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Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

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Mrs.S.Kalpana

Assistant professor of Law

Mrs.S.Kalpana, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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THE LEGALITY AND PROSPECTS OF THIRD-PARTY LEGAL FINANCING IN INDIA: AN ANALYSIS OF CURRENT TRENDS, CHALLENGES, AND THE IMPACT OF THE MEDIATION ACT, 2023

AUTHORED BY - JASRAJ BHOWMIK¹

ABSTRACT

In India's dynamic legal system, the concept of third-party legal financing has gained attention as a solution to the financial obstacles faced by those involved in legal disputes. This paper delves into the current status of third-party legal financing in India, emphasizing the growing presence of legal financing firms and the expected market expansion in the near future. Moreover, it examines the potential hurdles that may confront third-party legal financing within the Indian legal system. The study critically evaluates the proposed framework for legal financing under the Mediation Bill, 2023, recently introduced by the government, and analyzes its possible impacts on the third-party legal financing sector.

Keywords: *Third-Party Legal Financing in India, Mediation Act 2023, Indian Legal Framework for Legal Financing.*

1. INTRODUCTION

In the changing realm of the legal system third party legal financing has become an important factor providing financial support to individuals and organizations dealing with complex litigation matters. This research paper examines aspects of party legal financing, in India including its legality, the current legal landscape and its potential for market growth. It also explores the challenges faced by this growing industry. Critically evaluates the proposed framework under the Mediation Bill of 2023.

The regulations governing party financing intersect with well established norms in the legal profession. Therefore it is crucial to have coherent guidelines as the demand for these services continues to increase. This paper adopts an approach by incorporating research into foundational

¹ 3rd Year Law Student, CHRIST (Deemed to be University), Delhi-NCR Campus

chapters while addressing essential aspects such as the structure of legal financing the role of arbitration in litigation and practical challenges in subsequent sections.

Beginning with an analysis of the legality of party financing in India this paper critically examines its current status through a study of judicial cases and state amendments. It then delves into details, about companies involved in providing financing services shedding light on their structure, operations and offerings. Market growth projections take into account both evolving dynamics and economic factors.

The industry presents both opportunities and challenges which we thoroughly analyze in this paper. Our analysis is not solely based on data. Also includes interviews, with individuals who manage legal finance funds in India.

Furthermore we delve into the relationship between litigation finance and arbitration illustrating how the growth of one corresponds to the growth of the other. This chapter serves as a foundation for the chapter explaining why the Mediation Act 2023 highlights the importance of litigation financing.

A vital aspect of our study focuses on exploring the impact of the Mediation Bill 2023 on party legal financing. By examining and analyzing the provisions of this proposed legislation we shed light on how it could shape the landscape of financing and influence interactions between litigants, legal financing companies and the mediation process.

In conclusion, our research provides a comprehensive overview of the legality and prospects of party legal financing in India. We place emphasis on laws, market trends, challenges well as potential implications arising from impending legislation. These insights are invaluable for stakeholders such, as practitioners, policymakers, scholars navigating through Indias evolving legal financing landscape. The convergence of funding the judicial system and the Mediation Bill of 2023 carries substantial ramifications, for the accessibility of justice and the landscape of litigation, in India.

1.1. Research Problem

The main focus of this research revolves around the changing landscape of party financing in India, considering the consistently high costs associated with legal disputes. Despite reforms, the

expenses related to legal proceedings remain significant, leading to a growing reliance on litigation funding by businesses and law firms. This emerging trend, although common in developed countries, presents a challenge and opportunity within the Indian legal system.

The primary objective is to comprehend and address the aspects of party legal financing in India. The research aims to offer insights into the extent and future prospects of this practice similar to how civil liberties are balanced with national security concerns. Specifically, the study explores how India navigates through the realm of financing companies, predicts market growth and tackles challenges posed by the proposed Mediation Bill 2023.

To conduct an analysis this research. Contrasts India's approach with that of the United Kingdom. This comparison provides insights into how financing intersects with the Indian legal system and access to justice. The ultimate goal is to contribute to discussions by offering an understanding of this evolving landscape while emphasizing the delicate balance needed for facilitating access, to justice.

