WHOSE CLIENT IS IT ANYWAY? THIRD-PARTY LITIGATION FUNDING AND LIMITS OF ADVOCATE INDEPENDENCE IN INDIA

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ABSTRACT

Third-party litigation funding (TPLF) finds itself in a murky realm under Indian law: it is not outlawed or regulated, yet it was granted judicial sanction by the Supreme Court, which forbids advocates from financing litigation, while permitting other funders, notably those non-lawyers, to do so for a share of the profits of litigation. This permissiveness is welcomed as it enlarges access to justice, but what remains to be looked at is the effect on lawyers independence once the interests of sponsors get embedded in the case. Meanwhile, Rules 18, 20, 21, and 22 of the Bar Council of India that were framed to monitor the stakes of lawyers in litigation remain silent on third-party financing arrangements. Using examples from jurisdictions like Singapore and the UK, this paper studies if current BCI Rules consider the independence of lawyers when there is a financier involved, whether the foreign safeguards can be introduced by virtue of Section 49(1)(c) of the Advocates Act 1961, and whether the above-mentioned safeguards can be implemented without sacrificing the access to justice function of TPLF.

Keywords: Third-party funding, professional conduct, fund-control, legal ethics, advocate independence.

INTRODUCTION

In the Indian law, third-party litigation funding is positioned in an interesting manner: it is neither banned or regulated, but allowed. The Supreme Court's ruling in Bar Council of India v. A.K. Balaji stated that while lawyers cannot provide financial assistance in litigation, the same law does not apply to third parties – companies, investors, and non-banking financial institutions – that desire to offer financing for the lawsuit in return for part of its income. The permissive stance of the law is often praised because it helps poor plaintiffs with good claims that they would otherwise be unable to make. However, there has been little discussion regarding how the collaboration between the funding institution and the claimant is conducted after the financial agreement has been reached and whether the attorney representing the claimant is able to use his or her independent judgment in working on the case or be influenced by the financial interest of the funder which the attorney is not required to oppose.

The gap can also be seen in reality. The Bar Council of India's rules about the conduct of advocates in financial matters, contained in Rules 18, 20, 21, and 22 of Part VI, Chapter II, were formulated in times where the guiding principle of concern of advocates was the advocate's interest in the legal matter, whether pertaining to instigating disputes, earning contingency fee or acquiring an interest in the legal matter itself. These rules do not say anything about a situation which has become omnipresent in modern law practice the situation where the advocate has no stake, but some other person is financing the case. However, countries which have been permitting third-party funding for longer than India, such as Singapore and the United Kingdom, have been able to combat the situation by introducing rules which take care of such matters as revelation of the identity of the financing party as well as the non-involvement of the financier in the managing of the litigation.

This paper studies the gap by posing three relevant questions. First, it investigates whether the rules of the Bar Council of India offer any protection of the independence of the lawyer in situations where a third-party funder is involved. Secondly, it studies whether any measures created in other systems of justice funding could be introduced successfully in the Indian legal framework concerning the application of the provisions of Section 49(1)(c) of the Advocates Act of 1961 (RQ-2). Thirdly, it sets out to find whether applying such safeguards means saving independence of lawyers without violating the importance of third-party funding in accessing justice.

RESEARCH METHODOLOGY

The research method used in this paper can be described as doctrinal and comparative. The first legal sources which have been drawn upon in this research paper are Bar Council of India Rules, Part VI Chapter II (meaning rules 9, 18, 20, 21, and 22), Advocates Act, 1961, particularly section 49(1)(c), and their counterparts in Singapore laws represented by Civil Law (Third Party Funding) Regulations 2017, Legal Profession (Professional Conduct) Rules 2015 and other documents relevant to the UK legislation written for the association of litigation funders. The paper analyzes case law including but not limited to Bar Council of India vs A.K. Balaji and Ram Coomar Coondoo vs Chunder Canto Mookerjee to discover how third-party finance in litigation has been viewed in India historically. The paper employs secondary sources, namely academic commentary, law firms publications and reports on this issue to find gaps in research on this topic and to provide an understanding of the doctrinal analysis conducted in this paper.

