THIRD-PARTY FUNDING IN INTERNATIONAL ARBITRATION: ETHICAL RISKS, COMPARATIVE REGULATION, AND A REFORM FRAMEWORK FOR INDIA

SPANDANA REDDY BOMMU*

Arbitration has become a popular tool for settling commercial disputes due to its efficiency, adaptability, and impartiality. However, arbitration is costly and thus tends to limit access to justice, particularly for financially strained claimants. Consequently, Third-Party Funding (TPF) has become a popular solution where claimants secure financing from third parties against a percentage of the potential award. While TPF is widely-known and regulated in England, Singapore, and Hong Kong, India lacks systematic regulation, bringing uncertainties regarding enforceability, the funder's effect, disclosure requirements, and ethical matters.

This article critically examines the legal and ethical concepts of TPF in arbitration and compares India with international best practices. The study emphasises the issues emerging due to the absence of statutory provisions, including conflict of interest, lack of disclosure norms, and the risk of undue funder control in arbitral proceedings. On the basis of a comparative study, the paper presents the principal regulatory measures utilised by leading arbitration-friendly countries. It examines whether they can be adapted in India.

The researcher suggests a regulation regime for TPF in India, which encompasses, legislative recognition with clarity, regulation of sponsors with funding and financial control, obligatory disclosure, ethical safeguards, and confidentiality protection. The suggested reforms will enhance transparency, accountability, and procedural justice, ensuring uninterrupted access to justice through TPF. By applying the proposed regulated regime to TPF, India can provide a strong and international best practice-compatible arbitration industry, boosting the confidence of investors and players in arbitration.

TABLE OF CONTENTS

* *Postgraduate student at King's College London.*

I. INTRODUCTION

Arbitration is the most popular tool for resolving commercial business disputes in today's increasingly globalised financial market. The combination of high effectiveness, flexible approach, and impartial handling makes arbitration appealing as a replacement for court procedures. The primary obstacle in arbitration practice are the financial barriers that hamper parties with not as much funds from defending genuine claims and lawsuits. Therefore, Third-Party Funding (**"TPF"**) model appears as a remedy for a better access to justice, as it permits parties to avail TPF, subject to future proceeds share percentages.[1] India has to make a historic choice regarding the TPF legal regime, as other well-established arbitral jurisdictions such as England, Singapore, and Hong Kong have already established regulations.

The growing use of TPF in arbitration raises interrelated legal issues and thus, they necessitate in-depth examination. The supporters of TPF claim to enhance access to dispute resolution by reducing financial limits; however, critics highlight its dangers, including control and influence on the part of the funders and possible conflict of interest with a lack of transparency.[2] The lack of explicit Indian law governing TPF renders authorities uncertain over its legal enforcement and reporting, and professional boundaries. The Apex Court's judgment in *Bar Council of India v. A.K. Balaji*[3] had declared third-party funding for non-lawyers permissible. Still, a law recognising the same is essential to meet recurring issues. India must explore enacting TPF laws in depth to discover how the country can maintain access to justice without letting abuse go unchecked under this system. This gap in law leads to an inquiry as to whether India ought to embrace and regulate third-party funding and how it may protect the system against possible misuse, while at the same time facilitating access to justice.[4]

---

[1] Pranav V Kamnani and Aastha Kaushal, 'Regulation of Third-Party Funding of Arbitration in India: The Road Not Taken' (2020) 8(2) Indian Journal of Arbitration Law 151 <https://34cea698-e2e3-4e35-8fcc-41238625d016.filesusr.com/ugd/ead939_68ad83d7bf7341089da789648c1eee0a.pdf> accessed 27 August 2026.
[2] Kaira Pinheiro and Dishay Chitalia, 'Third-Party Funding in International Arbitration: Devising a Legal Framework for India' (2021) 14 NUJS Law Review 254.
[3] *Bar Council of India v AK Balaji* (2018) 5 SCC 379.
[4] Rahul Bipin Meduri and Ravneet Kaur Baweja, 'Third Party Funding in International Arbitration - An Indian Context' (2019) 9 SUPREMO AMICUS 251 <https://supremoamicus.org/wp-content/uploads/2019/01/A31v9.pdf> accessed 27 August 2026.

The regulation of TPF in international arbitration has followed varied trends in various jurisdictions where some have resorted to self-regulation. Others, however, have enacted legislation on disclosure and funder liability. Singapore[5] and Hong Kong,[6] for example, have tried to solve these issues by imposing disclosure and limiting the scope of such disclosure to prevent hostile relationships. The United Kingdom (**"U.K."**),[7] however, has predominantly pursued a laissez-faire policy, permitting the funding sector to develop in the context of common law. India, on the other hand, is experiencing growth in the use of institutional arbitration. However, there are no rules governing TPF, which presents a significant challenge for public policy, and there is an urgent need for an appropriate policy framework that responds to international standards within the context of the Indian socio-economic legal environment.

A key issue in the TPF debate is party autonomy and risk of undue control over the proceedings by the funder. However, arbitration centres around independence from outside interference, and introducing external sponsors raises questions about how the funder would wield control over crucial decisions; such as closing settlement deals, legal strategy, and even the preferred counsel. Also, the characteristic of arbitration regarded as the most important, confidentiality, may potentially be compromised by granting access to sensitive information to the funders, raising concerns about the abuse of protected information. Solutions to balance transparency against the suppression of third-party funding's commercial feasibility require more complex regulation than what currently exists.