1.2. Objectives

The main goal of this research paper is to investigate and analyze the current status and future potential of third party legal financing in India. Our approach will cover key research objectives;

1. Legality Assessment;

Examining the existing framework to determine the legal standing of third party legal financing in India including any ambiguities or gaps.

2. Landscape of Legal Financing Companies;

Identifying and analyzing the legal financing companies operating in India including their structures, services offered and operational practices.

3. Market Growth Analysis;

Estimating and forecasting the growth trajectory of the third party legal financing industry in India based on economic and legal factors.

4. Challenges and role of mediation;

Analyzing the challenges associated with third-party legal financing in India and understanding the correlation between mediation and legal financing, considering their impact on litigation finance companies.

5. Evaluation of the Mediation Bill, 2023;

Critically evaluating the provisions and implications of the proposed Mediation Bill by the government in 2023 with a specific focus on how it would affect third party legal financing practices.

1.3. Research Questions

In the light of research problem statement provided above, this study aims to explore the following research questions:

1. What is the legal position/legality of legal financing in India?
2. How big is the current third-party legal financing market in India and its estimated future growth?
3. What are the specific challenges that third-party legal financing may encounter in the Indian legal system?
4. What is the framework proposed for legal financing under the Mediation Bill, 2023, recently introduced by the government, and assesses its potential implications for the third-party legal financing sector?

1.4. Review of Literature

Cyril Shroff. Third-Party Funding in India. *cyril amarchand mangaldas advocates & solicitors*. This paper highlights Third Party Funding (TPF) in India, including its benefits, ethical considerations, and notable gaps in the Indian market. It also covers the regulatory framework for TPF, the key terms of TPF agreements, and the potential impact of TPF on litigation and arbitration. The author highlights the global presence of TPF and the potential for the Indian landscape to evolve to support this innovation in dispute resolution. However, the paper does not provide a detailed analysis of the future of legal financing in India.

Debajyoti Ray Chaudhuri and Radhika Agarwal. Litigation Funding: A breakthrough for Avoidance Proceedings under IBC. *Insolvency and Bankruptcy Board of India (IBBI)*. The paper

discusses the concept of litigation funding, its benefits, and its international scenario. It also highlights the potential of litigation funding in India, especially in the context of the Insolvency and Bankruptcy Code (IBC). The author emphasizes the need for a robust regulatory structure to ensure fairness and equity in the settlement procedure for parties receiving litigation funding. However, the paper does not provide a detailed analysis of the challenges and limitations of litigation funding in India, such as the lack of a clear legal framework, ethical concerns, and the potential for conflicts of interest. It also does not discuss the role of litigation funding in promoting access to justice and reducing the burden on the Indian judiciary.

1.5. Hypothesis of Study

1. The current landscape of legal financing companies in India indicates a growing market that is poised for substantial expansion in the near future. The arbitration and mediation matters are set to increase, which will increase the demand for third-party legal financing continues to increase.
2. The legality challenges faced by third-party legal financing in India might improve with the framework proposed under the Mediation Bill, 2023, which offers a potential avenue for the facilitation of third-party legal financing in India

1.6. Research Methodology

This research paper employs a mix approach combining both doctrinal research, known as library-based research, and empirical Research. However, the research is primarily doctrinal, empirical method is only used in one of the chapters, where interviews has been taken of legal finance company founders and the rest of the chapters are based on doctrinal research. The data collection process is derived from a diverse range of primary and secondary sources, incorporating information from legal finance company websites, doing case analysis of landmark cases, references from articles and research papers, as well as insights from the Mediation Act, 2023. These sources collectively form the basis for a robust and nuanced exploration of the intricacies surrounding third-party legal financing in India.

1.7. Limitation of the Study

1. **Data Availability:** The availability of comprehensive data from legal finance company websites and court cases may pose limitations, influencing the depth of analysis in certain areas.

2. Scope of Proposed Bill: The analysis is based on the available draft of the proposed Mediation Bill, 2023, which may still be subject to revisions and amendments, potentially impacting the comprehensive evaluation of its implications for third-party legal financing.

