
GLOBAL AND DOMESTIC PERSPECTIVE OF THE THIRD-PARTY FUNDING IN ARBITRATION

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ABSTRACT

This article delves into the concept of Third-Party Funding in arbitration, wherein any other party, which is not a party to the suit funds the proceedings. Internationally, TPF has gained prominence and has been accepted as a valid legal practice in countries like United Kingdom, Hong Kong and Singapore. India continues to rely solely on the judicial precedents, lacking any legislative enactment. Arbitration is governed by the Arbitration and Conciliation Act, 1996, but lacks any provision regarding TPF. This article deals with the status of TPF in the Indian perspective with an overview of the domestic perspectives. Further, it states the advantages of TPF, and the core challenges faced in its implementation. The article concludes with the suggestive reforms that can be adopted for the regulation of TPF.

INTRODUCTION

Disputes are the most common and the most likely outcome of any commercial undertaking. If there are disputes, then there must be resolution for it. Arbitration is a kind of alternative dispute resolution that helps the parties to settle their conflicts outside the tiring and hectic procedures of the Court. Arbitration means any arbitration whether or not administered by permanent arbitral institution.¹ Third-party funding (hereinafter, “TPF”) means the financial aid provided by a non-signatory party to the dispute, to cover the costs of the dispute and a share is demanded if the claim succeeds. In the present scenario, TPF is emerging as a pivotal mechanism in the global arbitration landscape, for both the parties.² Third-party funders are entities that invest in litigation and arbitration for profit.³ The charges include arbitration fees, lawyers’ or arbitrators’ fees, institutional charges or any other kind of charge that may arise.

TPF has been the topic of discussions around the global economies, and a few, like Singapore and Hong Kong have even formalised it into their legal domains. Despite the rapid pace of growth of arbitration proceedings in the Indian subcontinent, the country has not enacted any formal law for the regulation of TPF within the country. This article examines the advantages, challenges, and the measures or suggestions for the robust TPF regime in India.

INTERNATIONAL PERSPECTIVE OF THE THIRD-PARTY FUNDING

The concept of third-party funding is related to the principles of Champerty and Maintenance. Champerty has been defined as a “*bargain by a stranger with a party to a suit, by which such third person undertakes to carry on the litigation at his own cost and risk, in consideration of receiving, if successful, a part of the proceeds or subject sought to be recovered*” in the Revised Fourth Edition of the Black’s Law Dictionary.⁴ Traditionally, this concept has been illegal in most of the countries, but gradually the countries are changing their stand and moving towards the legalising and swift practice of TPF globally. There are three major countries that have been putting efforts for TPF. They are:

¹ Arbitration and Conciliation Act, No. 26 of 1996, § 2A.

² Dr Amitesh Deshmukh, Understanding Third-Party Arbitration Funding in India, SCC ONLINE BLOG (Oct. 14, 2025), <https://www.sconline.com/blog/post/2025/10/14/understanding-third-party-arbitration-funding-in-india/>.

³ Victoria Shannon Sahani, Reshaping Third-Party Funding, 91 TUL. L. REV. 405 (2017).

⁴ BLACK’S LAW DICTIONARY (4th ed. West Publishing 1968).

A. United Kingdom

Chapter XXV of the Statute of Westminster 1275⁵ states “*None shall commit Champerty*” and it was the first U.K. legislation that banned champerty and maintenance. The first official instance of liberalization of champerty and maintenance was the Criminal Law Act, 1967⁶ wherein, Section 14 states that “*no person shall, under the law of England and Wales, be liable in tort for any conduct on account of its being maintenance or champerty as known to the common law, except in the case of a cause of action accruing before this section has effect.*” TPF is gradually being legalized in the United Kingdom. In *R (Factortame Ltd.) v. Secretary of State for Transport*, the Court of Appeal held that “*agreements that are against the integrity of the judicial process and that seem to undermine the ends of justice would be considered in violation of the principles of maintenance and champerty.*”⁷

TPF was not accepted as an ethical practice in the U.K. historically, but gradually it is being widely accepted. United Kingdom is one of the first countries that has adopted and accepted the TPF of the arbitration suits by rendering the above two principles obsolete in the modern context.