LITERATURE REVIEW

Alaukik Agarwal, *"Third-Party Litigation Funding: Global Growth and the Emerging Landscape in India"*

This paper traces the origins and global growth of third-party litigation funding across jurisdictions like Australia, the UK, and the US, and examines India's nascent TPLF market, including its opportunities (financing meritorious claims in an overburdened judiciary) and obstacles such as legal ambiguities and ethical constraints on lawyers.

Research gap: The paper stops at a macro, market-level diagnosis it identifies research gaps in understanding TPLF's long-term impact on legal systems and calls for balanced regulatory measures in general terms. It doesn't examine the specific mechanics of the lawyer-client-funder relationship after a funding agreement is signed, nor does it test any particular provision of the BCI Rules against the funder scenario. While this paper moves from this industry-level observation down to the rule-textual level studying BCI Rules 18, 20, 21, and 22 and proposing a concrete statutory route (Section 49(1)(c) of the Advocates Act)

"Third-Party Litigation Funding In India: A Legal Vacuum Or A Regulatory Opportunity" (IJLLR, 2025)

This paper discusses the concept and history of TPLF and undertakes a comparative analysis of its functioning in the United Kingdom, Australia, and Singapore, arguing that with judicial supervision and regulatory clarity, TPLF could democratize access to justice in India, particularly in high-stakes commercial and arbitration matters.

Research gap: Its comparative work is descriptive rather than diagnostic it surveys what foreign regimes do (disclosure rules, investor safeguards) without isolating advocate independence as the specific value at risk, and without working through how any of these foreign mechanisms could actually be introduced into India's existing legal architecture. While this paper narrows the question to independence of the advocates.

Wayne Attrill, *"Ethical Issues in Litigation Funding"* (2009)

This paper traces the medieval doctrines of maintenance (officious intermeddling in someone else's lawsuit) and champerty (an aggravated form where the funder agrees to split the proceeds), and notes that despite the relaxation of these doctrines in many jurisdictions, courts can still invalidate a funding agreement as champertous

Attrill's ethical inquiry is centered on the *validity of the funding contract itself* whether the funder-client bargain survives challenge under contract or tort-adjacent doctrine. The lawyer's own professional conduct obligations are not the subject of analysis; the ethics discussed are those attaching to the funding arrangement, not to the advocate's independent judgment once such an arrangement exists. This paper covers both the enforceability part of the funding and the safeguards.

RESEARCH QUESTIONS

RQ-1: "To what extent do the Bar Council of India Rules restricting an advocate's financial stake in litigation namely Rules 9, 18, 20, 21, and 22, apply to third-party litigation funders in India?"

1.1 "Does the wording of Rules 9, 18, 20, 21, and 22, which apply only to an advocate, cover third party litigation funders who are not advocates?"

According to Rule 9, no advocate can act in the case where he/she has personal interests[1]. Rule 18 prohibits an advocate from initiating any litigation on his/her personal account[2]. Rule 20

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[1] *Bar Council of India Rules, pt. VI, ch. II, § I, r. 9 (India)*
[2] *Id. § II, r. 18.*

states that lawyers cannot stipulate fees on the basis of outcome of the litigation[3]. Additionally, Rule 21 prohibits lawyers from buying or making any transaction with the actionable claims.[4] Rule 22 prohibits lawyers from buying or acquiring any property related to the case.[5] All of these five rules have the same subject of the sentence – “the advocate.” None of these rules include phrases like “no person,” “no party financing litigation,” or other formulations indicating someone other than the advocate client relationship. This is significant because the presence of a single, repeated, and deliberately narrow subject across five separate rules cannot be treated as accidental drafting. Where a rule making body uses one consistent word to identify the person bound by an obligation, and refrains from using broader language elsewhere available to it, the ordinary presumption is that the narrower word was chosen deliberately.[6] This is reinforced by the interpretive principle that the express mention of one category implies the exclusion of others: naming "the advocate" as the sole bound party across an entire cluster of related rules signals that other financially interested actors, including funders, were not meant to be swept in by implication.

When Rule 20 refers to "a fee," it refers to remuneration for legal services rendered by counsel, something a funder never renders and therefore never charges[7]. According to Rule 21, while the rule speaks about the act of buying into a claim or agreeing to get a share in the claim, it is only concerned with the actions of an advocate. This means that the restriction does not apply to the same actions by other individuals such as funders. Additionally, there is another aspect to this argument which shows that the wording of the rule is deliberate. The Bar Council of India has the power to create rules under the Advocates Act of 1961 and this power applies only to the regulation of matters related to the advocates[8]. It follows that the Bar Council cannot impose any restrictions on the funders’ actions since they do not fall under its jurisdiction. If the rule was made by an authority which only has control over the advocates, it cannot apply to the funders.

