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## **THIRD PARTY FUNDING**

### **Abstract**

The study seeks to explore the emergence of Third Party Funding (TPF) in international arbitration as a new generation funding instrument that not only provides access to justice but raises several regulatory issues and ethical questions. TPF allows parties to participate in arbitration and engage in expensive proceedings by getting financing from third party funders for the benefit of sharing the proceeds. The research uses doctrinal and comparative approach, which includes examination of relevant legislation, institutional rules, judicial decisions, as well as academic sources on the topic.

Legal issues linked to TPF include matters of transparency and disclosure, conflict of interests impacting on the independence of arbitrators, cost distribution and security for costs, confidentiality, privilege, and the level of control funders exercise over the arbitration process. Also, the study addresses the issue of regulatory landscape related to TPF in various jurisdictions like UK, Singapore, Hong Kong, EU, US, and India. Despite the efforts made by certain

countries to develop a sophisticated regulation system, other states opt for either market or partly developed system.

Concluding remarks of this research show that while the TPF system plays a critical role in enhancing access to justice and effective risk management, the lack of harmonization in the development of international standards creates problems of equity and fairness. The report calls for a need to develop consistent regulations, mandatory disclosures, and funder liability principles.

**Keywords:** Third Party Funding (TPF); International Arbitration; Access to Justice; Disclosure and Transparency; Conflicts of Interest; Cost Allocation; Comparative Legal Analysis; Arbitration Regulation; India; Champerty and Maintenance

## CHAPTER 1: INTRODUCTION

### 1.1 Third Party Funding as a Contemporary Legal and Financial Mechanism

Third Party Funding (TPF) is a disruptive innovation within international arbitration which has dramatically changed financing dynamics of dispute resolution. Arbitration although favored because of its neutrality and recognition under international conventions such as New York Convention on Recognition and Enforcement of Foreign Arbitral Awards is costly and inaccessible due to its high cost.<sup>1</sup>

TPF solves this problem through a process whereby parties can receive funding from third parties to cover their costs in return for an agreed percentage of proceeds.<sup>2</sup> In essence system has developed into a complex financial tool in itself as arbitration claims have become more and more akin to investments.<sup>3</sup>

The increasing acceptance of third party funding demonstrates how dispute resolution systems themselves are becoming commercialized whereby claims are evaluated on basis of risk and recoverability.<sup>4</sup>

### 1.2 Research Problem and Rationale

Although it is increasingly common there are serious issues about legality and ethics associated with TPF. One of most critical issues is lack of a consistent regulatory regime in different jurisdictions. Although some jurisdictions have legalized TPF and regulated it other jurisdictions still operate using traditional principles like maintenance and champerty.<sup>5</sup>

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<sup>1</sup> Convention on Recognition and Enforcement of Foreign Arbitral Awards (adopted 10 June 1958) 330 UNTS 3.

<sup>2</sup> Gary Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021).

<sup>3</sup> Lisa Bench Nieuwveld and Victoria Shannon, *Third Party Funding in International Arbitration* (Kluwer Law International 2017).

<sup>4</sup> ICCA-Queen Mary Task Force, *Report on Third-Party Funding in International Arbitration* (2018).

<sup>5</sup> Wouter Van Boom, 'Third-Party Litigation Funding in Europe' (2011) 8 *Erasmus Law Review* 1.

The second major problem related to TPF is related to transparency. If there are third-party funders involved in an arbitration process, The interests of arbitrator can be compromised because they already know some funders personally. There are no rules mandating disclosure in some jurisdictions' arbitral regimes<sup>6</sup>

Other problems include distribution of costs and confidentiality. There is also concern that funders will control process of arbitration too much.

### **1.3 Objectives of Study**

The basic objectives of this research paper include:

- a. To analyze idea and development of Third Party Funding.
- b. To analyze issues related to legal and ethical aspects of TPF.
- c. To critically analyze regulation of TPF in different jurisdictions.
- d. To analyze Indian legal position regarding same.