B. Singapore

Singapore is the first country in the Asian continent to sideline the concept of maintenance and champerty and legalize TPF in arbitration in 2017. Civil Law (Third Party Funding) Regulations, 2017 and Civil Law (Amendment) Act, 2017 were the first legislation that put an end to the tort of maintenance and champerty in international arbitration. Under Sections 5A and 5B of the Act, it is stated that “*no person is, under the law of Singapore, liable in tort for any conduct on account of its being maintenance or champerty as known to the common law.*”⁸ The Civil Law (Third Party Funding) Regulations, 2017 was amended in 2021 and the Law Ministry of Singapore (MinLaw) extended the third-party funding (TPF) framework to include domestic suits, Singapore International Commercial Court (SICC) disputes, and related mediation suits, as well.⁹ This step ensured that TPF doesn’t restrict only to the international

⁵ Statute of Westminster, 1275, ch. XXV, 1275 (UK).

⁶ Criminal Law Act, 1967, § 14, 1967 (UK).

⁷ Ansh Desai et al., *Third-Party Funding for Dispute Resolution in India* (Nishith Desai Associates Apr. 2024), https://nishithdesai.com/fileadmin/user_upload/pdfs/Research_Papers/Third-Party-Funding-for-Dispute-Resolution-in-India.pdf.

⁸ Civil Law (Amendment) Act, 2017, § 5A, 2017 (Singapore).

⁹ Press Release, Ministry of Law (Sing.), *Third-Party Funding Framework Permitted for More Categories of Legal*

arbitration matters of the country. **Singapore International Arbitration Centre (SIAC)** also gave its guidelines regarding the TPF and necessitated the disclosure by a party about the existence of any third-party financing agreement and the third-party funder's identity and contact details.¹⁰

Singapore has reacted positively and has taken few steps towards the legalizing of TPF in both, international and domestic arbitration in the past few years. It has amended its Acts and re-framed its guidelines for the smooth functioning and less disputes in the matters of the TPF in arbitration, including the divulgence of the funder's identity.

C. Hong Kong

Hong Kong has taken various steps to foster TPF in arbitration. As all the other countries of the world, Hong Kong also considered the practice of maintenance and champerty as illegal but gradually they shifted towards a pro-TPF side. Hong Kong has dealt with TPFs extensively and in the decision of *Cannonway Consultants Ltd. v. Kenworth Engineering Ltd.* the principle of champerty was invalidated especially in arbitration disputes.¹¹

The Hong Kong government passed the Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017 wherein it ensured in the Section 98E of the Part 10A of the Act that “*third party funding of arbitration is not prohibited by particular common law doctrines and provided measures and safeguards in relation to third party funding of arbitration.*”¹² The Hong Kong International Arbitration Centre (HKIAC) released the revised guidelines for arbitration which became effective on 1 November 2018. The new guidelines contain rules that strengthen the de-anonymization requirements in the Arbitration Ordinance.¹³

Hong Kong has taken several steps for the legalizing of TPF in the country. The journey

Proceedings in Singapore (June 21, 2021), <https://www.mlaw.gov.sg/news/press-releases/2021-06-21-third-party-funding-framework-permitted-for-more-categories-of-legal-preceedings-in-singapore/>.

¹⁰ SING. INT'L ARB. CTR., ARBITRATION RULES r. 38.1 (7th ed. Jan. 1, 2025).

¹¹ Mouli Bhardwaj, Third-Party Funding in Arbitration: A Game-Changer for Access to Justice and Dispute Resolution, THE ARBITRATION DIGEST (2023), <https://thearbitrationdigest.com/third-party-funding-in-arbitration-a-game-changer-for-access-to-justice-and-dispute-resolution/>.

¹² Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017, (H.K.), pt. 10A, § 98E.

¹³ Carolina Carlstedt, And Then There Were Three... Third Party Funding in Hong Kong, PRACTICAL LAW ARBITRATION BLOG (Feb. 1, 2019), <http://arbitrationblog.practicallaw.com/and-then-there-were-three-third-party-funding-in-hong-kong/>.

towards the TPF has entered its beginning phase and is one of the first countries to take a proactive stand for TPF in arbitration.

LEGAL LANDSCAPE OF TPF IN INDIAN SCENARIO

India doesn't have any codified law or statute for the regulation of TPF in India. Arbitration is regulated by the *Arbitration and Conciliation Act, 1996*, but it doesn't talk anything related to TPF in arbitration. The principle is being governed mainly by judicial precedents and pronouncements. If there is no law, that doesn't mean that India is against the concept. The Privy Council held in the matter of *Ram Coomar Coondoo v. Chunder Canto Mookerjee* (1876) [pg. 46 and 47, ¶ not explicitly stated], that:

*“The English laws of maintenance and champerty are not of force as specific laws in India. A fair agreement to supply funds to carry on a suit in consideration of having a share of the property, if recovered, ought not to be regarded as being per se opposed to public policy. But agreements of such a kind ought to be carefully watched and when extortionate, unconscionable, or made for improper objects, ought to be held invalid.”*¹⁴ It is inferred from the above judgement that only those agreements will be held invalid, in India, which are opposed to public policy. In India, of course, champerty or maintenance is not illegal,¹⁵ still India lacks any regulations or guidelines for the TPF in arbitration.