The conclusion, then, is that the language of Rules 9, 18, 20, 21, and 22 does not apply to third party litigation funders. Each of these rules states that the only person bound by its provisions is the advocate, makes reference to rules relevant only to the profession of each advocate

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[3] *Id. § II, r. 20.*
[4] *Id. § II, r. 21.*
[5] *Id. § II, r. 22.*
[6] *G.P. Singh, Principles of Statutory Interpretation 300–04 (14th ed. 2016).*
[7] *Concept of Contingency Fees of Advocates: Cross-Jurisdictional Analysis, iPleaders (Oct. 22, 2021)*
[8] *Advocates Act, No. 25 of 1961, § 49(1)(c)*

including fees, appearances, and conduct of the litigation, and emanates from the authority which is only concerned with advocacy in the first place. As a result, a funder carrying out an activity which would be banned if done by an advocate is not really breaking any given rule according to the rules since the rules are not meant for funders in the first place.

1.2 ***Does a third- party funder's stake in a case create the same risk to independent judgment that these Rules were designed to prevent?***

Rule 9 points out the key point: an advocate must abstain from handling any case where he has a stake in the financial outcome of that case, as this can lead to the attorney acting in a self-serving manner instead of in the client's best interests or the interests of justice[9]. As for Rule 18, it puts a ban on lawyers instigating legal action for their financial benefit, that is, it prevents them from using their professional activities to generate monetary income[10]. Rules 20-22 close various loopholes in form of financial rewards for legal action[11]. When all these rules are read together, they suggest that their ultimate purpose is very simple: they protect the independence of a lawyer's judgments. Now assessing the funder's position: does the financial interest of a funder also have similar structural risks? From a practical perspective, a litigation funder funds a claim for a share of the compensation if the matter is successful[12]. This means that both the funder's remuneration and an advocate's remuneration are subject to the outcome of the lawsuit: whether the case ends in a positive or negative manner will directly impact the earnings obtained by a funder. Thus, the situation creates a financial motivation that is not so different from the motivation created by a prohibition in the case of advocating: the party that has financial interests in the result of the case will have legitimate reasons to exert pressure as to the methods of litigation, the claims pursued during the case, the acceptable settlement, and the extent of the risks taken. In that way, the presence of a financial interest implies the emergence of the same category of threats that were previously identified in the context of advocation by Rule 9: it is a financially interested outsider whose interests do not coincide with those of the litigant, and this outsider has a possibility to affect the litigation.

However, it is important to be precise about what "the same risk" means here, because the risk is similar in kind but not identical in every respect. An advocate with a personal financial stake

[9] Bar Council of India Rules, pt. VI, ch. II, § I, r. 9 (India).
[10] *Bar Council of Idia Rules, pt.VI, ch. II,* § II, r. 18 (India)
[11] *Bar Council of Idia Rules, pt.VI, ch. II,* § II, r. 20–22.
[12] Alaukik Agarwal, *Third-Party Litigation Funding: Global Growth and the Emerging Landscape in India*, SSRN (2025)

sits inside the professional relationship itself, directly controlling strategy, drafting, and courtroom conduct, and owing enforceable duties to the court as an officer of the court[13]. A funder typically sits outside that relationship, exercising influence indirectly through the funding agreement, through control provisions negotiated with the litigant, or through informal pressure on litigant and counsel alike, without owing any of the direct professional duties an advocate owes.[14] The risk to independent judgment is therefore structurally analogous rather than perfectly equivalent: both involve a financially interested party whose incentives may diverge from the client's true interests, but the mechanism through which that risk could translate into actual harm differs because the funder does not occupy the same position of direct control and professional duty that the advocate occupies.

The decision made by the Privy Council in Ram Coomar Coondoo v. Chunder Canto Mookerjee supports this interpretation to some degree but must be considered carefully[15]. The court found that the agreement under which a third party provides funding for litigation in return for a cut of its results was valid and ruled that such agreements were not illegal solely because of their similarity with champerty as understood by English law, provided that the conditions of the arrangements were not exploitative, unethical or entered into for an unlawful purpose. The important point is that the Privy Council concentrated solely on the nature of the relationship between the financier and the litigant and ignored the problem of whether the financier's interest in the case could put in jeopardy its independence and that of its legal counsel, which is the basis for the formation of Rules 9, 18, 20, 21, and 22 in connection with the advocate.