### **1.4 Research Questions**

The current research aims to address following queries:

- a. What is theoretical and legal foundation of TPF?
- b. What issues are raised by adoption of TPF in international arbitrations?
- c. How has TPF been regulated across various legal jurisdictions?
- d. What is status of TPF under Indian law?

### **1.5 Scope of Study**

This study will limit its scope on subject matter of Third Party Funding in International Arbitration only. This encompasses a discussion on international arbitration laws, rulings and comparison from other legal systems but not domestic litigations unless necessary for discussion.

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<sup>6</sup> International Bar Association, *IBA Guidelines on Conflicts of Interest in International Arbitration* (2014, revised 2024).

## **1.6 Research Methodology**

The study follows a doctrinal and comparative approach focusing mainly on secondary sources like arbitration rules, case law, scholarly literature and reports from institutions. Doctrinal approach entails analyzing relevant legal principles regulating practice of TPF in international arbitration. It includes an examination of legislation, arbitral rules and case law to determine concept of Third Party Funding under different legal frameworks. The primary sources used include rules formulated by institutions like International Chamber of Commerce and London Court of International Arbitration among others. There are also some soft laws like guidelines published by International Bar Association. Besides judicial pronouncements in several countries are examined regarding concepts of maintenance, champerty, disclosure of funder information and funder liability.

Apart from doctrinal approach used in research comparative analysis will also be applied in assessing approach different jurisdictions use for regulating TPF. Comparative analysis is especially crucial when it comes to international arbitrations in which disputants hail from various legal jurisdictions. Through this method research will compare approaches employed in jurisdictions like UK, Singapore, Hong Kong, EU and India in order to ascertain their similarities, differences and emerging trends.

Finally critical analysis of academic comments and institutional reports will also be undertaken so as to make a determination of effectiveness of current TPF regulatory frameworks. Comments and institutional reports such as those made by international arbitration organizations and task forces on issue will be considered.

## **CHAPTER 2: CONCEPTUAL AND LEGAL FRAMEWORK OF THIRD PARTY FUNDING**

### **2.1 Meaning and Essential Characteristics**

Third Party Funding involves a situation where a third party finances arbitration process in return for a percentage of outcome.<sup>7</sup> Non-recourse funding is one of core characteristics of TPF whereby funder is paid only if claim is successful.

Unlike conventional financing options like loans and insurance third-party funder takes all financial risks of dispute in TPF.

### **2.2 Historical Evolution: From Champerty to Modern Acceptance**

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<sup>7</sup> Stavros Brekoulakis, 'Third Party Funding in Arbitration' (2016) 32 *Arbitration International* 239.

TPF has evolved from legal concepts of maintenance and champerty which sought to keep third parties out of litigation proceedings.<sup>8</sup> These concepts served to prevent abuse of legal processes and any type of speculations in law suits.

However it was found in due course that adherence to these concepts restricted scope for obtaining justice. This is why in jurisdictions like United Kingdom restrictions placed by these concepts became less stringent giving rise to TPF.<sup>9</sup>

### **2.3 Types of Third Party Funding Arrangements**

There are several types of TPF arrangements that vary based on how financing structure is built and how much risk investor is willing to bear. The simplest type of TPF arrangement is a single-case funding. As per this arrangement investor finances a single case and gets a share from amount recovered. Single case funding is mostly used when merits and quantum of dispute are clearly ascertainable in high-value arbitrations. But this type of funding carries high risks as all investment would be concentrated in one dispute only.

Another type of TPF agreement that has been receiving increased attention in recent times is portfolio funding. In this scheme of things funder makes an investment in multiple cases. Here again claim can belong to one claimant or law firm. By investing in multiple cases funders are able to diversify risks. It helps claimants or law firm get better funding deals.<sup>10</sup>

A developing form is that of legal funding for law firms, where money is advanced to firm itself and not client. This allows firm to pursue cases on a contingency or deferred fee basis. All of these examples show how

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<sup>8</sup> Giles v Thompson [1994] 1 AC 142 (HL).

<sup>9</sup> Arkin v Borchard Lines Ltd [2005] EWCA Civ 655.