The following investigation looks at the opposing legal, ethical, and governance aspects of funding through TPF in arbitration, with particular attention to the developments in India and the rest of the world. It studies judicial attitudes regarding TPF and the constituent elements of the relevant maintenance and champerty doctrines, disclosure of evidence, the liability of the funder, and other ethical issues such as conflicts of interest and breach of confidentiality. The analysis of countries considered exemplary for their legislation and those that are friendly to arbitration leads to the conclusion that India is developing a more arbitration-friendly (pro-arbitration) framework.

---

[5] Civil Law Act 1909 (Singapore), ss 5A–5B; Civil Law (Third-Party Funding) Regulations 2017 (Singapore), reg 3; Legal Profession (Professional Conduct) Rules 2015 (Singapore), r 49A.
[6] Arbitration Ordinance (Cap 609) (Hong Kong), pt 10A.
[7] United Kingdom: Association of Litigation Funders, *Code of Conduct for Litigation Funders* (2018).

II. EVOLUTION OF THIRD-PARTY FUNDING IN ARBITRATION

Today, TPF is a novel tool for resolving high-value litigation and arbitration involving parties with limited funds. Although TPF was initially meant to assist claimants with restricted funds, it has now emerged as a sophisticated financial instrument used by businesses, law firms, and institutional investors.[8] Rising costs of arbitration, the complexity of cross-border disputes, and the understanding that funding can be used to provide access to justice and mitigate financial risk have all propelled the growth of TPF.

The cost of arbitration, including arbitrator, counsel and expert fees, has risen significantly as arbitration has come to be used widely. TPF has emerged as a financing mechanism for arbitration, used by both claimants and respondents to manage costs and risk. It can enable parties to pursue or defend proceedings without bearing the entire financial burden upfront, while also raising concerns relating to transparency, conflicts of interest and influence over strategy.[9] Various states and arbitral institutions have created legal and regulatory frameworks for TPF management that provide equity and conformity to moral values in financing agreements to combat this.

This chapter traces the development and use of TPF in arbitration, from its limited use in the past to its widespread use today. The key players are described, along with third-party funding models and the benefits and pitfalls of their use in arbitration. It also addresses recent developments in ethics and law, specifically concerning transparency, conflict of interest, and the growing role of funders in legal proceedings.

A. Legal Doctrines of Maintenance and Champerty: The Evolution of TPF Restrictions

Historically, TPF was restricted in many jurisdictions by the doctrines of maintenance and champerty, developed in medieval England to prevent abuses of legal process. Maintenance refers to the support provided by an unrelated third party in lawsuits. Champerty is a form of maintenance in which the supporter funds the proceedings in return for a share of the proceeds if the claim succeeds. These doctrines were intended to deter speculative or vexatious claims and prevent undue influence over judicial outcomes. Over time, however, many jurisdictions have relaxed these restrictions, treating funding arrangements as

---

[8] Naman Devpura, 'Third-Party Funding in Arbitration: International Landscape and the Road Ahead for India' (2021) Arb Spec Edn RFMLR<https://www.rfmlr.com/_files/ugd/0fa0b3_61bcee8705954c7ba1c734d16fe2eca0.pdf> accessed 27 August 2026.

[9] Lisa Bench Nieuwveld, *Third-Party Funding in International Arbitration* (2nd edn, Wolters Kluwer 2017).

permissible provided they do not endanger public policy or undermine the integrity of proceedings.[10]

Judicial approaches to champerty in arbitration have evolved through a series of decisions assessing when third-party involvement undermines the integrity of proceedings and when it may be tolerated in the interest of access to justice. Within this trajectory, certain cases are frequently cited as turning points in extending (or relaxing) champerty-based restrictions in arbitration.

One of these landmark cases is *Bevan Ashford v. Geoff Yeandle*,[11] in which the U.K. extended the prohibition against champerty to arbitration and ruled that contingency fees (i.e., fees payable only if the case succeeds, typically calculated as a percentage of the recovery) in arbitration is against public policy. The Vice-Chancellor, Sir Richard Scott, could discern no intrinsic distinction between arbitration and litigation in this respect, pointing out that the lack of funder's genuine financial interest in a case and sole interest in the outcome had the potential to taint the integrity of proceedings. This ruling reinforced the conventional English court's distaste for authorising third-party dispute resolution funding.

Modern states, however, have increasingly been moving away from these proscriptions because they understand how valuable TPF is to ensuring that claimants have a fair chance of seeking legal remedies. TPF is allowed in England, Australia, and Singapore, on the other hand, because of persistent concerns about third-party involvement in legal claims, Ireland and other U.S. states still maintain strict prohibitions against champerty-based agreements. The movement toward TPF acceptance underscores the precarious balance that jurisdictions must strike between preventing the commodification of disputes and ensuring access to the legal system.