This methodology has been carefully chosen to align with the research problem and objectives, ensuring a comprehensive and rigorous exploration of the legal and financial landscape of third-party legal financing in India.

2. THE LEGALITY OF LEGAL FINANCING IN INDIA

This chapter delves into the legal aspects of third-party legal financing in India, analyzing its evolving landscape. Beginning with a review of landmark cases, we explore the judicial stance on legal financing. Subsequently, we examine state amendments to the Code of Civil Procedure, 1908², designed to regulate legal financing. By navigating through these legal milestones, we aim to unravel the complexities surrounding the legality and prospects of third-party legal financing in India. This chapter lays the groundwork for a detailed exploration of current trends, challenges, and the potential impact on India's legal ecosystem.

2.1. Landmark cases

In the absence of specific legislation governing Third-Party Legal Financing (TPF) in India, the legal landscape relies heavily on judicial precedent. As of the current date, the nation follows the doctrine of judicial precedence, where landmark cases play a pivotal role in shaping legal norms. This section meticulously examines the evolution of TPF through the lens of significant cases that have left an indelible mark on India's legal fabric.

Commencing with the 1876 Privy Council decision in *Ram Coomar Coondoo v. Chunder Canto Mookerjee*³, we embark on a historical exploration of the earliest major case addressing third-party legal financing. This decision not only laid the groundwork for subsequent cases but also provided foundational guidance that reverberates through the corridors of Indian jurisprudence.

Subsequently, our analysis turns to the contemporary legal landscape with a spotlight on the landmark case of *Bar Council of India v. AK. Balaji*⁴. This 2018 Supreme Court ruling stands as

² The Code of Civil Procedure, 1908

³ *Ram Coomar Coondoo v. Chunder Canto Mookerjee*, 2 App Cas 186

⁴ [(2018) 5 SCC 379]

a beacon in the realm of third-party legal financing, setting a precedent that echoes throughout the legal fraternity. As the current touchstone case in this domain, it plays a pivotal role in shaping the discourse around the legality and prospects of third-party legal financing in India.

Ram Coomer Coondoo v. Chunder Canto Mookerjee (J.C.)⁵- 25/11/1876

Facts :-

The plaintiffs, Ram Coomar Coondoo and another, filed a suit against the defendant, Chunder Canto Mookerjee, claiming Rs. 25,202 as the loss and damage alleged to have been sustained by them from or by reason of alleged wrongful and injurious acts by the defendant. The circumstances out of which the suit arose are detailed in the judgment of their Lordships. The case involved an agreement executed by McQueen and his wife and by the defendant, which was very lengthy and attested. The plaintiffs had obtained the funds to prosecute the suit by means of this agreement. The defendant argued that the agreement did not constitute a punishable offense and could not give the plaintiffs, who were strangers to it, a right of action against him.

Issues :-

1. Whether the agreement executed by McQueen and the defendant constituted a punishable offense and whether it gave the plaintiffs, who were strangers to it, a right of action against the defendant ?
3. Whether the agreement created legal privity between the plaintiffs and the defendant, thus giving the plaintiffs a right of action against the defendant

Arguements :-

The plaintiffs argued that the defendant had committed wrongful and injurious acts, which had caused them a loss and damage of Rs. 25,202. They claimed that the defendant had entered into an agreement with McQueen and his wife, which was attested and very lengthy, and that they had obtained the funds to prosecute the suit by means of this agreement. The plaintiffs argued that the agreement created legal privity between them and the defendant, thus giving them a right of action against the defendant.

On the other hand, the defendant argued that the agreement did not constitute a punishable offense and could not give the plaintiffs, who were strangers to it, a right of action against him. The defendant also argued that the agreement did not create legal privity between the plaintiffs and the defendant.