<sup>10</sup> William Stone, 'Portfolio Funding and Risk Diversification' (2022) 39 Journal of International Arbitration 421.

sophisticated third party funding has become today in international arbitration practice.

## **2.4 Economic Significance, Advantages and Criticisms of Third Party Funding**

Third party funding has been one of main factors leading to financialization of international arbitration practice which has resulted in international arbitration becoming an investment vehicle instead of just a means for resolving disputes. Companies involved in providing funding services such as Burford Capital and Omni Bridgeway often regard arbitral claims as financial instruments that should be evaluated based on expected rates of return, their enforceability and level of risks associated with such claims.<sup>11</sup> In this context TPF has created a new economic dimension in international arbitration. Before making any decisions about funding a claim financiers usually conduct thorough due diligence procedures including examination of potential for merits of claim, amount of potential damages and prospects of enforcement. Only promising cases are likely to be funded.

On other hand third-party funding (TPF) provides many benefits that have made it very popular. Firstly TPF has ability to increase access to justice by enabling parties that cannot afford arbitration to litigate against those who wronged them.<sup>12</sup> This issue is especially pertinent when it comes to complex and cross-border cases which require a lot of money. Another important benefit of TPF is that it acts as a risk mitigation strategy for individuals and corporations. Using services of funders enables them to mitigate financial risks without investing large amounts of money upfront. Even large corporations make extensive use of third-party funding thus being able to deploy their funds more effectively.

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<sup>11</sup> Burford Capital Annual Report (2024).

<sup>12</sup> OECD, *Third Party Litigation Funding and Access to Justice* (2023).

One other benefit that makes TPF popular is that it enhances case selection and procedural efficiency. Because funders invest in cases only after analyzing them weak and speculative claims are less likely to come through process. As a result there could be fewer instances of frivolous lawsuits. Also funders are knowledgeable about enforcement and dispute resolution mechanisms.

On other hand TPF is not without its disadvantages. First of all one of major worries associated with TPF is possibility of it encouraging opportunism because funders seek to have good ROI.<sup>13</sup> Although various mechanisms of conducting due diligence exist profit-driven essence of any funding may be perceived as a way of promoting risky behaviour. Second problem of conflicts of interest should be mentioned since presence of another relationship can affect impartiality of arbitrators.

Additionally confidentiality issues may also become an important consideration since funders require receiving certain information from claimants during TPF process. Finally issue of funders ability to influence conduct of arbitration proceedings through shaping litigation strategy is relevant. On one hand TPF agreements provide same level of autonomy for parties but at same time economic interests of funders may impact way claimants behave.

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<sup>13</sup> Catherine Rogers, 'Ethics in Third Party Funding' (2020) 36 *Arbitration International* 123.

## CHAPTER 3: LEGAL ISSUES AND CHALLENGES IN THIRD PARTY FUNDING

### 3.1 Disclosure and Transparency in Third Party Funding

Among other important issues connected to Third Party Funding (TPF) one of the main ones in international arbitration is disclosure. Transparency plays a significant role in the fairness of international arbitration. It helps ensure that there is no corruption during arbitration procedures. The presence of a third party who will financially benefit from the results of arbitration brings about this challenge.<sup>14</sup>

As previously, arbitration rules lacked requirements for disclosing the funder's identity, it was not always easy to establish whether there were any conflicts of interest between the parties involved in the case or not. The arbitrators did not know anything about the funder, which raised a lot of doubts regarding the validity of arbitral awards.<sup>15</sup>

That is why now rules have become stricter. The International Chamber of Commerce Arbitration Rules make parties disclose the funder in order for arbitrators to be able to identify a conflict of interest.<sup>16</sup> The same provision can be found in the London Court of International Arbitration Rules.<sup>17</sup>

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<sup>14</sup> ICCA–Queen Mary Task Force, *Third-Party Funding in International Arbitration* (ICCA 2018).

<sup>15</sup> Stavros Brekoulakis, 'Third Party Funding and Arbitration Integrity' (2017) 33 *Arbitration International* 45.

