



## Third-party funding in arbitration and its effect on the confidentiality and impartiality

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### Abstract

The growing practice of Third-Party Funding (TPF) in arbitration offers increased access to justice, especially for financially constrained parties. However, its expansion in India, where a regulatory vacuum persists, raises concerns regarding the core principles of arbitration, notably confidentiality and impartiality. This paper critically examines how TPF challenges these principles within the Indian arbitration framework, focusing on the ethical dilemmas and potential conflicts of interest that stem from funders' financial involvement. The article analyses international best practices from jurisdictions such as Singapore, Hong Kong, and the United Kingdom, proposing that India adopt mandatory disclosure obligations, ethical guidelines, and confidentiality safeguards. These regulatory reforms are essential to balance the benefits of TPF with the need to maintain fairness, transparency, and trust in the Indian arbitration system, particularly as India seeks to position itself as a global arbitration hub.

**Keywords:** Third-party funding, arbitration, confidentiality, impartiality, conflict of interest, legal ethics, Indian arbitration law, regulatory framework, access to justice, international best practices

### Introduction

#### Overview of Third-Party Funding in Arbitration

Third-Party Funding (TPF) refers to an arrangement where a party to an arbitration receives financial assistance from an external funder, who, in exchange, receives a share of the proceeds from any favorable outcome. This financial support helps claimants, particularly those with limited resources, afford the high costs of arbitration, including legal fees, expert witnesses, and other expenses. Initially prevalent in common law jurisdictions, TPF is gaining increasing recognition in international arbitration due to its ability to enhance access to justice for parties that otherwise could not afford the costs associated with arbitration (Tulsyan & Kadyan, 2023) <sup>[1]</sup>. While the practice is becoming more common globally, in India, TPF is still in its nascent stages, particularly in domestic arbitration, where it remains largely unregulated.

#### Relevance of Confidentiality and Impartiality

Confidentiality and impartiality are cornerstone principles of arbitration, ensuring that the process is fair and transparent. Confidentiality ensures that sensitive information, including legal strategies and evidence, remains protected. Impartiality refers to the neutrality of the arbitrators, free from influence by any of the parties. The involvement of third-party funders in arbitration raises concerns about whether these principles can be upheld. Funders, who often have a financial stake in the outcome of the arbitration, may introduce potential biases or conflicts of interest that could influence the proceedings. The growing use of TPF underscores the need to critically examine its impact on these principles (Krishnamurthy & Pradeep, 2023) <sup>[2]</sup>.

#### Purpose and Scope of the Essay

This essay explores the role of Third-Party Funding in Indian arbitration, with a focus on its impact on confidentiality and impartiality. It aims to analyze how TPF influences the arbitration process, challenges related to its

ethical implications, and suggests regulatory reforms for its proper integration into India's arbitration framework. The essay also discusses international best practices and how these could be adopted in the Indian context (Bhardwaj, 2023) <sup>[3]</sup>.

#### Understanding Third-Party Funding in Arbitration Definition and Nature of Third-Party Funding

Third-Party Funding (TPF) in arbitration is a financial arrangement where a party involved in a dispute receives financial assistance from an external entity—often a funder—who is not a direct party to the arbitration. In exchange for their financial support, the funder typically receives a percentage of the award or settlement, should the case result in a favorable outcome for the funded party. The external funder assumes the financial risk, meaning that if the claim fails, the funder generally does not receive any payment (Meduri & Baweja, 2019) <sup>[5]</sup>.

This form of financing is becoming increasingly important as arbitration can be prohibitively expensive, especially in complex commercial or international disputes. The costs of engaging experienced counsel, securing expert witnesses, and meeting other procedural costs can be substantial. For many parties, particularly small businesses or individuals with limited financial resources, this creates a barrier to seeking justice. TPF enables these parties to access arbitration despite their inability to afford the costs involved, thus democratizing access to legal recourse and enhancing the ability of claimants to assert their rights (Bhardwaj, 2023) <sup>[3]</sup>.

TPF is particularly prevalent in international arbitration, where disputes often involve substantial sums and complex legal issues. Although it has long been practiced in common law jurisdictions such as the United States and the United Kingdom, its usage is increasing globally. In India, the concept of TPF is still emerging, especially in domestic arbitration, and is largely unregulated. This has led to the need for legal reforms to balance its use while preserving the integrity of the arbitration process.

