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# Third Party Funding in India's Arbitral Proceedings

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## ABSTRACT

*Third-party funding is becoming a more common type of arbitration environment in a variety of jurisdictions. In recent years, funding activity in India has exploded, focusing initially on investor-state arbitration but now appearing to be expanding to commercial international arbitration. This article discusses the potential for third-party funding in India. The purpose of this article is to give facts about the possibility of offering TPF in the Indian arbitration system. This essay begins with laying out a running clarification of TPF by taking an all-inclusive approach. Later, this article makes a point of mentioning the procedures used in various TPF controls. Using abroad expansions as a starting point, the article then shifts its focus to India, looking at various regulatory frameworks that indirectly allow TPF in the Indian arbitral system.*

*Keywords: TPF, Litigation Financing, Investors, Arbitration, International Arbitration.*

## I. INTRODUCTION

In recent years, India's progress toward becoming a global frugality has elevated its profile as a target for foreign investment. That being said, the outbreak's consequences and consequences continue to fuel a new wave of impeachments. With the rise in borderland deals, alien marketing mediations have risen in popularity. Despite the fact that adjudication is a more persuasive and appropriate case, the massive costs associated with it cannot be overlooked. The utilisation of mediator funding in international mediation is a hotly discussed topic. Third-Party Funding in India is a tactic in which a party with no legal rights contributes monies to a petitioner or defendant to pursue their legal claims. Settlement financing is also referred to as this. It is not specifically protected by any act of Indian law, but recognised standards execution is also prohibited because it may violate Indian public law.

## II. INDIA'S LEGALITY OF THIRD-PARTY FUNDING

Third-party financing tools have aided economically disadvantaged claimants in pursuing their legitimate claims without jeopardising their relationships. Third-party funding has been scarce

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in India, and this theory has recently piqued Indian judges' interest. At the same time, it's a waste of money that the Apex Court of India decided in the case of Bar Council of India vs A.K Balaji<sup>2</sup> that third-party dispute funding is legal in India if the contributor isn't a lawyer, which is a clear step.

In India, the law on champerty has been determined, but the Supreme Court has yet to reach a decision, particularly on whether or not Third-Party Financing in Arbitration should be permitted. However, the states of Maharashtra, Gujarat, Madhya Pradesh, and Uttar Pradesh have incorporated necessary changes into their respective CPC<sup>3</sup>, under Order XXV Rules 1 and 3 to identify third-party-financed conflicts.

Because an adjustment is essentially a contract between a competitor and a funder, it is governed by the Indian Contract Act of 1872. The Foreign Exchange Management Act of 1999 requires that any overseas backing selling is thoroughly investigated (FEMA). Any modification, in addition to these laws, will be governed by the subdivision or agreements applicable to that foreign funding.

### **III. USING THE JUDICIAL LENS TO EXAMINE THIRD-PARTY FUNDING**

A permissible mediation to come to bear on an appropriate in discussion of adopting a partition of the equity, if resumed, may not be disputed to regulations, according to the Privy Council in Ram Coomar Coondoo and Ors. vs Chunder Canto Mookerjee<sup>4</sup>. Nonetheless, the Privy Council stated that such arrangements, if found to be oppressive and excessive, and not made with the bona fide commodity of aiding a valid claim for erroneous commodities, such as the urge to sue, must not be carried out as they are against the principles.

According to Mr. "G" a Senior Advocate<sup>5</sup> of the Supreme Court of India, the stringent English standards of champerty and care are not widely practised in India. If the type of Third Party Funding is granted, it may be legally enforceable and beneficial. Despite the fact that the topic was not specifically presented to the bench, it can be inferred from the bench's experiences that third-party funding compliance in and of itself is meticulously accented, does not spike the humiliation, and does not violate public policy or ethics.

A Division Bench of the Kerala High Court examined whether champerty arrangements are valid in India in the case of Damodar Kilikar and Ors. Vs Oosman Abdul Gani<sup>6</sup>. The bench

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<sup>2</sup> (2018) 5 SCC 379

<sup>3</sup> Civil Procedure Codes, 1908

<sup>4</sup> (1876-77) 4 IA 23

<sup>5</sup> AIR 1954 SC 557

<sup>6</sup> A.S.No.171 of 1956, 176 of 1956 (E) Decided on 09 January 1961, 1961 KLJ 356

concluded that if no lawyers are involved in the mediation, the agreement does not become unlawful or binding in India. In the champerty arrangement that the Court examined, there was no intersection of any advocate.

