THIRD PARTY FUNDING: INDIA'S FRAMEWORK AND GLOBAL STANDARDS

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ABSTRACT

International arbitration has grown into the preferred method for resolving commercial disputes between countries, but the quick growth of Third-Party Funding (TPF) has significant implications for the core principles of arbitration. As arbitration costs escalate, TPF—in which specialized investment entities cover parties' legal expenditures in exchange for a preset amount of any decision or settlement—has become increasingly popular as a means of assisting claimants who are struggling economically in attaining justice. TPF democratizes dispute resolution by reducing financial barriers, but it also raises challenging procedural and ethical questions about conflicts of interest, transparency standards, and the impartiality of arbitral processes. Uncertainty is created by inconsistent rules for disclosing funding agreements, which could compromise arbitrators' impartiality and procedural justice.

The present scenario of TPF regulation is examined in the present study by analysing tribunal jurisprudence and institutional instructions from well-known arbitral bodies. The fundamental dispute between the long-standing arbitration secrecy restrictions and the increasing demand for transparency regarding Third-Party Funding arrangements is examined. While safeguarding legitimate confidentiality interests, disclosure duties are given special consideration as instruments for identifying potential conflicts of interest.

The analysis indicates that to maintain the integrity of arbitral processes, comprehensive legal frameworks are necessary. The present paper compares India's regulatory stand to international best practices to make the case for fair reforms that allow TPF while maintaining arbitration's core characteristics as an impartial, efficient, and trustworthy conflict settlement process.

Keywords: Investment Arbitration, Confidentiality, Disclosure Framework, Transparency, Third-Party Funding (TPF)

Third Party Funding: India's Framework and Global Standards

Introduction

Effective dispute resolution mechanisms are becoming more and more necessary as cross-border trade and business expand. International arbitration is a popular option for this, and its use is growing tremendously. The price of bringing a dispute before an international arbitration tribunal is rising in accordance with this expansion. Numerous parties to international arbitration are currently looking into alternate options to cover these higher expenses, whether they are experiencing financial difficulties or not. One such option is Third-Party Funding (TPF). In lieu of financial gains like a portion of the arbitral verdict, etc., third-party funding is the method by which a non-signatory to an arbitration agreement finances the arbitration proceedings for a party to the arbitration.

In international arbitration, TPF is among the most controversial and disputed topics. But it is becoming more and more popular in the legal arena globally. Since the parties are given an even playing field, its frequent usage in arbitration has proven advantageous. However, it fosters certain concerns regarding confidentiality throughout the arbitration. Confidentiality is a crucial component of arbitration, which influences a party's decision to submit a matter to arbitration. If TPF is governed by statute so as not to jeopardize the interests of the arbitration parties, it may be an effective tool in guaranteeing access to justice for those who face financial constraints.

TPF was first popular in nations with common law, but it is now becoming increasingly popular in international arbitration since it can help parties who normally couldn't pay the fees of arbitration seek justice (Tulsyan & Kadyan, 2023)[1]. Though the practice is spreading across the globe, TPF is still fairly new in India, especially in domestic arbitration, where it is still entirely informal.

Objective and Scope of the Study

The study examines the role of third-party funding in Indian arbitration, emphasizing how it affects impartiality and confidentiality. It focuses on the ethical issues around TPF, how it impacts the arbitration process, and what changes should be made to the law to ensure its effective integration within India's arbitration framework. Also covered in this article are global best practices and their potential adoption in India (Bhardwaj, 2023)[2].

Alternative Funding Models

Funding for international arbitration is now available through TPF. There were many of other ways to finance international arbitration prior to the introduction of TPF. Some of the other available funding models are briefly covered in the present article.

(i) Insurance

One of the initial methods of funding disputes has been insurance. The costs associated with the dispute are typically covered by the insurance packages. These charges include the cost of filing a claim or defending one, the cost of hiring an attorney, and the payment of any award or order that is imposed on the insured. The terms "before the event" (BTE) and "after the event" (ATE) relate to the two primary types of insurance plans. The BTE insurance model is typically used to cover any future legal disputes. The premium is paid in advance to the insurer under this scheme. Additionally, the insurance covers the cost of filing a claim, defending against one, and all other related expenses. The insurer constantly monitors the arbitration's behaviour because it has no stake in the outcome of the arbitration other than to reduce the expenses borne by the insured party.