Had the risk of a financially interested third party swaying the course of litigation been regarded as an imminent concern by the time when that ruling was issued, it would have been a convenient moment for the Privy Council to deal with that issue as its investigation was focusing precisely on the legality of such types of arrangement. The fact that it chose to be silent with respect to this matter indicates that at that point of time litigation funding was being perceived solely in terms of contractual justice rather than any sort of professional independence. However, it is worth saying that this silence cannot be understood as either corroborating or closing the debate over the analogy being made above. The ruling makes a very long time before Bar Council of India Rules and was made in an entirely different doctrinal

[13] Advocates Act, No. 25 of 1961, § 33, (India)
[14] Irene Lee, Litigation Funding Overview - Singapore, Deminor (2024)
[15] Ram Coomar Coondoo v. Chunder Canto Mookerjee, (1876) L.R. 4 I.A. 23; (1877) I.L.R. 2 Cal. 233 (P.C.).

context and did not have to take into account the threat that those rules were created to eliminate. At best, it shows that the issue regarding the funder's investment and whether the institutional issue raised mirrors that raised by the interest of an advocate has yet to be examined directly by courts, leaving this analogy as a matter of principles not yet resolved or addressed by existing jurisprudence.

RQ-2: Whether safeguards developed under comparative third-party litigation funding regimes Singapore's Civil Law (Third-Party Funding) Regulations, 2017 and the UK's Association of Litigation Funders Code of Conduct are structurally transplantable into the Bar Council of India's rule-making framework under Section 49(1)(c) of the Advocates Act, 1961.

2.1 Whether the funder-disclosure and funder-non-control safeguards central to the Singaporean and UK models can operate meaningfully within India's existing costs and fee-shifting regime, which differs materially from the "loser pays" structures those regimes were designed around.

The Singapore Civil Law (Third-Party Funding) Regulations of 2017 explicitly allow third-party funding to be used in international arbitration and related court processes[16] and were implemented with certain protections concerning disclosure of the funder's involvement in the legal proceedings[17]. Singapore courts have adopted a proactive cooling-off policy to safeguard these protections, especially regarding the independence of the legal counsel for the funded party and the funder's avoidance of interfering in how the case is handled[18]. The UK-based Association of Litigation Funders has a Code of Conduct instituted which also limits any interference by the funder in the litigation process or decisions about settlements besides obligating the funder to have sufficient monetary resources to honour the funding agreement[19].

Both of the systems evolved in a loser pays cost situation that means that the lose party in the lawsuit is often obliged to pay a considerable part of the legal costs of the winning party[20]. The structure of costs affects the whole risk assessment for the financing party. In a loser pays

[16] Civil Law (Third-Party Funding) Regulations 2017, S 68/2017, reg. 3 (Sing.)
[17] Legal Profession (Professional Conduct) Rules 2015, r. 49A (Sing.)
[18] Legal Profession (Professional Conduct) Rules 2015, r. 49B (Sing.); Law Soc'y of Sing., *supra* note 2, at 3–4 ; civil Law Act (Cap. 43, 1999 Rev. Ed.) § 5B(8)(c) (Sing.)
[19] Ass'n of Litig. Funders of Eng. & Wales, Code of Conduct for Litigation Funders §§ 9, 11 (Jan. 2018),
[20] Civil Procedure Rules 1998, SI 1998/3132, r. 44.2 (Eng.); Rupert Jackson, *Review of Civil Litigation Costs: Final Report* (2010)

system, the finance party's risk is not limited by the funds invested in the party's own case[21]. The financier has to take into account the possibility of the case loss and responsibility for the costs of the losing party, which are often borne by the financier since the losing party does not have funds to pay these costs. As a result of the increased risk, the financiers have a strong motivation to influence the strategy of the case and decision making on settlement, which motivates the introduction of mandatory disclosure and non-control measures since the level of intervention risk is significantly higher when the financier's own costs are involved along with the costs of the winning party[22].