Proposals to give actions when proper specialists are not complicated cause are not adverse to public policy, according to a careful analysis of the emerging conditions. As a result, different third-party funders who may be keen to hasten connection to honesty for insufficient acts should check the Third Party Funding instrument used to ensure that it is not oppressive and barbaric in the manner described above.

#### **IV. NEED OF THIRD PARTY FUNDED ARBITRATION IN INDIA**

In the post-Covid world, there are numerous economic disagreements in the form of cracks or discontent with agreements between parties. Because the Government of India is spreading finance in the framework and efficiency zone under which numerous legal arrangements will occur, the majority of the conflicts are restricted to occur in the defects of framework, intensity, development, bankruptcy, and investments of associations.

With such substantial funding, the government of India may find itself embroiled in a slew of adjudication disputes with foreign bodies in the coming years, causing their funds to become stuck in the system. A refined trade body that operates on a risk-return foundation may prevent financing organisations or society zone enterprises from catching their acquisitions in adjudication and allowing them to continue with their planned task without failing to meet their essential.

In the economic arena, allies should definitely go for it if they can find someone to stock their trails. Taking investments or other forms of due diligence is a terrible idea since it is a pricey way of backing up and has a negative impact on domestic employment costs. There will be a halt to development plans due to a lack of resources in the neighbourhood. Litigation financing aids a company's basic development by allowing it to put its profits to good use. It does not compel the company to undertake business, and the risk is passed to a third party at a cheaper cost.

#### **V. A SET OF RULES GOVERNS LITIGATION FINANCING**

In India, there are currently no definite rules or policies in place to regulate third-party funding. In India, this notion is still in its infancy; therefore involved governance is both impossible and necessary. Mature countries all around the world are developing ways to self-regulate this strategy and allow trade to flourish by delivering on a risk-reward basis. According to the

government's new broadcasts, India is on its way to become a developed country. As a result, a self-regulation lane will be more feasible in its early stages.

The Indian Association for Litigation Financing was founded on February 11, 2021, with the participation of a number of law firms, professionals, and third-party funders. This organisation aims to self-regulate and raise awareness of litigation financing in the United States. The activities are the first of their sort in India's Third Party Funding field, and they show that the future is closer than thought.

### **TESTIMONY INTEGRITY**

A financier is compelled to perform high-intensity work in order to determine the case's activity. To arrive at a decision, the quantity of records must be examined. The applicant will share classified instruction in this field of investigation. As a result, the parties must have just signed a confidential agreement. A banker may also want to make a note of an exclusion agreement. However, exclusivity should be granted after the conclusion of the inquiry process. If there is a chance that shareholders will opt out of the agreement, another lender can be found as soon as possible.

## **VI. TRENDS FROM AROUND THE WORLD**

As one of the first few countries to do so, Australia was able to eradicate supply and champerty-related crimes and offences. Recently, Singapore became the first Asian jurisdiction to impose third-party funding for arbitrations. It has passed the Civil Law (Amendment) Act of 2017, which repeals maintenance and champerty and recognises third-party funding arrangements as valid for prescribed dispute resolution mechanisms as long as they are not contrary to public policy, as well as prescribes funder rights and exceptions to those rights. Third-party funding arrangements are likewise governed by the Civil Law (Third Party Funding) Regulations, 2017, which were passed in 2017. The Singapore Institute of Arbitrators has also given its approval.

Third-party finance plans are primarily permitted under civil code laws in countries such as France and Germany, although actual agreements on what is permissible vary greatly. Although there is a global debate and outlook on the applicability and demand of third-party finance schemes, they are banned in a number of jurisdictions, including China, Ireland, and Nigeria, which consider such arrangements to be illegitimate.

## **VII. CONCLUSION**

The strength of Covid's position has increased the chances of a community breakthrough, and Third Party Funding is no longer a unique method in India. It's a bad time for works in a pre-

covid storyline when there are numerous legal misunderstandings and no one has the financial means to fight for their legal claims. As a result, after considering the following criteria, parties may elect to use Third Party Funding. Initially, the courts may be wary of financial requests. There is a prediction that a dispute will turn into a job, and that there will be an increase in the number of unnecessary trials. As a result, the application of this concept in Arbitration differs from its application in traditional litigation.

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