⁵ Supra Note 2

Judgement :-

The court ruled in favor of the defendant, Chunder Canto Mookerjee. The court held that the agreement executed by McQueen and the defendant did not constitute a punishable offense and could not give the plaintiffs, who were strangers to it, a right of action against the defendant. The court further permitted TPF on the grounds of promoting access to justice, but held that:

“agreements of this kind ought to be carefully watched, and when found to be extortionate and unconscionable, so as to be inequitable against the party, or to be made, not with the bona fide object of assisting a claim believed to be just, and of obtaining a reasonable recompense therefor, but for improper objects, as for the purpose of gambling in litigation, or of injuring or oppressing others by abetting and encouraging unrighteous suits, so as to be contrary to public policy, effect ought not to be given to them.”

Bar Council Of India V. A K Balaji And Ors⁶:

Facts :-

Mr. A.K. Balaji, a registered advocate in Tamil Nadu, filed a writ petition. According to the Advocates Act, to practice law in India, one must be an Indian citizen with a law degree from a government-accredited Indian university (Section 29)⁷. Foreign degrees are recognized only if Indian citizens can practice in those countries. An Indian advocate can't practice in the USA, UK, or Australia without passing their qualification exams and obtaining the necessary permissions. Despite these rules, international legal professionals are conducting seminars and practicing law in India, often on visitor visas. They evade immigration and tax regulations since disciplinary measures of the Bar Council apply only to advocates under the Act. While Indian legal practitioners can't solicit or advertise, these restrictions don't apply to foreign legal firms. In India, law is seen as a noble profession for the benefit of society, not just a money-making business. However, foreign lawyers have a different perspective, viewing it as a lucrative trade. A.K. Balaji argued that foreign lawyers should be restricted unless their countries allow reciprocal rights. He sought guidelines through the writ petition to prevent foreign lawyers and firms from operating in India.

Issues :-

(i) Whether the expression ‘practise the profession of law’ includes only litigation practice or

⁶ Supra Note 1

⁷ The Advocate Act, s. 29

non-litigation practice also?

(ii) Whether such practice by foreign law firms or foreign lawyers is permissible without fulfilling the requirements of Advocates Act and the Bar Council of India Rules?

(iii) If not, whether there is a bar for the said law firms or lawyers to visit India on 'fly in and fly out' basis for giving legal advice regarding foreign law on diverse international legal issues?

(iv) Whether there is no bar to foreign law firms and lawyers from conducting arbitration proceedings and disputes arising out of contracts relating to international commercial arbitration?

(v) Whether BPO companies providing integrated services are not covered by the Advocates Act or the Bar Council of India rules?

Arguments :-

(i): The rules for lawyers aren't just for court appearances; they apply to all legal practices. Following ethical standards is crucial for justice. The term "practice of law" includes both litigation and non-litigation.

(ii): Practicing law involves more than just court appearances; it includes giving testimony, creating documents, and participating in legal discussions. Only advocates registered with the Bar Council can practice law, and others need permission to appear in court. Regulations for advocates also apply outside of court.

(iii): When a foreign lawyer visits frequently, it may be considered legal practice. Whether a visit qualifies as practice depends on the circumstances. The Advocates Act applies to foreign lawyers practicing in India, and they can't claim exemption from the regulatory framework.

(iv): Foreign attorneys can conduct arbitrations in India, but they must follow institutional regulations and Sections 32⁸ or 33⁹ of the Advocates Act. The Indian legal profession's code of conduct must be obeyed, and specific provisions may be made by the Central Government or the Bar Council.

(v): BPO businesses can provide various services to clients without breaking the Advocates Act, as long as these activities don't essentially amount to practicing law. The Act doesn't apply if their services don't directly or indirectly involve practicing law. Each situation needs individual consideration.