India has its peculiarities when it comes to its costs regime. Indian courts, in general, have awarded costs with far more restraint to victorious litigants than their counterparts elsewhere, including Singapore[23]. Although the loser-pays principle is available under the Code of Civil Procedure, the application is less consistent and entails lower amounts than in, for instance, the UK[24]. This means that the Indian funder's exposure is only to the amount provided to the litigants as opposed to the entire amount the funder could lose in case of the losing party not being able to cover the cost for the successful party's expenses. Therefore, the tension that was sought to be addressed via the introductions in Singapore and the UK is less pronounced in India.

At the same time, first, it is significant to mention that the establishment of the disclosure and non-control system cannot be attributed to one reason only. Indeed, the necessity for such system is also determined by the need to protect the litigant’s right to make independent decisions regardless of the funder’s financial exposure. The case of a funder in India (even not subjected to winning or losing in the costs sense) provides an example of how the financial source has certain interest in the result of the case due to its share in any future settlements[25]. Moreover, since the funder will benefit as a result of the case outcome, it will influence the settlement process and its strategies. Thus, the nature of the idea that the funder should never control the decisions made by the litigant would still be relevant in this country as the need for the safeguard is not so profound.

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[21] Ass'n of Litig. Funders of Eng. & Wales, *supra* note 4, § 9
[22] Ass'n of Litig. Funders of Eng. & Wales, *supra* note 4, §§ 9, 11; Law Soc'y of Sing., *supra* note 2, at 1–4
[23] Code of Civil Procedure, 1908, No. 5, Acts of Parliament, 1908, § 35 (India)
[24] Code of Civil Procedure, 1908, No. 5, Acts of Parliament, 1908, § 35, 35-A (India)
[25] *Bar Council of India v. A.K. Balaji, (2018) 5 SCC 379*

2.2 Whether such safeguards are better introduced as an amendment to Part VI, Chapter II of the Bar Council of India Rules: regulating the advocate's conduct in a funded matter or would require independent legislation directly regulating funders, given that the Bar Council's rule-making power under Section 49(1)(c) extends only to advocates and not to third parties.

The Advocates Act of 1961, Section 49(1)(c) provides the Bar Council of India with authority to lay down rules on professional conduct and decorum to be followed by lawyers[26]. This power of making rules is only applicable to lawyers and does not cover non-lawyer entities such as litigation funders who are not lawyers and do not fall under the regulatory and disciplinary framework set up by the Advocates Act[27]. This creates a significant structural limitation around incorporating any mechanism for lawyers' independence in funded litigation.

In the event that the Bar Council of India modifies Part VI, Chapter II of its own Rules in order to include third-party funding, such a modification would only permit controlling the behavior of advocates with regard to funded cases—for example, the modification may state that an advocate has to inform the court about the existence of a funding agreement, the lawyer cannot follow the instructions of anybody apart from the client (thus extending Rule 19) or that an advocate has to prove that the funder could not control the litigation process[28]. In this way, this course of actions might be the most possible as it will require only implementing the existing statutory authority of the Bar Council without the necessity of creating a new primary law and waiting for a lengthy parliamentary process. Besides, it would be consistent with the framework of Part VI, Chapter II since its provisions already cover the financial conduct of advocates according to Rules 9, 18, 20, 21, and 22.

Nonetheless, this method has an important drawback: it can only regulate the advocate but not the funder. In case the funder makes the advocate act in a specific way or makes a decision to settle on unfavourable terms, the amended Bar Council regulations would be able to sanction the advocate for giving in, but the rules would not be able to restrain the funder from putting pressure on the advocate or punishing the funder for his actions. The funder remains completely beyond the scope of disciplinary measures applied by the Bar Council since the Bar Council

[26] *Advocates Act, 1961, No. 25, Acts of Parliament, 1961, § 49(1)(c) (India)*
[27] *Advocates Act, 1961, No. 25, Acts of Parliament, 1961, §§ 29–34 (India); Bar Council of India, https://www.barcouncilofindia.org (last visited July 30, 2026)*
[28] *Bar Council of India Rules, pt. VI, ch. II, r. 19 (1975) (India)*

has no authority over non-advocates[29]. Thus, the advocate-centred regulation lays full responsibility for counteracting the funder's interference on the advocate.