ATE insurance, sometimes referred to as litigation/arbitration insurance, is purchased upon the occurrence of a court case. The contingency premium model is a unique way that the insurance premium is structured under this package. In this approach, the insured only pays the insurance premium if the claim is successful; otherwise, the payment is typically deducted from the settlement proceeds or awarded damages. Though the return paid is far lower, it is similar to the TPF model. The only difference between the ATE and TPF insurance models is that the former does not offer day-to-day financing; instead, it pays the insured on an indemnity basis in the event that the case is unsuccessful. Additionally, the insurance premium is usually significantly less than the return that a funder would seek under the TPF model[8].

(ii) Corporate Financing

There are primarily two methods for obtaining funds under this strategy. The first method is through corporate finance, which is best demonstrated by the scenario that follows: a parent company may lend money to its subsidiary so that the subsidiary may pursue the claim.

In other cases, the company's creditors, owners, or other stakeholders may offer the financial support required to pursue the claim in return for a reward (which may include monetary compensation or managerial control)[9].

Equity-based finance is the second method. In exchange for an equity stake in the business, the funder may provide the necessary financial contributions to help the company pursue its claim. The most effective and prevalent mechanism of equity-based finance is private placement of equity.

(iii) Sale of Claims

In this scenario, the claim is sold outright to the funder by the claimholder. This arises because the claimant might consider protracted arbitration procedures to be costly and time-consuming, and they would assign the rights to a different party in return for an upfront payment. The amount of consideration is typically pennies on dollars. Unlike supporting a third party, the funders will have all authority and control over the arbitration process, which is why they are even pleased with the sale of claims.

The outright sale of claims is prohibited in common law jurisdictions and jurisdictions where champerty exits, and funders are prohibited from assuming authority over another party's claims. As a result, rather than being an outright sale, the TPF is only defined in certain jurisdictions as an agreement for an investment in the claim holder's arbitration in exchange for that interest. Nonetheless, other civil law jurisdictions allow funders to pursue third-party claims and allow the outright sale of claims[10].

(iv) Attorneys as Funders

Lawyers can also serve as funders in some instances. The lawyer shares the risk and pays all or part of the arbitration fees under this arrangement. The structure of this approach is often that the lawyers receive a portion of the award or settlement received in exchange for no legal expenses.

(v) Portfolio Funding

Numerous funders are actively pushing portfolio funding, another alternate method of paying claims, due to its diversified risk. Thus, what is the framework of a portfolio arrangement? There are numerous approaches to structuring a portfolio arrangement, but two common models are as follows: 1) finance organized around a number of legal disputes of a corporate claim holder over a comparatively short period of time; 2) finance organized around a claim holder's numerous legal disputes as clients of a law firm.

The funding in both models evidently organized across a number of claims, which offers the funder some degree of cross-collateralization (i.e., the funder's return is based on the net performance of the portfolio as a whole rather than on a single claim). These financial structure options facilitate the speedier acquisition of TPF by the legal firm or business organizations. The funder's risk is distributed among several claims, resulting in a lower risk percentage on each claim. This strategy also has an economic advantage.

Additionally, portfolio financing offers a benefit to corporate claim holders. This is the potential inclusion to the portfolio of certain claim categories (such as non-monetary claims) that would not otherwise be able to be paid separately. Because of the cross-collateralization that portfolio finance offers, the inclusion is feasible.

Comprehending Third-Party Funding in Arbitration

A financial arrangement known as Third-Party Funding (TPF) in arbitration takes place when a party to a dispute seeks financial support from an outside party, sometimes a funder, who is not a party directly involved in the arbitration. If the litigation ends well for the supported side, the funder usually gets a portion of the award or settlement in return for their financial support. Financial risk is borne by the external funder, who typically does not be paid if the claim is denied. Baweja and Meduri (2019) [4].