High Court of Bombay in its judgement in *Harilal Nathalal Talati v. Bhailal Pranlal Shah* (1939) [¶ 8], find that the agreement which is disproportionate to the amount of money spent is an extortionate and unconscionable one and opposed to public policy¹⁶ [¶ 8]. The matter of fact for this paper is mainly related to TPF in arbitration. The Supreme Court of India, in the dispute of, *Bar Council of India v. A.K. Balaji* (2018) [¶ 38] held that:

“In India, funding of litigation by advocates is not explicitly prohibited, but a conjoint reading of Rule 18 (fomenting litigation), Rule 20 (contingency fees), Rule 21 (share or interest in an actionable claim) and Rule 22 (participating in bids in execution, etc.) would strongly suggest that advocates in India cannot fund litigation on behalf of their clients. There appears to be no restriction on third parties (non-lawyers) funding the litigation and getting repaid after the

¹⁴ *Ram Coomar Coondoo v. Chunder Canto Mookerjee*, 1876 SCC OnLine PC 19.

¹⁵ *Vatsavaya Venkata Jagapati v. Poosapati Venkatapati*, 1924 SCC OnLine PC 22.

¹⁶ *Harilal Nathalal Talati v. Bhailal Pranlal Shah*, 1939 SCC OnLine Bom 79.

outcome of the litigation”¹⁷ [¶ 38]. This judgement can make us infer that only advocates cannot fund the litigation, but non-advocates can fund through TPF, hence arbitration can also be funded by any third party.¹⁸

Through several judgements, the courts in India have shown that they were against TPF in the field of litigation. The A&C Act doesn't mention third-party funding particularly, but the recent developments to the Act of 1996 have introduced stricter deadlines for the awards being passed and have necessitated fast-track arbitrations as well.¹⁹ Arbitration is a comparatively newer concept, and courts seem to be still of the view that TPF should be valid in arbitration as well. TPF is very important for the fostering of the field of arbitration in India and there must be a statute or governing law for the purpose of regulating TPF because although it is beneficial, it can be harmful for the weaker parties as well, if they are not regulated by any stricter body.

ADVANTAGES AND CHALLENGES OF TPF

The principle of Third-party Funding comes with both, the advantages and the challenges in its implementation. Let's first look into the advantages of the TPF that both the funders and claimants have when they enter into the agreement.

a. Levelling the field of Arbitration

In a matter of dispute between two parties, there is a high chance of any one of the parties being more financially strong than the other. There are possibilities that a party might not have enough resources to initiate arbitral proceedings. The concept of TPF allows the parties to initiate these proceedings without the availability of funds in their own bank accounts. With external financial support, less affluent parties can mount a compelling challenge, ensuring that financially stronger party does not overshadow the genuine claims.²⁰ This makes arbitration accessible to everyone in the current scenario.

b. Risk Management

The Companies have a choice to transfer risks to the funders. TPF becomes a risk-free

¹⁷ Bar Council of India v. A.K. Balaji, (2018) 5 SCC 379.

¹⁸ Amitesh Deshmukh, Understanding Third-Party Arbitration Funding in India, SCC ONLINE BLOG (Oct. 14, 2025), <https://www.scconline.com/blog/post/2025/10/14/understanding-third-party-arbitration-funding-in-india/>.

¹⁹ Pavni Tuli, Third Party Funding in Arbitration in India: Setting the Law Straight, INT'L BAR ASS'N (June 3, 2021), <https://www.ibanet.org/thirdpartyfunding-arb-India>.