B. EXPANSION OF THIRD-PARTY FUNDING IN INTERNATIONAL ARBITRATION: TRENDS AND ADOPTION

The increasing cost of dispute resolution, the complexity of cross-border disputes, and the widespread use of TPF as a mainstream financing solution have triggered the expansion of third-party financing in arbitration. Arbitration involves astronomical up-front costs like

---

[10] Lisa Bench Nieuwveld, 'Third Party Funding - Maintenance and Champerty - Where is it Thriving?' (*Kluwer Arbitration Blog*, 7 November 2011) <https://arbitrationblog.kluwerarbitration.com/2011/11/07/third-party-funding-maintenance and-champerty-where-is-it-thriving/> accessed 27 August 2026.

[11] *Bevan Ashford v Geoff Yeandle* [1998] Ch 387.

institutional fees, fees to the arbitrators, and expert witnesses, as opposed to litigation, whose costs are amortised over a sequence of hearings. This expense has driven many claimants, particularly those engaged in investor-state disputes and international commercial arbitration, to seek third-party funding to level the playing field.

Investor-state arbitration (**"ISDS"**) has also been a factor in the rise in demand for TPF, as, in such arbitrations, the claimants usually find themselves up against more-resourced sovereign states.[12] High-value international commercial arbitrations have attracted institutional lenders; arbitration is viewed by such lenders as a pretty good bet because awards can be substantially enforced under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.[13] These trends have caused TPF to become a more mainstream part of arbitration.[14]

Arbitral institutions have responded to the expansion of TPF by introducing disclosure requirements designed to prevent conflict of interest and ensure procedural justice. The International Centre for Settlement of Investment Disputes (**"ICSID"**), the International Chamber of Commerce (**"ICC"**), the Singapore International Arbitration Centre (**"SIAC"**), and the Hong Kong International Arbitration Centre (**"HKIAC"**) have all incorporated provisions to mandate claimants to disclose third-party funders in certain cases. They function to maintain the arbitrators' impartiality and avoid arrangements whereby an unaware funder already has pre-existing relationships with the arbitrator, counsel, or any interested party in the dispute.

Among the noteworthy issues in TPF-supported arbitration is the risk of disputes between funders and claimants regarding settlement results. In *Eskosol S.P.A. in Liquidazione v. the Italian Republic* (**"Eskosol"**), the funded claimant tried to settle, but this was resisted by the third-party funder, who believed that a higher award than the one being negotiated was attainable.[15] This is a typical example of the tension involved in TPF arrangements—the risk of dispute between a claimant's commercial or legal interests and the economic interest of a funder. Such conflicts have prompted jurisdictions and arbitral institutions to review the

[12] Stephen Jaguschand and Rayhan Langdana, 'Third Party Funding of International Arbitrations' in Lawrence W Newman and Grant Hanessian (eds) *THE LEADING ARBITRATORS' GUIDE TO INTERNATIONAL ARBITRATION* (4th edn, Juris Publishing 2025).
[13] Convention on the Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958, entered into force 7 June 1959) 330 UNTS 3 (New York Convention).
[14] Ibid.
[15] *Eskosol SpA in liquidazione v Italian Republic*, ICSID Case No ARB/15/50.

conditions of TPF agreements to ensure that claimants are in charge of essential litigation decisions.

C. Challenges of Third-Party Funding in Arbitration

TPF raises ethical and procedural concerns, particularly in relation to transparency, conflicts of interest, confidentiality, and potential influence over strategic decision-making. When arbitrators have professional relationships with contributors, third-party funding in arbitration raises questions about transparency and conflicts of interest. Unreported ties can introduce bias and jeopardise procedural neutrality and fairness. Although disclosure is required by organisations like SIAC, ICC, and ICSID,[16] different countries have different approaches since there is no standard norm. Specific regulatory systems enforce strict disclosure requirements; others say nothing and let conflicts continue. Uniform and legally binding disclosure regulations are necessary to maintain arbitral integrity and avoid procedural injustice.

Funders' control over court cases raises moral and procedural issues, especially when establishing settlement conditions or litigation tactics that might compromise claimant autonomy. Additionally, because responders frequently need financial guarantees, funders continue to have difficulties with cost security. However, tribunals find it challenging to impose expense responsibilities on funders since they are not direct parties to the arbitration.[17] Although responders are protected by cost security, TPF access may be restricted by exorbitant payment constraints. Cost-allocation techniques that provide procedural fairness, integrity, and access to justice must be balanced in a well-regulated system.

It can be gathered that third-party arbitration funding continues to flourish because parties require the means to manage expensive dispute costs and facilitate judicial accessibility. The emergence of third-party arbitration funding creates new challenges in terms of disclosure processes, ethical funding practices, and control of strategy mechanisms that arbitral institutions and jurisdictions address through the creation of legal frameworks. In the subsequent chapter, the researcher will conduct a comparative analysis of how Australia, England & Wales, Singapore, and Hong Kong tailor their legal framework towards the regulation of third-party funding of arbitration.

[16] Robin Grover, 'Revisiting Third-Party Funding – An Analysis of the New ICSID Arbitration Rules' (2023) 5 Ind Arb L Rev 66.
[17] K Kandavel and J Nithin Srinivas, 'Third Party Funding in Arbitration: An Overview' (2020) 3 Int'l J L Mgmt & Human 1138.