The need of this kind of funding is growing since arbitration can be costly, particularly in sophisticated commercial or international disputes. Securing expert witnesses, hiring professional legal representation, and covering other procedural expenditures can come at a high cost. This hinders many parties from seeking justice, especially small enterprises or those with limited financial resources. TPF democratizes access to legal proceedings and strengthens claimants' ability to uphold their rights by allowing these parties to access arbitration even though they cannot afford the associated costs (Bhardwaj, 2023) [2].

In international arbitration, where disputes often entail substantial amounts of funds as well as intricate legal concerns, TPF is extremely prevalent. Even while common-law jurisdictions like the United States and the United Kingdom historically utilized it, its adoption is spreading throughout the globe. The idea of TPF is relatively informal in India and is still in early stages, especially among domestic arbitration. Legal amendments have to be implemented to balance its application with upholding the integrity of the arbitral proceedings as consequences of this.

Significance of Third-Party Funding in Arbitration

A study by Merlone and Lupano (2022)[5], third-party funding is crucial for improving access to justice, especially for claimants who may lack the funds to pursue arbitration independently. TPF enables parties, particularly those from small companies or emerging economies, to pursue claims against strong corporate entities or even states in commercial and investment arbitration, where stakes can be extremely high. Due to financial limitations, these parties might be forced to give up on valid claims in the absence of TPF, depriving them of the chance to obtain justice (Singhania & Vajpeyi, 2020)[6].

However, issues concerning the impartiality and integrity of the arbitration process are also raised by the participation of funders. Third-party funders are financially invested in the dispute's resolution, which raises ethical questions about conflicts of interest. Funders might have an impact on the arbitrators' impartiality, for instance, by influencing choices about the settlement or the way the case is handled. In countries like India, where the legal system governing TPF in arbitration is still developing, these issues are particularly relevant (Bhardwaj, 2023) [2].

Regulatory frameworks must make sure that TPF does not affect the process's impartiality, fairness, or confidentiality, even though it may increase access to arbitration. To enable the correct inclusion of TPF while safeguarding these fundamental concepts, legal reforms are required in India.

Conflict of Interest and Disclosure Obligations

A conflict of interest (real, hypothetical, or perceived) might arise when a party enters into a TPF agreement. The funder and the financed party may be involved in any one of the three outlined conflicts of interest scenarios. The second is between the funder and the lawyer for the funded party, and the third is between the funder and the arbitrator.

Conflicts of interest arise at some point, even though most financed cases go well with the funder and the funded party having matched interests. For example, the funder may believe that the amount the financed party wants to settle for is insufficient given the investment made, and vice versa. In a similar vein, circumstances where the funded party's interest may differ from the funders may arise from budget overruns or when the opponent undermines case strength through the discovery of new evidence.

In reality, the relationship between the funder and the funded party's lawyer is frequently more complex; that is, the party may have signed a funding agreement as a result of the lawyer's referral, and the funder may also be the lawyer's client. Additionally, a lawyer may have a conflict of interest if they represent both the funder and the financed party. Usually, the funding arrangement is set up such that the obligations owing to the party and the funder (if the lawyer is representing them) are clearly distinguished. Attorneys advise both parties to retain independent legal advice, though, in order to lessen such conflicts.

Third-party sponsorship creates a special form of conflict of interest that requires thorough review in addition to the typical problems. The link between an arbitrator and a litigation funder could affect the arbitrator's independence and impartiality, perhaps resulting in the annulment of any award granted.

Significance of Confidentiality and Impartiality in Arbitration

The key concepts of arbitration, confidentiality and impartiality, ensure a fair and open process. Retaining confidentiality secures the protection of sensitive data, including legal tactics and supporting documentation. ***Confidentiality*** is a key component of arbitration that ensures the protection of parties' evidence, legal strategies, and sensitive information at all stages of the arbitration process. By doing this, parties are guaranteed the freedom to provide all relevant information without worrying about it being made public or used against in later legal proceedings.

In commercial arbitration, where trade secrets, financial information, and other proprietary data may be exchanged, confidentiality is especially important. Building confidence and promoting open communication between the parties and the tribunal is the key goal of retaining confidentiality (Tulsyan & Kadyan, 2023)[1].

