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THIRD PARTY LITIGATION: AN UNREGULATED BOON WITH NUANCES

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ABSTRACT

The author in this paper, enunciates the increasingly complex issue of third party litigation (TPL) focusing specifically on its growth in the UK, US, and India. My motivation for conducting this research was to critically examine how TPL, while frequently touted as a means to increase access to justice, is also fraught with major regulatory, ethical, and legal issues. The core argument is based on the paradox that whereas TPL promotes the advancement of meritorious litigation by under-resourced plaintiffs, its relatively unregulated framework—particularly in such jurisdictions as India—has the potential to invite abuse, commodification of justice, and conflicts of interest.

By application of doctrinal and comparative approaches the paper discusses the historical development, legislative strategies, and judicial inclinations toward TPL in different jurisdictions. The paper shows how well-developed regulatory regimes struggle to find a balance between the advantages of TPL with protection against abuse, while India is at a developing stage with disjointed jurisprudence and no unified statutory support. The author also takes a look into the issue where TPL intersects path with professional ethics, contingency fees agreements, and public policy issues.

By comparing and contrasting these legal systems, I hope to highlight the necessity for India to adopt a measured regulation strategy that continues the benefits of TPL without neglecting its inherent risks. In this paper, I contribute to the existing discussion on legal reforms, pointing out that although third party litigation is a blessing in disguise for access to justice, its subtleties require sophisticated regulation.

KEYWORDS: Third Party Litigation, Doctrine of Champerty and maintenance, Access to Justice, Frivolous Litigation, Professional Ethics.

INTRODUCTION

Third Party Litigation (TPL) is an emerging aspect in legal proceedings dynamics as it involves a premise where a party which is not originally party to a law case becomes implicated by virtue of a vested interest at law in the resolution of the dispute. This form of intervention generally occurs when a third party either finances the litigation in return for a portion of the prospective award or when liability can extend to them on the facts of the case. The principle stems from more general principles of justice and efficiency, allowing broader access to the judicial system by people who might not have the economic ability to bring legitimate claims on their own.

Conventionally, third-party intervention in litigation was viewed with skepticism, especially under doctrines like champerty and maintenance, which deemed outsider assistance in actions against public policy. However as development in the legal framework of jurisdictions took place and the laws prohibiting such intervention softened, particularly within jurisdictions like the UK and Australia, TPL became a feasible legal tool to assist claimants in complicated or expensive litigation cases.

In contemporary legal systems, especially common law jurisdictions, TPL has become more institutionalized, with specialized litigation funding companies providing organized financing. Regulation has since followed to avoid abuses and ensure the autonomy of the litigant and the integrity of the court are maintained. In addition, the growth of TPL has induced vigorous academic and judicial discussion on its consequences for legal ethics, access to justice, and commercialization of legal claims.

Therefore, third party litigation today occupies the juncture of legal creativity and economic pragmatism, presenting a subtle instrument to tip the balances of justice while propounding judicious examination to secure judicial fairness and accountability.

MEANING AND DEFINITION

Third-party litigation is a legal agreement whereby a party who was not initially a party to a case offers financing to an involved litigant. Such a third party typically finances legal fees, court costs, or other associated costs in return for a portion of the financial proceeds or settlement should the funded party win the suit. Significantly, the third-party funder does not possess any direct legal interest in the dispute but assists the claimant solely for commercial gain or strategic interest.

Historically, litigation was regarded as a two-way business between two adversarial parties—plaintiff and defendant. With the increasing cost and complexity of legal processes, third-party funding has come into the picture as a method to balance the playing field, particularly for disadvantaged claimants. This system provides access to justice as it diminishes the cost barrier faced by litigants, who are not able to enforce legitimate claims because of insufficient funds.

So, this makes litigation a form of investment, whereby the funder assesses the merits of the case before committing to finance it. The relationship is regulated by contract terms, which usually contain confidentiality clauses and terms of control and settlement rights. Though it provides valuable advantages like risk-sharing and improved legal access, it generates ethical and legal issues like champerty and maintenance, which have developed in common law jurisdictions.

Third-party funding is therefore a dramatic departure from the conventional model of litigation. It is both an empowerer of justice and a business enterprise, serving on a thin line between legal assistance and profit-making business. Legal status and regulation of such funding tools differ from one jurisdiction to another, seeking an even thinner line between encouraging access to justice and maintaining the integrity of the judicial process.

HISTORICAL BACKGROUND TO THIRD PARTY LITIGATION IN INDIA

Third Party Litigation (TPL), while a fairly new word in Indian legal parlance, has its conceptual antecedents in the historical development of legal process relating to civil claims and litigation financing. The Indian legal system, heavily borrowing from British common law, has undergone a gradual shift in its attitude towards third party participation in litigation—from early prohibition to hesitant acceptance.