Judgement :-

The case of Bar Council of India v. A.K. Balaji and Ors¹⁰, is a landmark decision by the Supreme

⁸ The Advocate Act, s. 32

⁹ Ibid. s.23

¹⁰ Bar Council of India v. A.K. Balaji and Ors, (2018) 5 SCC 379

Court of India. The case addressed the issue of whether foreign law firms and foreign lawyers could practice in India. The Supreme Court upheld the decision of the Madras High Court, ruling that foreign lawyers and law firms could visit India on a "fly in and fly out" basis to give legal advice on foreign law, but they could not set up permanent offices or practice. The court also ruled that foreign lawyers can participate in international commercial arbitrations held in India, but only if they are domiciled outside India. This case sheds light on the scope of practice of foreign lawyers and law firms in India and highlights the importance of maintaining the independence and integrity of the Indian legal profession. Recently, the Bar Council of India permitted foreign law firms in India on a reciprocity basis and with certain limitations and restrictions

The Supreme Court further observed that *"In India, funding of litigation by advocates is not explicitly prohibited, but a conjoint reading of Rule 18 (fomenting litigation), Rule 20 (contingency fees), Rule 21 (share or interest in an actionable claim) and Rule 22 (participating in bids in execution, etc.) would strongly suggest that advocates in India cannot fund litigation on behalf of their clients. There appears to be no restriction on third parties (non-lawyers) funding the litigation and getting repaid after the outcome of the litigation. In U.S.A., lawyers are permitted to fund the entire litigation and take their fee as a percentage of the proceeds if they win the case. Third Party Litigation Funding/Legal Financing agreements are not prohibited. In the U.K., Section 58B of the Courts and Legal Services Act, 1990¹¹ permits litigation funding agreements between legal service providers and litigants or clients, and also permits third party Litigation Funding or Legal Financing agreements, whereby the third party can get a share of the damages or "winnings" "*

2.1. Legislation and C.R.P.C

Legal financing in India has undergone advancements especially with regards to the amendments made to the Code of Civil Procedure, 1908¹². In the past champerty and maintenance doctrines posed obstacles to litigation financing in India. However there has been an amendment made by the Bombay High Court to Order XXV Rule 3 of the CPC¹³. This amendment acknowledges that third party funding is permissible for litigation and grants courts the authority to issue orders requiring funders to provide "security for the payment of all costs incurred and likely to be incurred by any defendant."

¹¹ The Courts and Legal Services Act, 1990, s. 58, cl. B

¹² Supra Note 2

¹³ The Civil Procedure Code, 1908, Rule.3

The concept of third party funding is recognized by law in states like Maharashtra, Gujarat, Madhya Pradesh and Uttar Pradesh through their respective state amendments to Order XXV rules 1 and 3 of the Civil Procedure Code, 1908 (CPC)¹⁴.

While some states have not explicitly recognized third party funding in their statutes there are no laws prohibiting it either. The terms of contracts have been under judicial scrutiny since 1867 when the Privy Council first allowed third party funding as a means of enhancing access to justice, in India.

To sum up the legal system in India has undergone changes to acknowledge and oversee financing. Several amendments at the state level have been made to the Code of Civil Procedure, 1908¹⁵ permitting third-party funding in litigation. These advancements have led to increased understanding among litigants and lawyers about the legality and regulation of financing, in India.

3. Current market and challenges for legal financing in India

The legal financing industry, in India has been experiencing growth aiming to assist clients who are burdened with legal expenses and inefficiencies in the legal services sector. In this chapter, we will delve into the state of the market. Discuss the obstacles faced by legal financing in India. Our analysis will primarily focus on two companies, Lawventures and Legalpay examining their structure and the services they provide. Additionally, we will shed light on the challenges encountered by these companies while operating within the system. To offer insights we conducted an interview, with the founder of Lawventures. Also, highlight some general challenges faced by businesses operating in India.

3.1. Current players

In this section we will analyze two third party litigation companies; LegalPay and Lawventures.

LegalPay :-

LegalPay Technology Private Limited is a company that offers assistance to individuals who require legal representation. The company was established in November 2019. Has received seed funding, from 9Unicorns, LetsVenture well as notable angel investors like Ashwini Kakkar and Ambarish Gupta. LegalPay utilizes its technology to evaluate cases and provide funding for approved expenses. They only charge an agreed upon percentage for cases that are successfully won while no fees are imposed on cases that are lost. LegalPay has partnered with over 4,000

¹⁴ *Ibid.* Rule 1 & 3

¹⁵ *Ibid*

professionals than 1,000 businesses and approximately 15,000 investors¹⁶. Their primary objective is to ensure access to justice for all individuals of their financial circumstances. The company primarily focuses on resolving disputes, within the B2B sector by selecting cases that offer returns.

