were employing it as an instrument of oppression and vengeance. The Supreme Court famously coined the term "**Legal Terrorism**" to describe the deliberate weaponization of false complaints to ruin the lives of spouses and their families.

To neutralize this illegitimate tactical advantage, the Supreme Court established key procedural safeguards:

**a. Abolition of Automatic Arrests (*Arnesh Kumar v. State of Bihar*, 2014):** The Court curtailed the practice of immediate arrest upon receipt of a complaint, imposing a mandatory 9-point checklist audit under Section 41 of the CrPC for police officers prior to effecting any arrest.

**b. Quashing Vague and Generalized Allegations (*Kahkashan Kausar @ Sonam v. State of Bihar*, 2022):** The Supreme Court held that "omnibus allegations" against extended family members—lacking specific dates, times, and overt acts—constitute an abuse of process and must be quashed at the threshold stage under Section 482 of the CrPC.

### 7.2 Core Lesson: The Dangers of Automatic Remedies

The primary takeaway from Indian judicial experience is unequivocal: when a legal system provides immediate, draconian, and automatic *ex parte* remedies without mandatory threshold screening, it exponentially increases the incentive to weaponize those mechanisms in divorce litigation.

When anti-violence statutes prioritize immediate coercive sanctions without initial verification—such as immediate eviction, arrest, or suspension of parental access—they create powerful financial and strategic incentives for dishonest litigants to fabricate or inflate claims. Rather than serving as a sanctuary for actual victims, the law converts into an asymmetric extortion tool designed to dictate terms in asset division and child custody.

### 7.3 Solution: Three-Pillar Model for Legal Hygiene

To preserve the core purpose of domestic violence laws for genuine victims while neutralizing tactical false complaints, international legal systems should adopt a three-pillar framework:

- 1. Mandatory Threshold Evidentiary Audit:** Obliging courts and law enforcement to conduct preliminary screening prior to invoking drastic sanctions. *Ex parte* emergency orders must be subject to an expedited evidentiary hearing within 48 to 72 hours, requiring initial objective proof beyond mere narrative affidavits.
- 2. Threshold Dismissal of Omnibus Allegations:** Empowering courts to dismiss or strike uncorroborated, generic allegations lacking specific dates, locations, or digital proof, thereby preventing vexatious litigation aimed at financial exhaustion.
- 3. Mandatory Punitive Costs and Tort Remedies:** Establishing meaningful deterrence through mandatory cost awards, civil damages for malicious prosecution and defamation, and referring clear bad-faith fabrications for criminal prosecution.

## 7.4 Applied Comparative Matrix

| COMPARATIVE PARAMETER                   | STANDARD GLOBAL PRACTICE                                                      | INDIAN SUPREME COURT MODEL                                                             | PROPOSED INTERNATIONAL SOLUTION                                             |
|-----------------------------------------|-------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|-----------------------------------------------------------------------------|
| <b>Primary Remedy</b>                   | Granting <i>ex parte</i> orders based primarily on oral/narrative statements. | Mandatory police threshold audit and statutory checklist ( <i>Arnesh Kumar</i> ).      | Mandatory threshold audit and evidentiary hearing within 48–72 hours.       |
| <b>Handling Generalized Allegations</b> | Factual analysis deferred to full trial of the main cause.                    | Threshold quashing and dismissal of "omnibus allegations" ( <i>Kahkashan Kausar</i> ). | Pre-trial Motion to Dismiss uncorroborated claims at the preliminary stage. |
| <b>Deterrence Mechanism</b>             | Low or rare cost awards due to fear of "chilling effect."                     | Judicial characterization as "Legal Terrorism" with criminal/disciplinary oversight.   | Mandatory punitive costs and structured civil tort actions.                 |

## 8. CONCLUSION

Combating domestic violence is a supreme moral and legal imperative. However, preserving the integrity of judicial proceedings and preventing protective mechanisms from being weaponized in high-conflict divorces is equally critical. False allegations do not only harm wrongfully accused parents and unlawfully alienated children; they severely undermine genuine victims of abuse by eroding systemic trust within law enforcement and the judiciary. Skilful defense management—grounded in rigorous evidentiary discipline, digital forensic analysis, and aggressive civil remedies—provides the definitive pathway to uncover objective truth, protect due process rights, and restore judicial proceedings to the pursuit of justice.

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[2] This article was written following a joint initiative and request from senior criminal defense attorney **Adv. VISHHAL SAXXENAA** (Mumbai, India), to conduct a comparative legal analysis between Israeli and Indian law regarding false allegations and strategic case management. Adv. Saxxena appears before the Supreme Court of India and various state High Courts, specializing in criminal law, bail proceedings, and complex criminal litigation, and conducts training programs for police officers in criminal law.