III. A COMPARATIVE STUDY OF THE EVOLUTION OF THIRD-PARTY FUNDING IN ARBITRATION

Third-party arbitration funding is shaped by how different national laws treat it in international jurisdictions. Some jurisdictions adopted TPF as a necessary business practice to ease access to courts, while other nations incorporated restrictive rules to govern the dispute resolution consequences of TPF. The major arbitral institutions have been proactive in the best practices of TPF by incorporating guidelines on transparency, ethics and disclosure obligations. This section covers the legal and institutional frameworks of four major jurisdictions and significant arbitral institutions, such as London Court of International Arbitration (**"LCIA"**), SIAC, and HKIAC, to provide worldwide insights into TPF regulations.[18]

A. Australia's Approach to Third-Party Funding: A Litigation-Driven Model

The country pioneered third-party funding in litigation and class action matters long ago. Eliminating legal barriers in numerous states led to an advanced litigation funding industry where financial backers support claimants who cannot proceed because of insufficient funds. The High Court's decision in *Campbells Cash and Carry Pty Ltd. v. Fostif Pty Limited Pty Ltd.*[19] formed a key judicial milestone because it declared third-party funding would not violate public policy standards. The decision by the High Court became vital judicial approval, which propelled the fast expansion of the TPF industry, thus triggering an increase in funder-backed claims across commercial disputes.

The broad industry approval of litigation funding has, however, not led Australia to create robust regulatory structures to govern TPF activity in arbitration specifically. Australian arbitral institutions refrain from implementing mandatory disclosure mandates about funding arrangements because they prefer to let such arrangements be governed by contractual commitments between parties and by widely accepted legal standards within Australian jurisdiction. The judiciaries monitor particular funder control cases alongside security for cost disputes, but arbitration lacks standardised regulatory policies for the TPF. Australia stands

[18] Victoria Sahani, 'Disclosure of Third-Party Funding in International Arbitration' (2020) NYU Center on Civil Justice; Singapore International Arbitration Centre, *SIAC Rules 2025* r 38; Hong Kong International Arbitration Centre, *Administered Arbitration Rules* (2024) art 44; London Court of International Arbitration, *LCIA Arbitration Rules 2020*.

[19] *Campbells Cash and Carry Pty Ltd v Fostif Pty Ltd* [2006] HCA 41, (2006) 229 CLR 386.

apart[20] from Singapore and Hong Kong due to its lack of institutional rules[21] which regulate funding arrangements during arbitration proceedings.[22]

B. England & Wales: Evolving TPF Laws and the Arkin Cap Principle

The judicial approach in England and Wales regarding third-party funding has changed dramatically since it banned funding through maintenance and champerty in historical times. Under the Criminal Law Act 1967,[23] the British government abolished the maintenance and champerty barriers, enabling a new funding system for litigation to emerge.[24] The Court of Appeal in *Arkin v Borchard Lines Ltd* introduced the 'Arkin cap',[25] which limits a funder's potential liability for adverse costs to the amount it contributes. The cap was intended to encourage funding while containing funders' exposure to adverse costs; however, subsequent decisions and commentary have questioned whether the approach remains appropriate in light of the growing scale and sophistication of the funding market.

England is a leading jurisdiction for funders because it has not imposed any legislative rules regarding third-party funding in arbitration cases. At the LCIA, tribunals may evaluate funding arrangements during decisions about cost distribution and security for costs, even though such disclosure is not compulsory. The LCIA operates differently than the SIAC because it does not force parties to follow disclosure rules and strongly promotes arbitration transparency. The funding agreement structure remains autonomous for parties under English law because of the arbitration-friendly framework, while established dispute resolution methods are concurrently available.

C. Singapore's Third-Party Funding Framework: A Model of Regulatory Clarity

TPF policies in Singapore have experienced a significant transformation as the government evolved from prohibiting funding to creating specific regulations for arbitration cases. TPF remained illegal for Singaporean courts before 2017 because of the legal principles of maintenance and champerty. The nation passed the Civil Law (Amendment) Act 2017[26] to

---

[20] Australian Centre for International Commercial Arbitration, *ACICA Arbitration Rules 2021* art 54.2–54.3; Victorian Law Reform Commission, *Access to Justice—Litigation Funding and Group Proceedings* (Victorian Law Reform Commission 2017) 2.66–2.68

[21] *Green (as liquidator of Arimco Mining Pty Ltd) v CGU Insurance Ltd* [2008] NSWCA 148

[22] *Knight v FP Special Assets Ltd* (1992) 174 CLR 178, 192–93.

[23] *Criminal Law Act 1967*, s 14(2).

[24] Mary Jordan, Andrew Matheson and Emma Brown, 'Why Third-Party Funding Is on the Rise in England & Wales' (*Global Arbitration News*, 27 February 2018) <https://globalarbitrationnews.com/why-third-party-funding-is-on-the-risein-england-wales/> accessed 10 February 2025.

[25] *Arkin v Borchard Lines Ltd* [2005] EWCA Civ 655, [16], [38].

[26] The Civil Law (Amendment) Act 2017.

officially remove maintenance and champerty doctrines during arbitration-related legal proceedings because international arbitration participants increasingly needed external financing. The Civil Law (Third-Party Funding) Regulations 2017[27] provided the requirements that funders operating in Singapore must follow.