<sup>16</sup> ICC Arbitration Rules (2021) art 11(7).

<sup>17</sup> LCIA Arbitration Rules (2020) art 14A.

However considerable ambiguity still exists on how far disclosure should extend. Although almost all regulatory frameworks insist on revealing identity of third party funder none of them requires parties to disclose any other details, such as terms of funding contract including controls or finances. This might be inadequate for evaluating possible conflicts or interference.<sup>18</sup>

In addition there exists a debate on whether disclosure must happen in initial stages or only when necessary. Some authors suggest that such disclosure is mandatory from outset of process while others claim that it is sufficient for disclosure to be obligatory only when issues arise.

### **3.2 Conflicts of Interest and Arbitrator Independence**

The involvement of third-party funders in arbitration has made problem of conflicts of interest even more challenging. Arbitrators must act independently and impartially however any undisclosed ties to funders might hinder their ability to do so.<sup>19</sup>

In its IBA Guidelines on Conflicts of Interest in International Arbitration International Bar Association has revised its stance on this matter. Specifically guidelines now consider funders as being on par with parties when checking conflicts.<sup>20</sup>

This change acknowledges that funders often have an economic interest in arbitration and could continue having a relationship with arbitrators or firms

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<sup>18</sup> Lisa Bench Nieuwveld and Victoria Shannon, *Third Party Funding in International Arbitration* (Kluwer Law International 2017).

<sup>19</sup> Catherine Rogers, 'Ethics of Third Party Funding in Arbitration' (2020) 36 *Arbitration International* 123.

<sup>20</sup> International Bar Association, *IBA Guidelines on Conflicts of Interest in International Arbitration* (2014, revised 2024).

providing legal assistance. Any undisclosed relations with them would likely result in claims against arbitrators and ultimately annulment of awards.<sup>21</sup>

Recent judicial and arbitral case law shows that transparency is essential to avoid conflicts of interest. Thus arbitrators are supposed to perform due diligence which includes assessing possible relationships with funders. Nevertheless in absence of complete disclosure process might not yield adequate results.

Another factor contributing to complexity of issue is that many funders use sophisticated corporate structuring. This makes it hard to establish links between all parties.

### **3.3 Cost Allocation and Security for Costs**

Moreover introduction of TPF has created complicated questions in terms of cost-sharing in arbitration proceedings. Historically arbitral tribunals have enjoyed a wide discretion in making rulings on legal costs and expenses. The presence of TPF however creates additional difficulties especially with regard to security for costs.<sup>22</sup>

Claimants frequently use existence of funding agreement as evidence that claimants do not have adequate financial means to satisfy any cost award against them. Based on this reasoning, respondents will usually ask for a security for costs.<sup>23</sup>

Arbitral tribunals have taken divergent positions on matter. For instance in *Essar Oilfields Services Ltd v Norscot Rig Management Pvt Ltd* High Court of England recognized validity of an arbitral award which includes reimbursement

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<sup>21</sup> *W Limited v M SDN BHD* [2016] EWHC 422 (Comm).

<sup>22</sup> Gary Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021).

<sup>23</sup> ICCA–Queen Mary Task Force Report (2018).

of funding costs as a legal expense.<sup>24</sup> This is an important development in light of acknowledgment of concept of funding costs.

Notwithstanding, some arbitrators have ruled against granting security based solely on existence of TPF since doing so would be discriminatory towards claimants who rely on third-party funds.<sup>25</sup> Arbitrators normally take into account several factors among which financial situation of claimants is prominent.

### **3.4 Confidentiality and Privilege Concerns**

Maintaining confidentiality is a key component of international arbitration ensuring that disputes are settled within a private and secure environment. However TPFs give rise to worries about confidentiality and protection of privileged information.<sup>26</sup>

In order to receive funding parties will have to make a full disclosure of their claims their strategy, evidence and even risk assessments. It would be important to determine whether disclosing such information is tantamount to waiving privilege or breaching confidentiality.<sup>27</sup>

While most countries have decided that disclosure to TPFs does not necessarily amount to waiver of privilege as long as proper confidentiality agreements are in place there remains a disagreement on this matter and it varies from country to country.<sup>28</sup>

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<sup>24</sup> *Essar Oilfields Services Ltd v Norscot Rig Management Pvt Ltd* [2016] EWHC 2361 (Comm).