²⁰ Broderick Bozimo & Co., Third-Party Funding in Arbitration: Pros and Cons, BRODERICK BOZIMO & CO. (Oct. 24, 2023), <https://broderickbozimo.com/third-party-funding-in-arbitration-pros-and-cons/>.

phenomenon for the party which is being funded as the funding gives immediate access to capital to pursue meritorious claims, while reducing risk and cost.²¹ The enforcing of the recovery of assets without the undermining of the liquidity grants these agreements the power to transform the arbitration from an expense into a cash-generating asset.²² Parties seek to enter into TPF agreements in order to attenuate the risks connected with delays in arbitral suits.²³ The potential earning that can be made by the funders as a result of the investment becomes an incentive for the funder to bear the amount of risk.

c. Boost to the domain of Arbitration

The high cost that is incurred in the process of arbitration becomes the prime deterrent to establish even a genuine claim by any financially weak party. If a party does not have the resources to initiate a legitimate claim, funding could be its only alternative.²⁴ It is indisputable that if meritorious claims get the funding that is required then the number of the arbitral proceedings are bound to increase. This will ensure the growth of the market of Arbitration, making even the small MSMEs or companies to initiate arbitral proceedings in any commercial dispute.

• Challenges

Looking at the positives is always a delight for everyone, but this principle also has its issues and challenges for the implementation. The issues faced in the application of the concept include:

a. Lack of regulation

Even though, some states and institutions are introducing various modifications in the laws and are initiating certain amendments in their regulations gradually, with the focus on regulating TPF, still regulation of this principle is scarce in the present scenario, both internationally and

²¹ Ben Sanderson, *Litigation Funding: A Financial Solution to the Pandemic*, LEXOLOGY (May 28, 2020), <https://www.lexology.com/library/detail.aspx?g=e74258a1-3001-4cde-b11f-b6fd7a5bc33f>.

²² *Third-Party Funding in Arbitration: International Landscape and the Road Ahead for India*, RFMLR ARB. SPECIAL ED. 1 (2021).

²³ Megan Betts & Evanthis Kasiara, *The Impact of the COVID-19 Pandemic on Third Party Funding and Security for Costs in International Commercial Arbitration*, KLUWER ARB. BLOG (July 30, 2020), <https://legalblogs.wolterskluwer.com/arbitration-blog/the-impact-of-the-covid-19-pandemic-on-third-party-funding-and-security-for-costs-in-international-commercial-arbitration/>.

²⁴ Poorvi Bhati, *Advantages of Third Party Funding in Arbitration*, VIA MEDIATION CENTRE, <https://viamediationcentre.org/readnews/MTMzMA==/Advantages-of-Third-Party-Funding-in-arbitration>.

nationally.²⁵ The Arbitration and Conciliation Act, 1996 is the primary statute that governs arbitration in India. It includes domestic disputes, international commercial transactions and the awards during the trial. The whole legislation lacks any clause that relates to the TPF. The Act restricts any arbitrator that may have close ties with any of the party under Section 12 of the Act²⁶, but there is no mention of the restriction of relationship between the funders and the arbitrator. This might create a bias in granting the award. Therefore, this is one of the most fundamental issues regarding the principle of TPF in India, as there is no stipulation as to who can become a funder.

b. Confidentiality

The amendment to the A&C Act, 1996 in 2019 added the clause of confidentiality under Section 42A which states that “*the arbitrator, the arbitral institution and the parties to the arbitration agreement shall maintain confidentially of all arbitral proceedings except award where its disclosure is necessary for the purpose of implementation and enforcement of award*”.²⁷ When any of the party will share the information with a third-party funder, then it can unintentionally risk these details and its confidentiality, and in some cases, courts may even determine that as soon as the sensitive information is shared with the external funder, the attorney-client privilege is waived.²⁸ This creates an issue for the parties as they can disclose only limited information regarding the dispute and this may deter the funder from funding the trial.

c. Enforcement Challenges

Funders are only the investors that provide funds for the arbitral proceedings, they are not the signatories to the arbitration agreement. The funders are indeed interested in the award that is given by the arbitral tribunal, but they cannot challenge the award, if they do not agree with it. The Supreme Court of India in its judgement in *Gemini Bay Transcription (P) Ltd. v. Integrated Sales Service Ltd.* (2022) [¶ 43] held that:

²⁵ Elena Sevilá & Olga Andrés, Third-Party Financing in International Arbitration: Regulation, Advantages and Disadvantages, ANDERSEN (June 2018), <https://es.andersen.com/en/publications-and-news/third-party-financing-in-international-arbitration-regulation-advantages-and-disadvantages.html>.

²⁶ Arbitration and Conciliation Act, No. 26 of 1996, § 12.

²⁷ Arbitration and Conciliation Act, No. 26 of 1996, § 42A.

²⁸ Krrishan Singhania et al., Third-Party Funding in the Indian Arbitration Scenario, SINGHANIA & CO. (Dec. 18, 2024), <https://singhanialaw.com/third-party-funding-in-the-indian-arbitration-scenario/>.