Further, while the Bar Council can regulate advocates, the parliament is not limited to just that and the legislators can create direct obligations on funders like mandatory registration, disclosure obligations on the funders, and capital adequacy requirements. The approach taken by Singapore with its Civil Law (Third-Party Funding) Regulations acts as an entirely independent regime instead of being an add-on to the professional conduct regulations for lawyers[30]. However, the issue with this route in India has to do with feasibility rather than viability. Standalone legislation requires an initiative from parliament and will take much longer to go through than a change in Bar Council rules, apart from navigating the diverging views on how much regulation is warranted for a funding industry that is still evolving in India. The recommendation by the Justice B.N. Srikrishna Committee in 2017 in the case of an enabling framework for third-party funding in the arena of arbitration shows that Indian legislative thought has already traversed the regulatory route, although the recommendation has not converted either into Bar Council regulations or standalone legislation.

Overall, the two-track strategy most accurately portrays the structural limitation that we have mentioned earlier. In the short run, the Bar Council of India can change Part VI, Chapter II of the statute book so that the duty of disclosure and non-control can be placed directly upon the advocates, which can be done without any changes in the existing provisions of the law and would offer some basic protection to the advocates. However, in the long run, addressing the behaviour of the funders and filling the enforcement gap left by the advocates-only rule will involve enacting a different piece of legislation, since the Bar Council's power under Section 49(1)(c) applies only to proponents and cannot by itself reach the third party.[31]

RQ-3: Whether the introduction of third-party litigation funding safeguards into Indian professional conduct regulation would adequately protect advocate independence without discouraging the access-to-justice function that litigation funding is intended to serve.

3.1 Whether imposing funder-disclosure and funder-non-control obligations risks

[29] *Advocates Act, 1961, No. 25, Acts of Parliament, 1961, §§ 35, 49(1)(c);*

[30] *Civil Law (Third-Party Funding) Regulations 2017, S 68/2017 (Sing.); Civil Law Act (Cap. 43, 1999 Rev. Ed.) § 5B (Sing.)*

[31] *Advocates Act, 1961, No. 25, Acts of Parliament, 1961, § 49(1)(c) (India); Bar Council of India Rules, pt. VI, ch. II (1975) (India)*

deterring commercial funders from financing litigation in India, thereby narrowing access to justice for parties who rely on third-party funding to pursue meritorious claims.

Commercial funding involves a funder who provides capital for litigation in exchange for a profit contingent on the outcome[32]. In this case, the funder pays the cost of litigation in return for a portion of the recovery in case litigation is successful. If the court case loses, then it means that the funder has lost its investment[33]. The consequences of this system can bring the changes in how risk of the funder is assessed and cause the reluctance of the funder to invest. It is interesting that information concerning this factor is crucial. If the new regulation states that only the fact of the involvement should be disclosed without guiding the parties concerning the deal conditions, it would not be harmful for the funder. This means that the financial terms should remain in shadows. For example, Singapore's method may point out to the existence of the funder but without giving any details concerning the agreement made with the funder[34]. Opposing lawyers could use that information during settlement negotiations, and other funders could use it to undercut existing deals.

The non-control regulations are somewhat more complex because they touch on an area that funders are particularly concerned with the protection of their money. Funders know that their return is completely dependent on the outcome of the case, so they expect to have some level of say on the case outcome[35]. For instance, if the rule excludes the funder entirely, with no consulting taking place whatsoever, funders might interpret this as a rule that takes away one of the important protections that they expect to have when they agree to fund a case, which might drive them to fund fewer cases in India, or at least fewer big commercial lawsuits, for which they want a higher level of involvement[36]. However, if the regulation is designed in such a way that the funder is informed about the case and consulted periodically, but the decision is taken by the lawyer and the client, the risk of disappointing funders is significantly lower, as they still have some level of visibility. The group that would suffer the most harm if funders withdrew their support are those who are intended to be helped by third-party funding, the