In the colonial era, the British exported the common law system to India. One of the key principles of this system was the doctrine of champerty and maintenance. An agreement in which a third party finances a litigant against payment in the form of a share of proceeds constitutes champerty, while maintenance is the interfering in a suit by a disinterested person. These doctrines are based on medieval English law and were strictly applied to avoid frivolous litigation and abuse of the judicial process. In India these principles were also followed rigorously in the starting by the British courts particularly in Presidency towns which were governed by English legal standards.

But in the mofussil regions the Indian courts were more lenient in their application. Indian jurisprudence over time started acknowledging that strict enforcement of the doctrines of champerty and maintenance was sometimes unjust particularly in a society where financial resources frequently exclude access to justice. The landmark case of *Ram Coomar Coondoo v. Chunder Canto Mookerjee* (1876) was first to show this shift in attitude. The Privy Council accepted that champerty type agreements could be enforceable in India only when they were not unconscionable, extortionate, or otherwise unfair.

After the independence there was more development. There was more development after independence. The Indian judiciary came to accept that assistance by money in litigation under honest and transparent terms was likely to encourage access to justice, particularly for weaker sections of society. With increased recognition of the necessity of legal aid and the advent of public interest litigation in the 1980s, the concept that third parties could be involved in legal cases became more acceptable. Nevertheless, the lack of a codified regime on third party litigation funding (TPLF) maintained the practice in a grey area.

Over the past few years, with economic liberalization in India and growing complexities in commercial cases, there has been renewed interest in institutional third party funding of litigation. Indian courts, especially those in commercial cities like Mumbai and Delhi, have been willing to accept and enforce such funding arrangements as long as they do not violate public policy or justice. The Supreme Court has yet to establish a concrete framework, but High Court rulings have tended to cite the legality of such arrangements in civil cases, arbitration, and insolvency.

Finally, the historical evolution of third party litigation in India is one of a gradual move away from formalistic common law dogma to more pragmatic and justice-focused practice. The Indian judicial system, although deriving much from English precedent, has responded to socio-economic conditions and the imperative for fair access to justice, laying the ground for greater official acceptance of third party litigation in the future.

ADVANTAGES AND DISADVANTAGES OF THIRD PARTY LITIGATION

Third Party Litigation (TPL) or Third Party Litigation Funding (TPLF) is the process where a third party offers financial assistance to a litigant for financing a lawsuit in return for a percentage of the monetary award. This system is increasingly becoming popular all over the world, particularly in countries such as the United States, the United Kingdom, and more and more in India. Although TPL may improve access to justice and provide economic relief to under-resourced claimants, it is also raising issues of control, ethics, and commercialization of litigation.

Advantages:

1. Access to Justice

The most significant benefit of TPL is that it ensures access to justice for a person or organization who does not have the financial resources to bring meritorious claims. Where complex or high-value litigation, e.g., commercial or intellectual property cases is involved the cost can be out of reach. Third-party funders fill the gap by assuming litigation costs and allowing claimants to pursue redress that would otherwise be inaccessible.

2. Mitigation of Risk

TPL transfers the financial risk of litigation from the funder to the claimant. In the majority of deals if the case is unsuccessful the claimant does not have to repay the funder. This "non-recourse" character of funding makes it possible for claimants to seek legal remedies without putting at risk their financial stability or business continuity.

3. Level Playing Field

Where the defendant is an organization with considerable resources like a government agency or multinational company there TPL can empower claimants to rival the legal ammunition of their adversaries. When claimants are funded appropriately, they can afford reputable teams of lawyers, professional expert witnesses, and extensive legal research which helps instituting fairer proceedings.

4. Litigation Efficiency and Scrutiny

Financiers perform thorough due diligence prior to committing to fund a case. Pre-screening to an extent weaves out groundless or weak claims, by proxy leading to judicial efficiency. In addition, funders can observe cases' progression to ensure efficiency and astute management of litigation so that the legal process as a whole is benefited.

Disadvantages:

1. Control and Interference

Among the major issues surrounding TPL is the possible intrusion by funders into litigation strategy or decision-making. Despite a common restriction in funding deals on funder intervention, in reality, financial interests can pressure legal teams or claimants, especially during settlement negotiations, to focus on financial gain in place of legal or ethical considerations.

2. Issues of Confidentiality and Privilege

Involving third-party funders could introduce issues of legal privilege and confidentiality. Disclosure of case information at funding negotiations could waive privilege protection, resulting in unforeseen legal implications or evidentiary exposure.