Confidentiality in arbitration is typically regulated by the arbitration agreement's terms or the institution's guidelines. Confidentiality is crucial for arbitrators, attorneys, and other participants in the processes in addition to the parties. By upholding this confidentiality, business interests are safeguarded and reputational harm is avoided (Bhardwaj, 2023)[2]. But with the advent of Third-Party Funding (TPF), maintaining confidentiality becomes more difficult because outside funders might need access to secret case data in order to evaluate the funding's sustainability and track the case's development.

The term "***Impartiality***" indicates arbitrators' neutrality and lack of party involvement. There are concerns regarding whether these norms can be followed when third-party funding sources are involved in arbitration. Funders may bring potential biases or conflicts of interest that could affect the proceedings because they frequently have a financial stake in the arbitration's outcome. Need of critically evaluating TPF's influence on these principles is highlighted by its expanding implementation (Krishnamurthy & Pradeep, 2023)[3].

The key element of arbitration is impartiality, which ensures that arbitrators base their decisions only on the arguments and evidence presented forth by the parties, without regard to outside influences or prejudice. In order to preserve the fairness of the arbitration procedure and ensure fairness for all parties, this premise is crucial. In order for arbitrators to be impartial, they must be free from any financial, interpersonal, or personal influences that can skew their judgment of the case (Ranjan & Kumari, 2023)[7].

Third-Party Funding and Ethical Issues

Third-Party Funding (TPF) in international arbitration has grown in popularity globally, it raised significant ethical concerns and gives access to funds for court cases. Funders' influence over lawsuit strategy, settlement decisions, and potential conflicts of interest challenges judicial independent and conventional lawyer-client relationships. Globally, jurisdictions face challenges related to disclosure obligations, regulatory frameworks, and concerns about fraudulent claims. The difference between well-funded claims and the reactions of governments enhances the subject of sovereign debates. Supporters claim TPF democratizes dispute resolution, while critics point to lack of transparency and unclear funding intentions. It is vital to find a balance between commercial innovation and procedural integrity since global organizations are increasingly reviewing TPF arrangements to uphold arbitration's legitimate basis.

TPF Across Global Jurisdictions

Common law considerations of public policy, maintenance, and champerty have historically prohibited TPF agreements in common law regions. Maintenance is the procedure by which an unaffiliated third party finances legal actions, and it is an aggravated version of maintenance in which the third party finances the legal proceedings in return for a portion of the money that outcomes of legal proceedings. The theories of generosity and maintenance have been used less rigidly in many jurisdictions globally in recent years, and the concept of TPF has been encouraged. In 2011, England and Wales, for example, established a code of conduct for TPF that included international arbitration.

In February of 2017, the Paris Bar Council passed a resolution affirming that there are no obstacles preventing the parties from signing TPF agreements. Once more, in March 2017, Singapore, a nation that is regarded as being pro-arbitration on the Asian continent, issued the Civil Law Amendment Act, which made TPF legal and regular. Hong Kong has acknowledged TPF as not being against public policy and has repealed the torts of maintenance and generosity. Furthermore, the two Asian nations have gone one step further and mandated that the parties involved disclose the existence of TPF itself.

TPF under the Indian Legal Framework

In India, the legitimacy of TPF is still based on the obsolete concepts of privilege and maintenance, which raise serious legal questions. Sections 28 and 29 of the Indian Contract Act of 1872 generally render agreements that limit legal processes null and void, and common law rules have historically prohibited non-parties from financing litigation in exchange for a share of the settlement's proceeds. Recent rulings by the courts, however, indicate that the trend is shifting. As long as the dispute funding arrangements meet disclosure standards, the Supreme Court recognised that '*they don't always violate professional ethics*[11]'. Indirect support for TPF agreements came from the 2015 amendment to the Arbitration and Conciliation Act, which included stronger disclosure standards.

India does not, however, have comprehensive laws that specifically handle Third-Party

Funding in arbitration. To bring Indian arbitration practice into line with global standards, quick change is necessary because there is now a scarcity of regulation that clarifies appropriate funding arrangements, disclosure requirements, and funding agreement enforcement.