<sup>25</sup> *RSM Production Corporation v Saint Lucia*, ICSID Case No ARB/12/10 (Decision on Security for Costs, 2014).

<sup>26</sup> Catherine Rogers, 'Confidentiality in International Arbitration' (2019) 35 *Arbitration International* 223.

<sup>27</sup> Lisa Bench Nieuwveld and Victoria Shannon, *Third Party Funding in International Arbitration* (Kluwer Law International 2017).

<sup>28</sup> ICCA–Queen Mary Task Force Report (2018).

There is also possibility of abuse especially since funders may be financing several disputes at once. This would require a discussion on adequacy of current safeguards and need for regulatory intervention.

There is a lack of international standards on confidentiality aspect of TPF arrangements which calls for harmonization of rules.

### **3.5 Control over Proceedings and Party Autonomy**

A controversial area in TPF is degree to which funders can exert control over process of arbitration. Although funding agreements usually guarantee party funded control over its decision-making process in practice funders might exert considerable control over critical aspects of arbitration, such as negotiations and selection of counsel.<sup>29</sup>

Another problem is related to issue of party autonomy – a basic principle underlying arbitration processes. In case of substantial control exerted by funders there is a risk that both parties and arbitration process will be undermined.<sup>30</sup>

Examples from scholarly literature prove that funders can possess veto power when it comes to negotiations or require their approval of critical procedural actions. Such requirements can create a conflict of interest between funder and party being funded.

The issue is particularly important for legal professionals whose ethics might be affected by presence of funder.

### **3.6 Enforcement and Recovery of Awards**

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<sup>29</sup> Maya Steinitz, 'Whose Claim is This Anyway?' (2011) 95 *Minnesota Law Review* 1268.

<sup>30</sup> Gary Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021).

Funding entities not only play a role in process of arbitration but also in enforcing arbitral awards. Often funding entities take a proactive approach in enforcing arbitral awards especially when it comes to cross-border transactions where recovery is difficult.<sup>31</sup>

Nonetheless it brings up question of rights and liabilities of funding entities in enforcement proceedings. One important aspect to consider here is whether funders can be made liable for enforcement costs and any other expenses incurred.

This is a matter that courts have approached differently. As mentioned earlier some courts have found funding entities liable for a certain amount of money while others have refused to make them liable beyond their funding agreement.<sup>32</sup>

Furthermore funding entities can also decide how to proceed with enforcement in light of possibility of recovering amount of money awarded in arbitral award.

## **CHAPTER 4: COMPARATIVE JURISDICTIONAL ANALYSIS OF THIRD PARTY FUNDING**

### **4.1 United Kingdom: Evolution from Prohibition to Regulation**

One of maturest jurisdictions with regard to TPF is United Kingdom. Traditionally doctrines of maintenance and champerty considered any interference in litigation from a third party illegal. However due to changes in circumstances those principles were modified to better suit modern times.

The Criminal Law Act 1967 marked a major change because it decriminalized maintenance and champerty thus enabling introduction of litigation funding.<sup>33</sup>

The courts took a practical position by stating that TPF was used not as a means

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<sup>31</sup> Burford Capital, *Annual Report* (Burford 2024).

<sup>32</sup> *Arkin v Borchard Lines Ltd* [2005] EWCA Civ 655.

<sup>33</sup> Criminal Law Act 1967 (UK).

of avoiding proper procedure but as a tool to facilitate access to justice. An example of such an approach can be found in *Arkin v Borchard Lines Ltd* in which Court of Appeal stated that a third-party funder could be responsible for paying any adverse costs yet only insofar as funding goes.<sup>34</sup> This rule is now known as "Arkin cap."