3. Profit-Motivated Reasons

TPL may result in the commodification of litigation. Where profit is the central driving force, there is a possibility that the process of litigation is manipulated to ensure higher pecuniary returns instead of ensuring justice. This is especially relevant in areas where there is poor regulation of TPL.

4. Cost Escalation and Ethical Concerns

TPL can balloon costs of litigation, as funders need a return on investment that involves a sizeable proportion of any award or settlement. In the worst cases, the claimant might receive a vastly diminished share of final compensation. Moreover, ethical issues can be raised if lawyers first serve funders' interests at the expense of their clients', most likely contravening professional standards of conduct.

Third Party Litigation presents a balanced picture of possibilities and problems. While it democratizes the legal system and gives empowerment to claimants, it has to be regulated by strong regulatory mechanisms to avoid abuse, uphold ethical values, and make sure that justice remains the end-point.

CHALLENGES TO THIRD PARTY LITIGATION (TPL)

Third Party Litigation (TPL) financing, while developing into an indispensable instrument in contemporary legal systems, has a number of serious concerns that call for careful analysis. One such main issue is the ethical and regulatory uncertainty of third-party participation in litigation. Since TPL permits a non-party to finance a lawsuit in return for a portion of monetary recovery, it could challenge the role played on the autonomy of the litigant as well as the integrity of legal processes. The funder could induce the claimant to settle or initiate litigation tactics that are more about money than justice. The other key challenge is the absence of a harmonized legal framework between jurisdictions. In jurisdictions such as India, the legal position in respect of TPL is still not clearly defined, leading to uncertainty among funders and litigants alike. Such a regulatory gap complicates the enforcement of obligations and rights between the parties to a TPL arrangement, and can potentially lead to exploitative deals. To the contrary, although nations such as the UK have established some guidelines, the regulatory framework is still changing, mirroring the international inconsistency in addressing TPL.

Moreover, confidentiality and disclosure issues are paramount. Third-party funding typically requires the disclosure of confidential legal information, which may impair the attorney-client privilege. This can provide potential risks of conflict of interest, especially when the funder receives access to strategic case information. Courts and legislators continue to debate the level of transparency that can be achieved without prejudicing fair trial rights or undermining legal confidentiality.

Additionally, TPL may result in the commercialization of justice, such that lucrative cases are given preference over meritorious but not as lucrative cases. This has the potential to push access to justice for the poor to the periphery, since funders have a preference for cases with high chances of success and high possible returns. Therefore, TPL is very prone in creating inequality more than resolve it.

In reality, though Third Party Litigation can go a long way in accessing legal remedies. However for that there is also need of calling for stringent regulatory control, ethical limits, and judicial intervention in order to make sure justice continues to be the overriding concern.

CONCLUSION

Third party litigation causes a dilemma of legal irregularity and access to justice. As litigation increasingly becomes complicated and costly in the modern era, the entry of third parties, either as litigation funders, insurers, or non-party stakeholders bears both promise and risk. Comparative development of this legal phenomenon between jurisdictions demonstrates divergent approaches grounded in varying judicial philosophies, economic arrangements, and regulatory cultures.

In the UK, the doctrine has developed considerably by way of common law and judicial control.

Third party funding has been welcomed in the courts as a means to equalize the scales between wealthy and financially unsupported litigants on the proviso that there are strict rules to ensure fairness and avoid abuse of process. The formation of the ALF is an attempt to self-regulate and upholding ethical standards in the profession.

In contrast, the TPL in United States is more commercially-oriented and policy fragmented. The absence of uniform national policy has resulted in divergent regulations at the state level, generally subject to political and corporate pressures. The pervasiveness of contingency fee arrangements and champerty and maintenance doctrines—while increasingly loosened—continue to influence the boundaries of permissible third party intervention.

India, however, is at the infancy stage of this discussion. While not strictly banned, third party litigation is not regulated and not widely used. The necessity for formalized litigation is the need of the hour as the legal fees has taken so much rise and there is an evident increase in the delayed justice. Yet, without the guidelines of a statutory system or settled case law, the scope for abuse and ethical dilemmas continues to be considerable.

Finally, third party litigation can be seen as catalyst towards greater access to justice for litigants who are marginalized. But it requires effective checks and balances and without such checks and balance it also risks the commodification of legal claims and corruption of judicial integrity. A balanced approach is needed, one that reconciles innovation with accountability. Harmonizing regulation while being flexible to accommodate jurisdictional needs will ensure that third party litigation achieves its prime intent: facilitating legitimate claims without compromising the sanctity of justice.

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