## Role of Third-Party Funding in Arbitration

Third-Party Funding plays a significant role in enhancing access to justice, especially for claimants who might not have the financial means to pursue arbitration on their own (Merlone & Lupano, 2022) <sup>[12]</sup>. In commercial and investment arbitration, where stakes can be incredibly high, TPF allows parties—especially those from smaller companies or developing economies—to pursue claims against powerful corporate entities or even states. Without TPF, such parties may have to abandon legitimate claims simply due to financial constraints, thus denying them the opportunity for justice (Singhania & Vajpeyi, 2020) <sup>[4]</sup>.

Additionally, TPF has the potential to increase the efficiency and fairness of the arbitration process. By alleviating the financial burden on the claimant, TPF allows them to focus on the merits of the case rather than the financial costs associated with litigation. This ensures that cases are not dismissed based on the financial strength of the claimant but on the substantive legal issues at hand. Furthermore, TPF can encourage better legal representation, as claimants with limited resources can now afford top-tier counsel and expert witnesses who are crucial in complex disputes (Singhania & Vajpeyi, 2020) <sup>[4]</sup>.

However, the involvement of funders also raises concerns about the integrity and neutrality of the arbitration process. Since third-party funders have a financial interest in the outcome of the dispute, there are ethical implications concerning conflicts of interest. For example, funders may influence decisions related to the settlement or how the case is conducted, raising questions about their impact on the impartiality of the arbitrators. These concerns are particularly relevant in jurisdictions like India, where the regulatory framework for TPF in arbitration is still evolving (Bhardwaj, 2023) <sup>[3]</sup>.

In summary, while TPF has the potential to expand access to arbitration, it is essential for regulatory frameworks to ensure that it does not undermine the fairness, impartiality, or confidentiality of the process. Legal reforms are needed in India to facilitate the proper integration of TPF while safeguarding these key principles.

## Confidentiality and Impartiality in Arbitration

### Concept of Confidentiality in Arbitration

Confidentiality is one of the fundamental features of arbitration that ensures parties' sensitive information, legal strategies, and evidence remain protected throughout the process. This ensures that parties can freely disclose all necessary information without the risk of it being publicly disclosed or used against them in future proceedings. Confidentiality is particularly crucial in commercial arbitration, where the information exchanged can involve trade secrets, financial data, and other proprietary information. The primary purpose of maintaining confidentiality is to foster trust and encourage open communication between the parties and the tribunal (Tulsyan & Kadyan, 2023) <sup>[11]</sup>.

In arbitration, confidentiality is generally governed by the rules of the arbitration institution or by the terms agreed upon in the arbitration agreement. The importance of confidentiality extends beyond the parties to include arbitrators, legal representatives, and anyone involved in the proceedings. Maintaining this confidentiality helps protect commercial interests and prevents damage to business reputations (Bhardwaj, 2023) <sup>[3]</sup>. However, the introduction

of Third-Party Funding (TPF) raises new challenges for ensuring confidentiality, as external funders may require access to sensitive case information to assess the viability of funding and monitor the progress of the case.

### Confidentiality and Third-Party Funding

While TPF can provide much-needed financial support, it also presents challenges to maintaining confidentiality. Third-party funders, to properly assess the case, may request detailed case files, including documents that are traditionally kept confidential within the arbitration process (Meduri & Baweja, 2019) <sup>[5]</sup>. This access to sensitive information can raise concerns about the potential for information leakage or misuse, especially when the funder has no direct relationship with the arbitration process and may not be bound by the same confidentiality obligations as the parties or arbitrators.

Moreover, funders' involvement may lead to the disclosure of internal legal strategies or settlement offers, which could affect the arbitration's fairness and transparency. A funder's financial stake in the outcome of the case could also lead to attempts to influence the direction of the proceedings, further complicating confidentiality concerns (Krishnamurthy & Pradeep, 2023) <sup>[2]</sup>. To mitigate these concerns, it is essential to include confidentiality provisions in the funding agreement, ensuring that third-party funders adhere to the same confidentiality obligations as the parties involved in the arbitration.

### The Principle of Impartiality in Arbitration

Impartiality is a cornerstone principle of arbitration, ensuring that arbitrators make decisions based solely on the evidence and arguments presented by the parties, free from any external influence or bias. This principle is essential to maintaining the integrity of the arbitration process and ensuring fairness for all parties involved. Impartiality requires that arbitrators are not influenced by personal interests, relationships, or financial considerations that could affect their ability to objectively evaluate the case (Ranjan & Kumari, 2023) <sup>[7]</sup>.