The Ciarb Guidelines 2025

In many high-value commercial arbitrations, Third-Party Finance (TPF) has emerged as a key component. Nonetheless, TPF creates complications for arbitral tribunals, clients, and attorneys alike. The Chartered Institute of Arbitrators (Ciarb) published its 2025 Guideline on Third-Party Funding in Arbitration, a comprehensive framework that explains TPF processes and how they impact arbitral procedures, in response to this evolving environment. The Guideline is positioned by Ciarb as a broad summary. Practitioners are warned that each case will be determined by the appropriate arbitration rules, the applicable national laws, and the specific rules of the arbitral seat.

The Guideline is divided into two primary sections: the first section, "The funding process," provides a useful summary of the structure of third-party funding by going over how funding agreements are assessed (including the due diligence that comes before funding), how they are negotiated, the numerous types of funding products that are available, and the typical commercial terms that are used in real-world situations.

Process and case management issues, including disclosure requirements, conflicts of interest (including obstacles for arbitral institutions), how security is treated for costs, and whether funding costs may be recovered, are covered in the second section, "Arbitration involving a Funded Party."

The Ciarb guideline outlines several key advantages of TPF, such as: TPF being available at any point in the process across a range of claim types; funders providing independent merit assessment and strategic expertise at no initial cost; and established corporations profiting from claims while maintaining working capital for core operational TPF levels the playing field by allowing resource-constrained parties to pursue meritorious claims against well-funded opponents, and risk transfer via non-recourse financing relieves claimants of financial burden even in the event that claims are unsuccessful.

However, the guideline also acknowledges significant disadvantages, such as the need for a protracted processing period of one month to a year in order to obtain funding; the possibility of overpriced terms due to high-risk profiles; the need for extensive monitoring by certain funders, which adds administrative costs to legal teams; and the possibility of conflicts when funder and claimant interests diverge, particularly with regard to settlement valuations under different pricing structures (Ciarb)[15]. These elements emphasize how crucial it is to thoroughly consider each person's TPF compatibility.

Case Studies on Third-Party Funding

The guideline points out a significant difference between arbitration and litigation: arbitral tribunals have the authority to award the winning party the costs of third-party funding under certain conditions. This is not the case in many court systems, where it is not customary to collect such costs. Important case law, such as Essar Oilfield Services Ltd v. Norscot Rig Management Pvt Ltd (2016)[12], which acknowledges a tribunal's discretion to award TPF costs, is cited in the Ciarb text. In order to prevent a funded party's recoverable earnings from being diminished, tribunals have, in fact, included TPF costs in their awards.

The Singapore International Arbitration Center verdict in B v. A created priority disclosure obligations, requiring supported parties to reveal funders' identities to prevent conflicts of interest[13].

The Hong Kong Court of Appeal balanced the respondents' rightful protection with the right to justice in Raiffeisen Bank International AG vs. Asia Coal Energy Ventures Ltd [2020] HKCA 417, a case involving security for costs applications against funded claimants (Court of Appeal of Hong Kong, 2020)[14].

Merlone and Lupano (2022)[5] analyse the economic justification for third-party funding by determining the lowest claim value that justifies outside funding in arbitration and litigation. They employ operational research models to assess how donors' involvement decisions are influenced by funding costs, risks, and expected returns. The authors assert that establishing a minimal claim threshold promotes fair access to the judicial system, ensures funder sustainability, and increases efficiency.

Conclusion

The widespread use of Third-Party Funding in international arbitration necessitates that

India rapidly implements thorough regulatory frameworks that adhere to international standards. Though common law prohibitions on champerty remain theoretically sound, evolving court views demonstrate that TPF's role in democratizing access to arbitration is being recognized in practice. However, a lack of stator clarity about cost sharing, disclosure obligations, and ethical boundaries raises concerns and puts India's aspirations to become a favoured arbitration venue in jeopardy. Lawmakers in India must develop fair legislation based on proven models from Singapore, Hong Kong, and England in order to preserve arbitral integrity and permit legitimate funding arrangements. Such reforms are essiential for India to ensure impartial justice for all parties and to remain competitive in the international arbitration arena.

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