Apart from legal precedents there have been several notable regulatory initiatives in UK. Association of Litigation Funders (ALF) was created to provide funders with a code of conduct.<sup>35</sup> This form of regulation implies three basic principles i.e. transparency, capital adequacy and ethical behavior.

#### **4.2 Singapore: Legislative Recognition and Structured Regulation**

Singapore has been established as a major arbitration center by adopting a modern stance on Third Party Funding. Historically Third Party Funding has been outlawed under rules akin to maintenance and champerty. Acknowledging crucial role of arbitration in legal landscape of Singapore, country made substantial amendments to its laws.<sup>36</sup>

With passage of Civil Law (Amendment) Act 2017, Singapore authorized TPF for international arbitration and associated proceedings. It was a critical development that aligned Singapore with international norms.<sup>37</sup> The enactment provided government with authority to draft rules concerning TPF funders such as their qualifications and disclosure obligations.

Singapore has taken a systematic regulatory approach by mandating lawyers to notify presence of any third party funding. In doing so, Singapore maintains transparency while protecting secrecy of financial arrangements.<sup>38</sup>

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<sup>34</sup> *Arkin v Borchard Lines Ltd* [2005] EWCA Civ 655.

<sup>35</sup> Association of Litigation Funders, *Code of Conduct for Litigation Funders* (ALF 2018).

<sup>36</sup> Gary Born, *International Commercial Arbitration* (3rd edn, Kluwer Law International 2021).

<sup>37</sup> Civil Law (Amendment) Act 2017 (Singapore).

<sup>38</sup> Singapore International Arbitration Centre, *Practice Note on Third Party Funding* (SIAC 2017).

### **4.3 Hong Kong: Comprehensive Statutory Framework**

Hong Kong has also embraced this progressive approach through enactment of laws regulating Third Party Funding in territory. The Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017 authorizes TPF in arbitration and mediation processes.<sup>39</sup>

This law makes specific provisions regarding terms of funding agreements including provisions relating to disclosure and conflict of interest. This statute also creates a regulatory authority to monitor actions of third-party funders<sup>40</sup>

One of important aspects of Hong Kong system is its provision for transparency. The parties are required to disclose any arrangements regarding funding which will enable arbitrator to determine whether there is any conflict of interest.<sup>41</sup>

### **4.4 European Union: Fragmented Regulatory Landscape**

In contrast to UK, Singapore and Hong Kong EU is not characterized by a harmonized regulatory framework concerning TPF. The regulation of TPF differs from one member state to another, thus creating a fragmented legal environment<sup>42</sup>

There are countries that allow TPF and where their financing market has become somewhat mature like Germany and Netherlands. There are also those who adopt a more cautious stance and prohibit or regulate TPF.

The trend at EU level concerning TPF is that there has been an increased interest in TPF, especially in relation to ISDS cases. The European Parliament

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<sup>39</sup> Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017 (Hong Kong).

<sup>40</sup> Hong Kong Department of Justice, *Code of Practice for Third Party Funding of Arbitration* (2019).

<sup>41</sup> Hong Kong Arbitration Ordinance (Cap 609).

<sup>42</sup> ICCA–Queen Mary Task Force, *Report on Third-Party Funding in International Arbitration* (2018).

has proposed that TPF should be regulated because of certain issues like conflicts of interest and lack of transparency and accessibility.<sup>43</sup>

But without existence of an EU-wide legislative framework on issue there is bound to be inconsistency.

#### **4.5 United States: Market-Driven Approach**

The United States takes a predominantly market-driven strategy for TPF. Although practice of TPF is usually allowed, The degree of control over TPF varies from one state to another. Traditionally doctrine of champerty was used to regulate TPF but now many states have liberalized these restrictions<sup>44</sup>

In United States principle of disclosure and ethical considerations is central in federal courts although there are no federal laws regulating TPF. The market-driven nature of TPF in United States has resulted in emergence of an efficient funding sector. Nonetheless lack of unified regulations has created some issues related to transparency and accountability<sup>45</sup>

#### **4.6 India: Emerging Framework and Judicial Recognition**

Third party funding (TPF) is a fairly new concept in India and there is no statute specific to arbitration in this regard. Unlike Singapore and Hong Kong there has been no legislative enactment in India which deals specifically with rules governing third party funding in international commercial arbitrations.<sup>46</sup>

It may be stated that Indian jurisprudence has generally acknowledged legitimacy of funding contracts provided they do not run counter to public policy considerations. In case of *Ram Coomar Coondoo v Chunder Canto*

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<sup>43</sup> European Parliament, *Resolution on Responsible Private Funding of Litigation* (2022).