The presence of third-party funders can potentially jeopardize this impartiality. Funders, while not directly involved in the arbitration's decision-making process, may have a significant financial interest in the outcome. This creates a perceived or actual conflict of interest, as the funder may indirectly influence decisions related to settlement offers, the case strategy, or even the selection of arbitrators, especially if there is an ongoing relationship between the funder and the arbitration institution (Bhardwaj, 2023) <sup>[3]</sup>. This could undermine the neutrality of the process, particularly in cases where the funder has multiple interests in the same arbitration or across related arbitrations.

### Impact of Third-Party Funding on Impartiality

Third-party funding's influence on the impartiality of arbitration procedures is a critical concern, especially in high-stakes disputes (Sharma & Shambhavi, 2025) <sup>[15]</sup>. The involvement of a third-party funder may create the perception of bias, as the funder's financial interest in the outcome could influence both the claimant's strategy and the overall direction of the case (Bhardwaj, 2023) <sup>[3]</sup>. While funders are not supposed to directly influence the legal strategy, the financial pressures they may exert on the claimant to maximize the potential award can lead to ethical

dilemmas, particularly if the funder has extensive relationships with the arbitrators or other parties involved in the arbitration.

In India, where the regulation of TPF is still evolving, it is crucial to implement clear guidelines that address potential conflicts of interest between funders, arbitrators, and the parties involved. Implementing mandatory disclosure of funders' identities and interests can help alleviate these concerns and ensure the impartiality of the arbitration process. By addressing both confidentiality and impartiality concerns, India can ensure that TPF remains an effective tool for accessing justice without compromising the fairness and integrity of the arbitration system.

## **Legal Framework and Ethical Challenges of Third-Party Funding in India**

### **Current Legal Status of Third-Party Funding in India**

In India, Third-Party Funding (TPF) remains an unregulated area of arbitration law, with no specific legal framework governing its use in domestic or international arbitration (Tax Guru, 2024) <sup>[17]</sup>. Despite its increasing relevance in commercial disputes, particularly in international arbitration, the Indian legal system has yet to establish comprehensive regulations that directly address TPF (Krishnamurthy & Pradeep, 2023) <sup>[2]</sup>. While TPF is not illegal in India, its practice is constrained by the absence of clarity on its legal standing and ethical implications.

The Indian courts have not yet articulated a clear stance on third-party funding, and the Arbitration and Conciliation Act, 1996, does not contain provisions specifically dealing with the practice (Lawbhoomi, 2023) <sup>[11]</sup>. As a result, there is ambiguity regarding whether third-party funders should be considered parties to the arbitration or whether they should be required to disclose their identities and funding arrangements (Meduri & Baweja, 2019) <sup>[5]</sup>. The lack of regulation means that funders are not held to the same ethical standards or confidentiality obligations as the primary parties or arbitrators, leaving room for potential conflicts of interest and breaches of impartiality.

This legal uncertainty also raises concerns about the influence of third-party funders on arbitration procedures. Without a clear legal framework, there is the risk that funders could exercise undue control over the arbitration process, especially when it comes to decisions regarding settlement offers or the legal strategy employed by the funded party (Krishnamurthy & Pradeep, 2023) <sup>[2]</sup>.

### **Proposed Legal Reforms for Regulating Third-Party Funding**

To address these challenges, experts have proposed legal reforms aimed at regulating third-party funding in India. Singhanian and Vajpeyi (2020) <sup>[4]</sup> suggest the introduction of specific provisions within the Arbitration and Conciliation Act, 1996, to regulate the practice of TPF. These proposed regulations would require mandatory disclosure of the identities of third-party funders to ensure transparency and prevent conflicts of interest. Furthermore, the regulations could stipulate that funders are bound by the same ethical guidelines and confidentiality requirements as the parties and arbitrators.

Bhardwaj (2023) <sup>[3]</sup> recommends comprehensive legal reforms to integrate TPF into India's arbitration landscape while safeguarding the core principles of arbitration, such as impartiality and confidentiality. He suggests that these

reforms could include the establishment of independent regulatory bodies that would oversee TPF agreements, enforce disclosure requirements, and ensure that funders do not exert undue influence on the arbitration process. Additionally, the creation of clear ethical guidelines for funders would help mitigate the potential risks associated with their involvement, such as the conflict of interest and compromising impartiality.