Under Singapore's TPF framework, funders must meet certification standards while the system maintains requirements for transparent financial operations. Singapore implements capital adequacy requirements for funders through its regulatory framework, though in contrast, Australia lets funding operate freely in arbitration.[28] The Singaporean framework for compliance follows the rules set by arbitral institutions within the same jurisdiction. SIAC became one of the inaugural arbitral institutions that made third-party funding disclosure mandatory for its users. Funded parties taking part in SIAC arbitration using its Investment Arbitration Rules must reveal details of their funding arrangement and the identity of their funding source. The disclosed funding arrangements help maintain procedure fairness by notifying parties and arbitrators about potential financial impacts on the process. SIAC allows tribunal members to use information about third-party involvement when assessing the allocation of costs and setting security for cost conditions.[29] The structured regulatory regime makes Singapore a top police state regarding third-party funding and reinforces its position as an arbitration-friendly seat.

D. Hong Kong's Legal Framework for Third-Party Funding: A Strict Regulatory Approach

Hong Kong adopted the same legislative trajectory as Singapore by shaping a highly regulated environment for third-party funding in arbitration through its comprehensive legal framework. Third-party intervention in legal disputes has traditionally been restricted by prohibitions on maintenance and champerty, which restricted financial involvement in litigation and arbitration. However, court rulings like *Cannonway Consultants Limited v. Kenworth Engineering Limited* (**"Cannonway Case"**)[30] have shown that arbitration procedures require protection distinct from litigation, prompting a significant shift in attitude toward arbitration.

[27] Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Act 2017.
[28] KC Vijayan, 'First Third-Party Funding for S'pore Arbitration Case' *The Straits Times* (Singapore, 1 July 2017).
[29] Singapore International Arbitration Centre, *Arbitration Rules of the Singapore International Arbitration Centre* (7th edn, 2025) r 38.6.
[30] *Cannonway Consultants Ltd v Kenworth Engineering Ltd* [1995] 1 HKC 179.

After the court ruling in the Cannonway case, TPF was formally introduced by the Arbitration and Mediation (Third Party Funding) (Amendment) Ordinance 2017.[31]

Hong Kong laws are more rigorous than those of most countries, as they require funders to prove their financial stability before entering the market. Institutions and statutory bodies in Hong Kong are subject to tight restrictions that are not followed in England. HKIAC formulated minimum disclosure requirements on third-party funding agreements as part of its regulatory function.[32] HKIAC guidelines bind funded parties to reveal financing agreements, promoting transparency and lowering the risk of conflicts of interest. To prevent funder-induced litigation abuse, Hong Kong legal regulations give tribunals the authority to consider TPF when deciding cost allocations and orders for security for costs.[33]

Through legislative regulation and institutional control, Hong Kong can maintain itself as an ordered jurisdiction concerning third-party arbitration funding. The jurisdiction fosters third-party funding arbitration through its rules in a manner that ensures funding agreements can run transparently while adhering to international best practices and ethical norms.

The comparison of Australia,[34] England & Wales,[35] Singapore,[36] and Hong Kong[37] concludes that TPF regulation is either loosely regulated or officially systematised during arbitration activities. Each jurisdiction has adopted its own TPF regulatory structure due to its legal background and requirements for international arbitration. The study laid the groundwork for the following arguments in the next chapter about the evolution of TPF globally and the ethical and historical elements of third-party funding in India.

---

[31] Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017 (Ord No 6 of 2017) s 98H.
[32] Peter Hirst and Mun Yeow, 'Comparing Hong Kong Code of Practice for Third Party Funding Arbitration with the Code of Conduct in England & Wales' (*Kluwer Arbitration Blog*, 4 February 2019) <https://legalblogs.wolterskluwer.com/arbitration-blog/comparing-hong-kong-code-of-practice-for-third-party-funding-arbitration-with-the-code-of-conduct-in-england-wales/> accessed 27 August 2026.
[33] Ibid.
[34] Jason Geisker and Dirk Luff, 'Australia' in Leslie Perrin (ed), *The Law Reviews: The Third Party Litigation Funding Law Review* (3rd edn, Law Business Research 2019) <https://www.claimsfunding.com.au/news-and-insights/the-third-party-litigation-funding-law-review-3rd-edition/> accessed 27 August 2026.
[35] Association of Litigation Funders of England and Wales, *Code of Conduct for Litigation Funders* (January 2018).
[36] Civil Law (Amendment) Act 2017 (No 2 of 2017).
[37] Secretary for Justice, *Code of Practice for Third Party Funding of Arbitration* (effective 1 February 2019).

IV. THIRD-PARTY FUNDING IN INDIAN ARBITRATION: ETHICO-LEGAL CONSIDERATIONS

Since arbitration has emerged as the most popular method of resolving business disputes, TPF makes it easier for claimants with fewer resources to pursue legitimate claims. Jurisdictions, including England, Singapore, Hong Kong, and Australia, have adopted either recognition or regulatory mechanisms for TPF to ensure that claimants have access to justice. The legal situation in India stands in a critical position because the nation needs specific regulatory oversight for TPF while judicial bodies adopt increasingly supportive positions.

The Indian arbitration law shows unclear positioning toward TPF because it neither bans TPF nor provides specific permissions to use it. The lack of standard disclosure standards, unclear cost liabilities, and concerns about fund provider control and confidentiality pose substantial legal and ethical risks to arbitration proceedings.[38]

This chapter analyses the historical development, legal standing, ethical challenges, and enforceability barriers to third-party funding within Indian arbitration practices. This research evaluates judicial precedents, public policy considerations, and regulatory needs by examining global best practices to identify current gaps.