<sup>44</sup> Anthony J Sebok, 'Inauthentic Claim' (2011) 64 *Vanderbilt Law Review* 61.

<sup>45</sup> Victoria Shannon Sahani, 'Reshaping Third-Party Funding' (2014) 30 *Arbitration International* 1.

<sup>46</sup> *Bar Council of India v AK Balaji* (2018) 5 SCC 379.

Mookerjee, Privy Council upheld legality of champertous agreements provided they were fair and equitable.<sup>47</sup>

In recent case of Bar Council of India v AK Balaji, it was held that third party funding is not unlawful in India.<sup>48</sup> Certain States such as Maharashtra, Gujarat and Madhya Pradesh have changed their legislation and now allow TPF in litigation.

Although TPF can be said to be permissible in India lack of any regulatory regime continues to cast a shadow of uncertainty especially regarding its applicability in arbitrations. Matters of disclosure, cost sharing and funder's liability need to be addressed.

#### **4.7 Comparative Analysis and Emerging Trends**

Comparative studies show notable differences in regulatory measures adopted with respect to TPF. For instance, while jurisdictions like UK adopt self-regulation Singapore and Hong Kong adopt a statutory regime. EU countries have shown fragmentation in terms of regulation, but US adopts a market-based approach.<sup>49</sup>

However a closer look shows some similarities. First there is a growing acceptance of TPF as a means of increasing access to justice. Second focus on transparency in order to deal with conflicts of interests. Third regulations are gradually evolving in favor of balancing business interests and due process.<sup>50</sup>

It can therefore be said that use of TPF is becoming increasingly prevalent within context of international arbitration though lack of harmonization of regulation poses challenges in this respect.

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<sup>47</sup> *Ram Coomar Coondoo v Chunder Canto Mookerjee* (1876) 2 IA 186.

<sup>48</sup> Bar Council of India Rules, Part VI, Chapter II.

<sup>49</sup> ICCA–Queen Mary Task Force Report (2018).

<sup>50</sup> Chartered Institute of Arbitrators (CIArb), *Guidelines on Third Party Funding* (2025).

## **CHAPTER 5: CONCLUSION AND SUGGESTIONS**

### **5.1 Conclusion**

The research has shown that Third Party Funding has become an important element of international arbitration ensuring access to justice and providing for proper risk management.<sup>51</sup>

At same time development of TPF has been accompanied by certain difficulties in legal and ethical nature including issues concerning disclosure, conflicts of interests and allocation of costs. Due to lack of standardization there have been discrepancies among jurisdictions in handling these issues.

Nevertheless TPF continues to be an important instrument in modern arbitration due to changing realities of dispute settlement in modern economic system.

### **5.2 Suggestions**

#### **a. Need for Harmonized Regulations**

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<sup>51</sup> OECD, *Third Party Litigation Funding and Access to Justice* (OECD 2023).

Harmonized regulation is required in order to standardize international regulations pertaining to TPF, especially concerning disclosures and conflicts of interests.<sup>52</sup>

#### **b. Mandatory Disclosures**

Regulations mandating disclosures in arbitral proceedings are recommended.

#### **c. Regulations for Funders**

Regulations can help to oversee conduct of funders.

#### **d. Cost Sharing**

Rules regarding cost allocation and funding should be laid down in clear terms.

#### **e. Law in India**

India needs a comprehensive law for regulating third party funding in arbitration proceedings to strengthen its status as arbitration hub.

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### **Miscellaneous**

- ICCA–Queen Mary Task Force, *Third-Party Funding in International Arbitration* (ICCA 2018).