### **Conflict of Interest and Ethical Concerns**

The introduction of third-party funding into the arbitration process creates potential conflicts of interest, particularly when funders have a financial stake in the outcome of the dispute (BBaC, 2023). These conflicts arise when funders are motivated by a desire for financial gain, which may influence the decisions of the funded party or the direction of the case. According to Krishnamurthy & Pradeep (2023) <sup>[2]</sup>, ethical concerns arise when funders attempt to exercise influence over the legal strategy or settlement negotiations, potentially undermining the impartiality of the arbitration process.

The ethical implications also extend to the arbitrators who may have pre-existing relationships with the funders, or the perception of bias may arise if the funder has a significant role in selecting the arbitrators or other participants in the arbitration process. Such conflicts can undermine the fairness of the arbitration process, and it is essential to address these concerns through clear disclosure obligations.

### **Confidentiality and Disclosure Issues**

Confidentiality is another key ethical concern in arbitration, particularly when third-party funders are involved (Rajasekaran & Korada, 2024) <sup>[14]</sup>. As mentioned by Ranjan & Kumari (2023) <sup>[7]</sup>, funders often require access to sensitive case information to evaluate the merits of a claim, but this can lead to a breach of confidentiality if the funders are not held to the same standards as the primary parties. The potential for disclosure of internal legal strategies, settlement offers, or privileged communications between the parties and their legal representatives is a critical issue that needs to be addressed by regulating the practice of TPF.

To ensure that confidentiality is maintained, any regulations surrounding third-party funding must require funders to enter into confidentiality agreements and adhere to strict disclosure standards. These provisions would help safeguard the integrity of the arbitration process while balancing the financial interests of third-party funders and the need for a fair, impartial, and confidential dispute resolution process.

### **Impact of Third-Party Funding on the Arbitration Process**

#### **Influence on Decision-Making and Case Strategy**

The involvement of third-party funders in arbitration can significantly impact the decision-making and case strategy of the funded party (Singhanian *et al.*, 2024) <sup>[16]</sup>. As funders typically have a financial stake in the outcome, they may influence the direction of the case, prioritizing a strategy that maximizes the chances of a favorable financial return. This can potentially lead to conflicts of interest, as the funder may pressure the claimant to pursue aggressive tactics or settle on terms that favor the funder's financial interests, rather than focusing solely on the merits of the case (Bhardwaj, 2023) <sup>[3]</sup>.

For instance, funders may attempt to influence settlement negotiations, advocating for a higher settlement amount even when a less contentious resolution might be in the claimant's best interest. Additionally, the funder's role in funding the case could lead to overlitigation, where the case strategy involves prolonged legal battles that might not be justified by the evidence or the legal principles involved (Krishnamurthy & Pradeep, 2023) <sup>[2]</sup>. This introduces the risk of compromising the fairness of the arbitration process, as the focus shifts towards maximizing the financial outcome, rather than pursuing justice on the merits.

Furthermore, the influence of funders on the selection of arbitrators could also raise concerns. If the funder has a direct or indirect relationship with the arbitration institution or arbitrators, it could lead to questions about the impartiality and independence of the arbitration process, as the funder's interests may conflict with the fairness expected from the tribunal.

### Access to Justice and Fairness of the Process

On the other hand, Third-Party Funding plays a crucial role in enhancing access to justice, particularly in high-stakes or cross-border disputes where the costs of arbitration can be prohibitively high (Meduri & Baweja, 2019) <sup>[5]</sup>. By relieving financially constrained parties from the burden of legal costs, TPF ensures that even smaller businesses or individuals with valid claims can access the arbitration process. This helps level the playing field, enabling claimants to pursue their cases without the fear of financial ruin.

However, the fairness of the arbitration process hinges on the balance between transparency and the financial interests of funders (Kalra & Mehta, 2025) <sup>[10]</sup>. While TPF can improve access to justice, it is essential to ensure that its involvement does not undermine the integrity of the arbitration process. Transparency regarding the funder's identity, the amount of funding, and the nature of the funding agreement is vital to maintain trust in the arbitration system (Tulsyan & Kadyan, 2023) <sup>[11]</sup>. Ensuring that funders do not have undue influence on the case strategy or the conduct of the arbitration is necessary to preserve the fairness and impartiality of the process.