A. The Journey of Third-Party Funding in India: Legal Evolution and Judicial Trends

The roots of third-party funding within India extend from its legal system based on common law. During British rule in India, the English Common law system received legal principles of maintenance and champerty to prevent illegitimate court processes and exploitative practices. India did not follow the United Kingdom by abolishing controversial legal doctrines through the Criminal Law Act 1967.[39] Therefore, there remains no complete prohibition against third-party legal funding in India.

The interpretation of courts in India has systematically determined the legal position of TPF. In *Ram Coomar Coondoo v. Chunder Canto Mukherjee*, (**"Ram Coomar Coondoo case"**) [40] the Privy Council maintained the legal value of champertous agreements in (1876) unless the agreement was proven fraudulent or harmful to public interests. In *Lala Ram Swarup v. Court of Wards*, (**"Lala Ram Swarup"**)[41] the Privy Council maintained its initial position established

[38] Meduri and Baweja (n 4).
[39] Criminal Law Act 1967, ss 13–14.
[40] *Ram Coomar Coondoo v Chunder Canto Mookerjee* (1876–77) LR 4 IA 23.
[41] *Lala Ram Swarup v Court of Wards* AIR 1940 PC 19.

in the *Ram Coomar Coondo* case. The 1921 Court of Wards decision under Privy Council rule established that legal funding followed by shared legal proceeds is not illegal *per se*.

The Apex Court of India, through its ruling in *Bar Council of India v. A.K. Balaji*,[42] established that non-lawyers (third-party funders) hold no limitations to support legal proceedings. However, lawyers face restrictions under the Advocates Act 1961 (**"Advocates Act"**).[43] The ruling took significant strides toward giving TPF its place as a legal, financial instrument throughout the Indian justice system.

The unregulated nature of TPF in arbitration leads to multiple uncertainties about disclosure rules, funding agreement enforcement, cost responsibility, and funder control regulations. The lack of standardised guidelines has caused courts to base third-party financing validity on private contractual terms and judicial decisions.

B. Ethical Dilemmas in Third-Party Funding: Conflicts, Transparency, and Control Issues

As third-party funding in arbitration gains traction, Indian authorities must address several regulatory and ethical concerns that may inform the development of an appropriate legal framework. The absence of a comprehensive statutory regime raises concerns relating to conflicts of interest, transparency and disclosure, the extent of a funder's influence over proceedings, and the preservation of confidentiality. Although Indian law does not generally prohibit non-lawyer third-party funding, the absence of specific statutory regulation governing third-party funding in arbitration leaves its precise regulatory status and the rights and obligations of funders insufficiently defined.

In *Eskosol*, a noteworthy discussion occurred wherein the bench observed that funders have significant authority to create dispute resolution strategies that may call into question the independence of claimants.[44] In international arbitrations, an undeclared link between a funding company and an arbiter or legal counsel may result in unfair prejudice and procedural issues.

Conflicts that emerge in TPF are not explicitly mentioned in the present Indian rules. Under Schedule V and Section 12(1) of the Arbitration and Conciliation Act, 1996, (**"Arbitration and Conciliation Act"**)[45] arbitrators must disclose any direct or indirect party links that may

[42] *Bar Council of India v AK Balaji* (2018) 5 SCC 379.
[43] Advocates Act 1961 (Act 25 of 1961).
[44] *Eskosol* (n 12).
[45] Arbitration and Conciliation Act 1996, s 12(1), sch 5.

compromise their independence and impartiality. Because funders usually have professional relationships with arbitrators, legal counsel, and opposing parties, the nondemand nature of disclosure requirements for TPF agreements in India sustains significant risks of biased decision-making and procedural injustice.

Further, one of the primary challenges is when sponsors take over too much power during arbitration while reducing the parties' autonomy. In other cases, TPF agreements allow funders to choose arbitrators who could be in line with their financial interests, require legal approach decisions, or impact settlement agreements. In these situations, financing agreements prioritise financial rewards above the case's merits, thus reducing plaintiffs' authority over their legal challenges.

Funders must refrain from legal representation and never influence the course of a case following the SIArb's Third-Party Funding standards (**"SIArb Guidelines"**).[46] The lack of ethical regulations in India which are on par with international best practices raises questions regarding the degree of financing control that may impact arbitrations in India. Claimants may be bound by agreements that limit their ability to negotiate and their autonomy in managing their legal affairs when legal money is not properly restricted.

Moreover, because arbitration procedures uphold the core premise of arbitration confidentiality while safeguarding the parties' privacy, they remain impartial. Participation by third-party donors carries some risk since they could reveal private information beyond the contesting parties. Funder companies must fully disclose case material, witness testimonies, and legal strategy papers to determine financing feasibility, which may violate confidentiality agreements.

Hong Kong and other jurisdictions solved the issue by establishing mandatory confidentiality clauses within TPF agreements. The Hong Kong Code of Practice for Third-Party Funders establishes legal obligations for funders to keep all case information confidential and preserve it from unauthorised use outside funding purposes.[47] There are no mandatory legal protections in India to safeguard the arbitral information parties share with funders during arbitral proceedings.

