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USE OF CONTINGENT FEES IN PERSONAL INJURY LITIGATION

-Jahanvi Saini

ABSTRACT

Personal injury litigation serves as a vital mechanism through which individuals who have suffered harm i.e. physical, emotional, or financial, seek redress from those responsible. It operates on the principle of restoring the injured party to their pre-injury position, primarily through monetary compensation. Central to this process in many jurisdictions is the concept of a contingency fee, a payment arrangement where an attorney's remuneration depends on the success of the case. This model democratizes access to justice, allowing individuals without financial means to pursue legitimate claims without the burden of upfront legal fees. However, while the contingency fee system is a cornerstone of civil justice in countries like the United States, it remains prohibited in India, where it is viewed as contrary to professional ethics and the dignity of the legal profession. The absence of such a system in India raises important questions about equity and accessibility, as many injured and economically vulnerable individuals are effectively priced out of the justice system. This paper explores the structure and significance of personal injury litigation, the operation of contingency fee arrangements, and the ethical and legal debates surrounding them. Ultimately, it argues that while safeguards are necessary to prevent exploitation, mechanisms akin to contingency fees could serve as powerful tools in promoting equal access to justice, ensuring that legal redress is not a privilege of the wealthy but a right available to all.

INTRODUCTION

“A contingency fee is not about money; it is about opening the courthouse doors to those who could never afford to walk in otherwise.”

Personal injury litigation is the legal process through which someone who has been harmed physically, emotionally, or financially seeks compensation from the person, company, or institution responsible for their injury. In simple terms, it is how the law helps injured people hold the responsible party accountable. Unlike criminal cases, where the state prosecutes a wrongdoer, personal injury cases are civil matters. This means the goal is not punishment, it is making the injured party “whole” again, usually through monetary compensation for medical bills, lost wages, pain and suffering, and other damages.

A contingency fee flips the traditional way of paying a lawyer on its head. Instead of paying by the hour or putting down a retainer, you agree that your lawyer’s payment will depend entirely on the outcome of your case. If you win, your lawyer takes a percentage of the recovery. If you lose, you do not owe them legal fees. This is as simple as if you win you earn a share and if you do not win who earn nothing.

COMMON TYPES OF PERSONAL INJURY CASES

Personal injury claims can arise from various situations, including:

- Motor Vehicle Accidents: Collisions involving cars, motorcycles, or pedestrians.
- Workplace Injuries: Accidents occurring on the job due to unsafe conditions or employer negligence.
- Medical Malpractice: Harm caused by medical professionals' negligence or errors.
- Slip and Fall Accidents: Injuries sustained from hazardous conditions on someone else's property.
- Product Liability: Harm caused by defective or dangerous products¹.

¹ Cornell Law School, "Personal Injury," Legal Information Institute, *available at*: https://www.law.cornell.edu/wex/personal_injury

THE LITIGATION PROCESS

The personal injury litigation process typically involves several stages; they are as follows:

1. Consultation with an Attorney: The injured party meets with a lawyer to discuss the case and determine if legal action is warranted.
2. Investigation: The attorney gathers evidence, such as medical records, witness statements, and accident reports, to build a strong case.
3. Filing a Lawsuit: If a fair settlement cannot be reached, the attorney files a formal complaint in court, initiating the lawsuit.
4. Discovery: Both parties exchange information and evidence relevant to the case.
5. Negotiation: Efforts are made to reach a settlement without going to trial.
6. Trial: If a settlement is not reached, the case proceeds to trial, where a judge or jury determines the outcome.
7. Post-Trial: If the plaintiff wins, the court awards damages, if the defendant prevails, the case ends².

For most people, a personal injury case is not about chasing money, it is about survival. After an accident, you are already carrying enough weight i.e. lost wages, medical treatment, family stress. The last thing you should worry about is how to pay a lawyer. There are three grounds on which personal injury claims can be brought:

1. **Negligence** is the most common basis for personal injury claims. The basis for liability under negligence stems from an individual's failures to behave with the level of care that someone of ordinary prudence would have exercised under the same circumstances. For example, a hunter who carelessly shoots his gun towards other people.
2. **Strict Liability** holds a defendant liable for committing an action, regardless of what his/her intent or mental state was when committing the action. For example, if an injury occurs as a result of a defect in a product, the manufacturer is responsible for that injury even though they did not act negligently or intend for their product to cause harm.

² Brown & Crouppen Law Firm, "Personal Injury Lawsuit Timeline – Steps & Process," *available at*: <https://www.browncrouppen.com/blog/personal-injury-lawsuit-process>

3. **Intentional Wrongs** result from an intentional act of the defendant. Common intentional torts are battery, assault, false imprisonment, trespass to land, trespass to chattels, and intentional infliction of emotional distress³.

Of course, contingent fees are not a perfect fairy tale. Sometimes lawyers walk away with a hefty chunk of the settlement, and clients can feel short-changed. Sometimes, a lawyer may push for a quick settlement rather than a drawn-out trial because it is more convenient for them. Regulators in many countries have tried to put guardrails around this system by capping percentages or requiring written contracts. And here is the interesting part, in places like the United States, contingent fees are an accepted norm. In India, however, they are outright banned. The legal profession here still considers them unethical, arguing that justice should not be treated as a gamble. But this very ban leaves injured and economically vulnerable people struggling with limited options for pursuing compensation. At its heart, the contingent fee system is about more than legal fees. It is about the principle that justice should not depend on the thickness of your wallet. It is about giving ordinary people a fair chance against powerful institutions. And it is about making sure that the courtroom does not become an exclusive club for the wealthy.

In personal injury litigation, where every case represents a story of pain, loss, and resilience, contingent fees remind us of something simple yet profound, **access to justice should not come with a price tag.**

³ Cornell Law School, "Personal Injury," Legal Information Institute, *available at:* https://www.law.cornell.edu/wex/personal_injury