LegalPay¹⁷ relies on AI and machine learning to evaluate claims taking into account factors such, as merit, financial feasibility the opposing partys standing, legal representation and alignment with the companys overall strategy. By doing LegalPays litigation financing approach can alleviate stress for businesses and strengthen their in house legal teams by sharing the burden. It's important to note that LegalPay doesn't replace or undermine the role of in house teams; instead it empowers them by providing access to expertise risk sharing opportunities and efficient cash flow management. Furthermore LegalPay has expanded its presence beyond Delhi NCR with offices in Surat, Mumbai, Pune and Bangalore. In essence LegalPay Technology Private Limited is a legal financing company that offers support for those in need of legal representation. Leveraging their technology for case underwriting and funding approved cases legal costs sets them apart. LegalPay only charges a agreed percentage for successful cases while no fee is imposed for lost cases. Their mission is to ensure access, to justice of ones financial circumstances.

LegalPay specializes in resolving disputes, in the B2B sector utilizing AI. Machine learning to evaluate valid claims. They offer a range of services including debt financing with the goal of ensuring access to justice for everyone regardless of their financial circumstances. By providing support LegalPay empowers businesses to pursue representation confidently. Their unique technology allows them to assess cases and cover the associated costs for approved claims. LegalPay operates on a agreed percentage basis for successful cases while not charging any fees for unsuccessful ones¹⁸.

Regarding revenue sharing LegalPay Technology Private Limited recorded operating revenues below INR 1 crore for the year ending on March 31 2022. The companys net worth is reported at INR 10.8 crore with an investment of INR 6,067,646. Their revenue/turnover remains below INR 1 crore while EBITDA has shown a decrease over time. Moreover LegalPay has successfully raised \$382,000 through five funding rounds involving contributions, from 25 investors.

¹⁶ Legal Pay, available at: <https://pitchbook.com/profiles/company/466723-45>

¹⁷ *Ibid*

¹⁸ *Supra note 16*

Lawsuits ventures :-

Lawsuit Ventures is a company that specializes in litigation finance, which is the practice of providing funding to plaintiffs and law firms to cover the costs of litigation in exchange for a portion of the settlement or judgment if the case is successful. The company is the first official non-recourse litigation finance company in India. Lawsuit Ventures has a proven track record of success, generating 5x ROI through litigation finance¹⁹.

The company's experienced team of legal and financial professionals carefully selects cases with strong merits and provides funding to individuals or businesses to pursue legal action, such as a lawsuit, arbitration, or other form of alternative dispute resolution. Lawsuit Ventures also provides legal analysis and co-equal financing in litigation finance. The company's financial model provides high returns for investors while also promoting access to justice for plaintiffs who might not otherwise be able to afford legal representation²⁰

Services they provide :-

Lawsuit Ventures operates as an online litigation financing platform for individuals and businesses, serving in the B2C, B2B space in the Financial Services market segments. The company's primary business model revolves around providing funding to plaintiffs and law firms to cover the costs of litigation in exchange for a portion of the settlement or judgment if the case is successful. This innovative model allows plaintiffs to pursue their legal rights without worrying about the high costs of legal fees, while also providing a return for investors. Lawsuit Ventures has been incredibly successful in the field of litigation finance, generating 5x ROI, and has a proven track record of success. The company's financial model provides high returns for investors while also promoting access to justice for plaintiffs who might not otherwise be able to afford legal representation²¹

3.2. Challenges faced in the Indian Landscape.

Litigation finance is an industry, on the rise in India, attracting interest from startups, law firms, companies and investors. In this part, we aim to understand the challenges that litigation finance companies in India encounter in two phases, the first part is general challenges and second part interview with Hiren Thadeshwar sir, the founder of Lawsuits Ventures.

¹⁹ Law Suit Ventures, available at: <https://lawsuitventures.com/>

²⁰ *Supra note 18*

²¹ *Supra note 18*

General challenges

These challenges fall into categories;

Transparency and Regulation; One of the obstacles in developing the financial market in India is the lack of transparency caused by incomplete regulations for green bonds and insufficient requirements for disclosure and verification. The same applies to the litigation finance industry; it requires a framework to ensure proper functioning and protect investor interests.