---

[46] Singapore Institute of Arbitrators, *SIArb Guidelines for Third Party Funders* (2017).

[47] Jung Won Jun, 'Third-Party Funding of Arbitration: Focusing on Recent Legislations in Hong Kong and Singapore' (2020) 30(3) J Arb Stud 137.

Indian dispute resolution parties dependent on TPF must consent to non-disclosure agreements (**"NDAs"**) with funders because the statute does not provide for confidentiality protections. Since these protection measures lack mandatory enforcement under the arbitration law, they demonstrate regulatory gaps that must be addressed.

C. Disclosure Obligations in Third-Party Funding: Ensuring Transparency in Arbitration

TPF agreements must be disclosed, to guarantee procedural fairness, by preventing conflicts of interest and arbitrator impartiality.[48] Currently, India has no laws requiring the disclosure of funds in arbitration proceedings. The arbitration system suffers from serious ethical and legal issues based on conflicts of interest, the expense burden, and funder influence during procedures without a formal framework to govern these behaviours.

The international standard of practice supports the requirement to reveal the required TPF arrangements. Both parties are required to disclose information regarding TPF relationships and financial supporter identities under the Hong Kong Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance (2017)[49] and the SIAC's Investment Arbitration Rules (2017).[50] According to the International Bar Association's (**"IBA"**) Guidelines on Conflicts of Interest[51] and the ICC's Guidance Note on Disclosure,[52] disclosures must be made to prevent procedural injustice and prejudices during international arbitration.[53] The established frameworks acknowledge that undisclosed funding poses risks to arbitrator impartiality and can lead to covert prejudice and unpredictable cost distribution.

The Indian arbitration law fails to address whether parties should disclose their funding arrangements, whereas other jurisdictions have issued regulations to clarify the matter. Current regulations fail to establish standards which allow parties to deliberately hide their cooperation with third-party funders from arbitrators and opposing parties. Drafted disclosure standards will clarify if funders need to financially support respondents through the cost-sharing of security for costs and adverse cost orders, and protect them against potential economic risks.

---

[48] Jonas von Goeler, *Third-Party Funding in International Arbitration and Its Impact on Procedure* (Kluwer Law International 2016).
[49] Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017 (Ord No 6 of 2017).
[50] Singapore International Arbitration Centre, *Investment Arbitration Rules of the Singapore International Arbitration Centre* (1st edn, 2017) r 24(l).
[51] International Bar Association, *IBA Guidelines on Conflicts of Interest in International Arbitration* (23 October 2014).
[52] International Chamber of Commerce, *Note to Parties and Arbitral Tribunals on the Conduct of the Arbitration under the ICC Rules of Arbitration* (effective 1 January 2021).
[53] Rebecca Leinen, 'Striking the Right Balance: Disclosure of Third-Party Funding' (2020) 20(1) OUCLJ 115.

Indian courts have not decided on TPF disclosure in arbitration, so domestic civil litigation rules provide relevant information to help understand this issue. Under amendments to Order XXV of the Code of Civil Procedure (**"CPC"**), 1908,[54] states of Maharashtra, Gujarat, and Madhya Pradesh now allow courts to request security deposits from third-party funders. Judicial amendments show how funders hold economic stakes in legal matters, thus enabling an additional justification for TPF disclosure requirements in arbitration legal processes.

India lacks compulsory disclosure rules, which leads to multiple adverse risks to the system, which include the omission of funders from disclosure prevents parties from adopting fair case procedures while decreasing decision-making transparency. An arbitrator without prior undisclosed connections between funders and the support law firms backing them may lead to conflicts of interest in arbitrated cases. Further, when cost liabilities are not disclosed, tribunals lack the data they need to determine which parties are responsible for paying costs, which leads to misunderstandings over financial obligations.

While Singapore and Hong Kong have implemented required reporting systems, Indian law has no rules for arbitration disclosure management. The lack of clear statutory instructions and institutional advice about process and expenses raises concerns about arbitration's transparency. This calls for attention to implement suitable measures in India's arbitration system.

D. Legal Enforceability of Third-Party Funding Agreements in India: Gaps and Challenges

India lacks specific legal rules to define the enforceability of TPF agreements since the rights and obligations of funders remain without proper legislative protections. Section 23 of the Indian Contract Act 1872[55] establishes general legal principles for assessing agreements through its provisions against public policy violations.

The main issue arises when funders can be forced to pay adverse cost orders when claimants lose arbitration proceedings. In England, 'Arkin Cap' is a legal principle wherein a commercial funder's liability for adverse costs is limited at least in principle to the amount it has contributed to the litigation. According to this, the funding entity bears expenses solely up to their contribution. The legal status of the funder's responsibility for adverse costs in arbitration

[54] Code of Civil Procedure 1908, O XXV r 1.
[55] Indian Contract Act 1872, s 23.

proceedings remains undecided in India because the country lacks a distinct doctrinal framework.

It remains unclear whether funders can recoup their damage claims from successful suits per their funding agreements. The legal definition of champertous agreements in India remains unclear because the country has not standardised its laws like Singapore and Hong Kong.[56] Indian courts must interpret existing legislation for each case. Based on the Privy Council's determination in the *Ram Coomar Coondoo* and *Lala Ram Swarup* cases and present-day Indian High Court decisions, funding agreements receive legal backing unless they show signs of unfairness or breach principles of justice.