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[32] Risks, Rewards and Regulation An Analysis of Third-Party Funding in Dispute Resolution, SCC Online Blog (Apr. 1, 2026)
[33] Striking A Balance: Confidentiality and Disclosure in Third-Party Funding in International Commercial Arbitration, Mondaq (May 9, 2025)
[34] Legal Profession (Professional Conduct) Rules 2015, r. 49A (Sing.)
[35] Tony Sebok et al., *" KEEP TO THE CODE ": A GLOBAL CODE OF CONDUCT FOR THIRD-PARTY FUNDERS*, 2331.
[36]*Cf.* Litigation Funding India, Global Law Experts (May 12, 2026),

litigants who have no way of financing their fight without assistance from outside funding[37]. If disclosure or no control rules are implemented in such a way that funders quite simply stop financing any cases in India, those same litigants would be deprived of all funding. Such a situation would defeat the purpose of having safeguards such as these in the first place. Current discussions of litigation funding in India are already highlighting this very concern, stressing that while there aren't any strict rules on disclosure or conflicts of interest at this point, any future regulation needs to ensure that it doesn't inadvertently cut off access to justice provided by funding. Putting this together, A rule that allows the funder to be consulted but keeps final say with the client and lawyer is low-risk. The real answer, then, is that regulation itself is not the problem, ill designed regulation, that asks for more than is actually needed to protect the lawyer's independence, is what creates the risk of pushing funders away.

RECOMMENDATIONS

Short Term: The Bar Council of India should amend Part VI, Chapter II of its Rules, with its rule-making power under Section 49(1)(c) of the Advocates Act, 1961, to place specific obligations on the advocate in a funded matter. This should include a duty to disclose the existence of the funding arrangement to the court, an extension of Rule 19 to make clear that an advocate cannot take instructions from a funder, and a requirement that the advocate certify that the funder has no control over strategy, choice of counsel, or settlement. This route is the most feasible in the short run, as it needs no new legislation and fits within the existing structure of Rules 9, 18, 20, 21, and 22.

Long Term: Since the Bar Council's rule-making power extends only to advocates, it cannot restrain a funder from pressuring the lawyer or the litigant. Closing this gap requires Parliament to enact a separate regulatory framework for funders themselves, along the lines of Singapore's Civil Law (Third-Party Funding) Regulations, 2017. Such a framework should provide for registration of funders, mandatory disclosure of funding arrangements in arbitration and high-value commercial litigation, and minimum capital-adequacy requirements similar to those under the UK's Association of Litigation Funders Code of Conduct. This route is more complete but slower, since it depends on legislative action rather than a rule amendment the Bar Council can make on its own. Any such safeguards, whether introduced in the short or long term, should be calibrated to India's costs regime, where a funder's exposure is generally limited

[37] Reimagining Access to Justice, Gokulam Seek IAS Academy (Oct. 17, 2024)

to its own investment rather than the opposing party's costs, so as not to discourage funders from financing meritorious claims and thereby undermine the access-to-justice function that third-party funding is meant to serve.

CONCLUSION

The regulatory processes adopted by Singapore, the UK and India do not suggest that there is a 'correct' version of third-party funding regulation available, but emphasize on the idea of regulation based on the cost practices and regimes. In Singapore and the UK, legislation is focused on the disclosure and non-control safeguards method of a loser-pays system, which is the principle according to which the financial burden of the losing party’s costs would be spread on the funder in most cases depending on the level of the capital invested. As a result of this asymmetry of the system, funders have the possibility to actively take part in the pre-trial manner and help in deciding on settlements, which led to the requirement of the ALF Code’s capital adequacy provisions. The costs regime of India imposes limits on the compensation of the winning party and does not make it so easy to implement; consequently, the funder's risks are limited to the amount of invested funds. As a result, the problem of influencing the process is not so sharp in the country; however, it still exists to some extent and allows for making an impact in and around the world.

India’s route towards implementing effective rules is quite different. Singapore adopted the approach of implementing a separate statutory regime directly addressing the funding institutions. India’s most significant scope of action is Section 49(1)(c) of the Advocates Act, which allows the Bar Council to formulate rules only for the lawyers. An amendment to the Bar Council Rules relating to matters financed by third-party funding, which would enable the Bar Council to impose obligations regarding disclosure and non-interference. However, it would fall short of holding the funder responsible for exerting pressure on the counsel or the client to reach a settlement. In order to provide comprehensively to this gap, legislation by the Parliament, creating a Singapore-style approach for the funding organizations, would be required. Any laws that may arise need to be associated with the nature of these protections. Singapore's information sharing framework indicates that full transparency does not mean allowing the legal rival or competitor sponsor access to the commercial information of transactions. Similarly, ALF Code indicates that funders do not need to control a suit or go through the entire process of settlement, but they need information about the process.