Market Awareness; Litigation financing is still a concept in India, so there is a need to raise awareness about its benefits and risks among potential users and investors. This can help overcome hesitations and limitations faced by companies and litigants when seeking access to litigation finance.

Legal and Ethical Challenges; The litigation finance industry faces ethical challenges, such as navigating securities law disclosures for traded litigation finance companies. This can create ambiguity and opacity, within the industry making it difficult for investors and litigants to have trust in the system.

Limited Market Size; The estimated value of the litigation funding market, in 2022 was \$12.2 billion. Experts predict that by 2030 this market will reach \$25.8 billion showing a compound annual growth rate of about 9% during the period between 2022 and 2030²². While there is potential for growth in India's litigation finance sector it currently has a market size compared to the market. This difference might impact the profitability and sustainability of litigation finance companies operating in India.

Competition within the litigation finance industry is intensifying as it continues to grow. Consequently, companies are compelled to develop strategies and unique value propositions to differentiate themselves from their competitors.

Accessing capital is a factor for litigation finance companies as they require funds from investors and financial institutions to support their operations and facilitate their expansion. In India startups and small companies face challenges when it comes to securing capital due to availability and stringent financing terms.

To summarize litigation finance companies in India encounter challenges such as transparency and regulation issues, market awareness limitations, legal and ethical concerns, restricted market size, competition pressures and accessing capital obstacles. Overcoming these challenges will

²²Ashish Rukhaiyar, 'From start-ups to law firms: The rise of litigation financing in India', available at: <https://www.businesstoday.in/magazine/deep-dive/story/from-start-ups-to-law-firms-the-rise-of-litigation-financing-in-india-381685-2023-05-17>

necessitate a framework along with increased awareness initiatives and innovative strategies aimed at fostering growth and ensuring long-term success within the industry, in India.

Interview:-

We are honored to have taken the interview of Hiren Thadeshwar²³, the founder and managing director of Lawsuits venture²⁴. We asked him about the challenges faced in running a legal finance company in India and the Impact of Mediation Act,2023.

His response:-

“As such a big problem is to find the right expertise, complex process of India's legal system. Impact of of Mediation Act 2023. There is no such big impact on the Mediation Act because people do not want to spend behind the legal process. But it will definitely help the public at large who can resolve disputes in a short time span.”²⁵

4. ADR and Legal Financing: Growth in One Leads to Growth of Another

ADR and legal financing are connected concepts that have seen expansion in recent times. This section examines the correlation, between the growth of ADR and its impact on the rise of financing. Additionally we will delve into the market for financing in India and explore how mediation and legal financing intertwine, particularly their influence on litigation finance companies.

ADR and Legal Financing: Basics

ADR encompasses methods for resolving disputes outside of the court system, including mediation, arbitration and early neutral evaluation. On the hand legal financing refers to providing resources to cover expenses related to litigation, such as legal fees, expert witness costs and court fees.

The surge in ADR can be attributed to factors such as a desire for more cost effective and convenient dispute resolution processes. As ADR gains popularity among parties involved in disputes there is an increased demand for support through financing to cover associated costs. This has resulted in the growth of an industry solely dedicated to providing financial assistance to litigants engaged in both litigation proceedings and alternative dispute resolution methods, like mediation. The growth of Alternative Dispute Resolution (ADR), in India has been noteworthy in years as the government actively supports and encourages its use to alleviate the burden on the court system and expedite dispute resolution. Consequently there has been a rise in the number

²³ LinkedIn, <https://www.linkedin.com/in/hiren-thadeshwar-972872a5/>

²⁴ *Supra note 18*

²⁵ *Supra note 22*

of ADR cases being handled leading to an increased demand for financing.

Multiple factors have contributed to this growth;

The government's dedication to promoting ADR and establishing ADR courts. Increased awareness among individuals about the viability of ADR as an alternative to litigation. Enhanced knowledge and application of ADR processes by lawyers and judges.