The lack of structured third-party funding regulations within Indian arbitration law creates unknown reasons for disclosure requirements, funder influence, and cost burden possibilities. The judiciary accepts TPF, but legal clarity deficits about TPF create hazards, including potential funder involvement, party alignment concerns, and difficulties enforcing funding agreements. Through legislative and institutional reforms, India will gain improved procedural fairness and accountability. In the subsequent chapter, the researcher draws legislative frameworks to provide an open financing mechanism for arbitration that might encourage public confidence in India's arbitration system.

V. A LEGAL FRAMEWORK FOR THIRD-PARTY FUNDING IN INDIA: REGULATORY REFORMS

TPF in arbitration has become a rising issue, highlighting India's need for a well-established legal system. Although court rulings have recognised the legitimacy of TPF, its enforcement, morality, funder influence, and financial obligations are all unknown since statutory laws are absent. Individual regulations have been passed in nations like Singapore, Hong Kong, and the U.K. to balance the advantages of TPF with safeguarding against abuse. With a view towards supervision by funders, disclosure standards, ethical protections, confidentiality protections, law reform, and financial security agreements between parties to TPF-financed arbitration, the researcher furnishes a comprehensive framework to enable fair, open, and effective arbitration in India in light of these background developments.

TPF must be recognised explicitly in Indian arbitration law to remove uncertainty about its legality, enforceability, and ethical boundaries. Although TPF has been recognised by court

[56] Ibid [5].

rulings such as *Bar Council of India v. A.K. Balaji*,[57] uncertainty exists due to the lack of statutory provisions. According to global best practices like the SIArb Guidelines,[58] TPF agreements should also contain provisions restricting funder engagement. The claimants will be guaranteed control over their legal claims by incorporating these measures.

While TPF increases the possibility of collusive privileged information, arbitration is revered for confidentiality. India needs to enforce compulsory NDAs between funders and claimants before exchanging case files, limited access to sensitive records, and financial and legal consequences for confidentiality violations to preserve secrecy. Similar controls have been implemented in jurisdictions like Hong Kong to ensure funders don't take advantage of private case information.[59] India can avoid breaches and abuse of confidential arbitration data by applying confidentiality rules.

The central problem in TPF-supported arbitration is that supported claimants would not be able to meet adverse costs in the event of losing a case. Arbitral tribunals need to be able to award security for costs to counter this and guarantee the protection of respondents. On the lines of the U.K.'s Arkin Cap, sponsors need to be held liable for adverse cost orders up to the amount of funding they provided. Second, India's arbitration law must provide definite directions for cost division, curb abuse of TPF and impose fair financial liability on all the parties.

With this study, it is suggested that India requires an urgent formalised policy for TPF in arbitration. Although TPF improves access to justice, there are threats related to ethics, finance, and procedures without regulation. India must implement legal reforms, funder license requirements, strict disclosure obligations, ethical safeguards, and financial protection for parties to provide procedural justice and accountability. India can create an open and equitable TPF system by implementing these reforms, ensuring that arbitration will continue to be a reliable, effective, and equitable method of dispute resolution.

VI. CONCLUSION

The advent of TPF has radically changed the dispute resolution landscape by increasing access to justice for claimants with limited funds. Unlike England, Singapore, Hong Kong, and Australia, India still struggles with the practice's legal, ethical, and procedural ramifications.

---

[57] *Bar Council of India v AK Balaji* (2018) 5 SCC 379.
[58] SIArb Guidelines (n 48).
[59] *Code of Practice for Third Party Funding of Arbitration* (n 39).

The absence of a clear regulatory framework creates uncertainty about enforceability, control by the funder, disclosures to be made, and the apportionment of costs, and calls into question the process's fairness, transparency, and integrity.

This study has qualitatively evaluated the status of TPF in India by examining judicial decisions, public policy, and international best practices. It is clear that while Indian courts have not expressly prohibited TPF, the lack of clear legislative guidance has resulted in a patchwork of rules that exposes stakeholders to funding parties' control, conflict of interest, and invasion of privacy concerns. Singapore and Hong Kong showcase that a legal structure like mandatory disclosures, ethical boundaries, and oversight provisions can assist TPF management and risk containment.

To meet such needs, the study has developed an outline for an approach India might adopt, which includes the legislative acknowledgement of TPF, a supervising and licensing scheme for the funders, robust disclosure requirements, ethical limitations of the control by the funders, and confidentiality provisions. If these principles were incorporated into the Arbitration and Conciliation Act, India would be in a position to offer certainty and curb excessive funder control while protecting the stakeholders from too much funder control under a clearly defined accountable funding regime.

In summary, India finds itself in a unique position where the TPF regulation, once put in place, will define the contours of the country's arbitration ecosystem. In as much as TPF may be beneficial in improving the chances of accessing justice or facilitating reactions to disputes, undue funder control and the absence of transparency will result in the opposite. A well-scoped regulatory framework that addresses India's socio-economic and legal context would assist the country in balancing the promotion of funding in arbitration and preserving fair legal processes. Consequently, implementing these reforms will align India with global arbitration hubs and bolster its position as a credible and attractive arbitration destination.