“There can be no doubt that a non-party to the agreement, alleging that it cannot be bound by an award made under such agreement, is outside the literal construction of Section 48(1)(a)²⁹” [¶ 43]. This creates an issue in the swift implementation of the agreement as funders are most likely to interfere with the arbitral award if it is not in their favour, as their money is at stake. Although, they cannot challenge the award, but they cannot be held liable for the enforcement of an award as well because the Delhi High Court in its judgement in *Tomorrow Sales Agency (P) Ltd. v. SBS Holdings Inc.* (2023) [¶ 75] held that:

“Permitting enforcement of an arbitral award against a non-party which has not accepted any such risk, is neither desirable nor permissible³⁰” [¶ 75].

d. Cross Border Transactions

If the third-party funder is from another country, then in addition to all the other relevant statutes, The Foreign Exchange Management Act, 1999 will also be applicable. Cross Border fundings poses an issue as TPF is neither described as capital account transaction nor as current account transaction under the Section 2 of the Foreign Exchange Management Act, 1999.³¹ This leads to a lack of clarity as to how these kinds of investments will be regulated in the Indian scenario, which disincentivizes the foreign fundings. The contemporary environment that surrounds foreign funding might subject a foreign funder to non-essential FEMA compliances thereby discouraging him from investing in the Indian Arbitration market.³²

SUGGESTIONS FOR THE TPF BOOST

When we look into the judgements of different courts in India, we can easily infer that India is not against the concept of third-party funding. There is no lack of intention, there is only a lack of regulation. India requires a robust framework for the regulation of TPF, otherwise the field of commercial arbitration will be “the road not taken”. In order to attract funders, the country must introduce any provision in the existing law, or frame new guidelines, otherwise the beautiful concept will easily be manipulated by the stronger party and the weaker will be oppressed.

²⁹ Gemini Bay Transcription (P) Ltd. v. Integrated Sales Service Ltd., (2022) 1 SCC 753.

³⁰ Tomorrow Sales Agency (P) Ltd. v. SBS Holdings Inc., 2023 SCC OnLine Del 3191.

³¹ Foreign Exchange Management Act, No. 42 of 1999, § 2.

³² Pragya Jain & Chaitanya Acharya, TPF: Insights and Challenges for the Indian Legal Regime, GNLU SRDC BLOG (July 29, 2020), <https://gnlusrdc.wordpress.com/2020/07/29/tpf-insights-and-challenges-for-the-indian-legal-regime/>.

Arbitration is a kind of alternative dispute resolution that a person adopts so that he can avoid much judicial interference in his matters, but with excessive judicial intervention in arbitrations in the country, mere acceptance of TPF, would only create unreliability for parties, and the total number of litigations will rise. The principle of least judicial interference will be infringed, if the dependence is placed on the judiciary for the interpretation of various aspects of arbitration. Additionally, judicial precedents and pronouncements would not be able to resolve the policy questions that surround TPF.³³

Another problem that arises due to no formal law or guidelines for TPF is the self-regulation by the funders. The funders are bound to adopt a self-regulatory framework which makes the TPF norms vary, case to case. Complete reliance of a norm, that is so essential for the country in becoming the commercial arbitration hub, on judicial precedents doesn't do justice to the concept itself.

India doesn't lack institutions that regulate international and domestic arbitration. There are institutes like, India International Arbitration Centre (IIAC), Indian Council of Arbitration (ICA), Mumbai Centre for International Arbitration (MCIA) etc., still there are no guidelines specific to TPF by these bodies. These regulatory institutions must also frame some kind of norms and principles, so that the concept gets boost in the country.

CONCLUSION

Justice Sudhanshu Dhulia while giving a speech at a symposium said "*Arbitration is a rich man's litigation. Poor people don't go for it.*" There are different income strata in the Indian subcontinent, and everybody cannot afford arbitration for their disputes. TPF is a concept that allows even the financially weaker party to initiate arbitration proceedings against a party with greater resources. India strives to become a commercial arbitration hub in the future, and this cannot be achieved if arbitration limits itself to the bigger companies and MNCs. India should take example from the countries like, Singapore and Hong Kong, which have framed laws for regulating TPF. TPF comes with its own challenges and a robust framework, and a vigilant action must be provided so that it doesn't become challenging in its application.

³³ Rishika Sharma & Shambhavi, Third-Party Funding in Arbitration: Is India Keeping Up with the Times?, ADR CELL, NLIU (Jan. 15, 2025), <https://adrc.nliu.ac.in/2025/01/15/third-party-funding-in-arbitration-is-india-keeping-up-with-the-times/>.