### Best Practices and Future of Third-Party Funding in India

#### International Guidelines and Practices

Globally, jurisdictions like Singapore, Hong Kong, and England have established comprehensive guidelines for managing Third-Party Funding (TPF) in arbitration, ensuring that transparency, fairness, and impartiality are maintained. In these jurisdictions, funders are typically required to disclose their identity to the arbitration tribunal and to the opposing party. The disclosure requirements often extend to the nature of the funding agreement and the funder's financial interest in the outcome of the arbitration. These practices help prevent conflicts of interest and ensure that the process remains fair and impartial (Bhardwaj, 2023) <sup>[3]</sup>.

Moreover, the Hong Kong Code of Practice for Third-Party Funding in Arbitration (2018) sets out ethical standards that funders must adhere to, including the avoidance of interfering with the funded party's decision-making process, particularly in matters related to case strategy or settlement negotiations (PCLawyers, 2019) <sup>[13]</sup>. In Singapore, the

regulatory framework has been designed to ensure that third-party funding enhances access to justice without compromising the integrity of the arbitration process (Krishnamurthy & Pradeep, 2023) <sup>[2]</sup>.

These international best practices provide a useful model for India, where TPF is not yet regulated. The introduction of similar guidelines could help establish a framework that ensures both transparency and impartiality, vital to the continued credibility of arbitration as a dispute resolution mechanism.

### Applying International Best Practices to India

India can effectively adopt international best practices for managing Third-Party Funding by introducing mandatory disclosure requirements and ensuring that funders follow ethical guidelines (Chaudhary, 2023) <sup>[9]</sup>. For instance, mandatory disclosure of the identity of third-party funders, along with the terms of the funding agreement, would ensure transparency and minimize the risk of conflicts of interest. Similar to international guidelines, India could require funders to refrain from interfering with the case strategy or settlement decisions to ensure that the funded party maintains control over the arbitration process (Ranjan & Kumari, 2023) <sup>[7]</sup>.

Additionally, it would be prudent for India to adopt regulations that address the confidentiality and impartiality concerns raised by TPF, ensuring that funders are bound by confidentiality agreements similar to those imposed on parties and arbitrators. Establishing a comprehensive regulatory framework will provide clarity, protect the interests of all parties, and foster trust in the arbitration system.

### Growth Prospects and Challenges in India

The future of Third-Party Funding in India is promising, particularly as the country seeks to become a hub for international arbitration. TPF can significantly enhance access to justice for businesses and individuals involved in high-stakes commercial and investment disputes. However, to fully realize its potential, India must develop a clear regulatory framework to manage the ethical challenges of TPF, such as conflict of interest, and ensure the integrity of the arbitration process (Singhania & Vajpeyi, 2020) <sup>[4]</sup>.

The lack of clear legal regulations remains one of the primary challenges. India must address these gaps to avoid any potential misuse of TPF that could undermine the impartiality and fairness of arbitration. With the right legal reforms, India can harness the benefits of TPF while ensuring that arbitration remains a trusted and effective dispute resolution mechanism.

### Conclusion

The rise of Third-Party Funding (TPF) in arbitration has undoubtedly reshaped the landscape of dispute resolution, offering crucial financial support to claimants who might otherwise be unable to afford the high costs of arbitration. This essay has discussed the growing importance of TPF in arbitration, particularly in India, where its use remains relatively unregulated but has significant potential to promote access to justice.

TPF enhances access to justice by allowing financially constrained parties, including small businesses or individuals, to pursue arbitration against larger, well-funded corporations or states. However, as this essay explored, the

involvement of funders raises important concerns related to confidentiality and impartiality. Third-party funders, motivated by their financial interests, can influence case strategies, settlement offers, and even the selection of arbitrators, potentially compromising the integrity of the arbitration process. The absence of clear legal frameworks in India complicates the effective use of TPF, as there is a risk of unethical behavior and conflicts of interest.

International practices, including mandatory disclosure of funders' identities and their financial interests, offer a viable model for regulating TPF in India. Applying these best practices would ensure transparency, mitigate conflicts of interest, and safeguard the impartiality and confidentiality of the arbitration process. Regulatory frameworks should also be established to address the ethical issues associated with third-party funding while fostering growth in India's arbitration market.

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