As India's demand for ADR and legal financing continues to grow it is expected that the legal financing market will expand, creating opportunities for litigation finance companies to operate successfully.

The connection between ADR and legal financing can be observed through aspects;

1. Funding; Legal financing companies offer resources for covering expenses related to ADR processes such, as mediation and arbitration. This allows individuals to easily access alternative dispute resolution (ADR) without worrying about the implications associated with pursuing alternatives, to litigation.
2. Increased Usage; As ADR gains popularity there is a demand for legal financing, which leads to the growth of the legal financing industry. Consequently this facilitates accessibility to ADR methods for parties involved as financial resources become available.
3. Impact on Litigation Finance Companies; The expansion of ADR and legal financing is expected to have an effect on litigation finance companies. These companies can benefit from the increased demand for their services in providing financing. Furthermore as ADR becomes widely accepted there may be opportunities for litigation finance companies to offer financial support to parties involved in these alternative dispute resolution processes.

Mediation and Legal Financing

Mediation is a form of ADR where parties engage in negotiations facilitated by a third party called a mediator. The growth of mediation can be attributed to its effectiveness in resolving conflicts, its nature and its emphasis on empowering parties to reach agreeable solutions.

The connection, between mediation and legal financing can be observed through ways;

The increasing popularity of mediation has led to a demand, for financing services. Parties involved in mediation require resources to cover the associated costs.

One advantage of mediation over litigation is its cost-effectiveness. It allows parties to reach settlements without undergoing expensive trials. This makes mediation an appealing choice for those wanting to resolve disputes without depleting their reserves.

The rise in demand for mediation and legal financing services also impacts litigation finance companies positively. These companies provide support for parties engaged in mediation and

other alternative dispute resolution processes. Consequently, this can lead to the growth and expansion of companies.

ADR, mediation plays a role in promoting the growth of legal financing. It creates a relationship between the two industries offering more options for resolving disputes and making alternative dispute resolution more accessible, for litigating parties.

As alternative dispute resolution (ADR) gains increasing traction, in India it is anticipated that the legal financing market will witness growth thereby creating an environment, for litigation finance companies to flourish and prosper.

5. Impact of proposed mediation bill, 2023 on legal financing.

The Mediation Act of 2023 a legislation, in India has brought about changes to the legal landscape particularly in the field of dispute resolution. This Act. Facilitates mediation as the method of resolving disputes whether they are commercial or otherwise. This shift towards mediation has ranging implications for the financing industry, which has traditionally focused on conventional litigation processes.

Legal Financing Framework under the Mediation Act of 2023 :-

Although the Mediation Act of 2023 does not explicitly address financing it establishes a framework that indirectly supports its growth and development. The Acts emphasis on using mediation as an early intervention mechanism creates an environment that's favorable for litigation financing. This is because mediation often leads to settlements potentially reducing dispute costs and making it more appealing for third party funders to invest.

Additionally the Act includes provisions for maintaining confidentiality and enforcing mediated settlement agreements. These provisions enhance certainty and predictability when it comes to outcomes making financing based on mediation to investors. Moreover the Act sets up guidelines for registering mediators ensuring there is a pool of experienced professionals to conduct mediation proceedings. This can lead to standardization, in mediation practices. Further increase investor confidence.

The Mediation Act of 2023 is expected to have an impact, on the practices of party legal financing in India. By placing emphasis on mediation it will open up opportunities for funders to provide financial support for mediation related expenses, such as mediator fees and expert witness fees. Moreover the Acts inclusion of provisions for confidentiality and enforceability of mediated settlement agreements will help mitigate the risks associated with financing based on mediation making it an appealing investment choice.

However the Act also brings forth challenges for third party funders. The increased focus on mediation may lead to a reduction in litigation which could potentially decrease the demand for litigation financing. Additionally the confidentiality provisions within the Act may limit funders ability to monitor the progress of mediation proceedings and assess the likelihood of an outcome. When critically evaluating the provisions and implications of the Mediation Act in 2023 it becomes evident that this legislation represents a step towards promoting mediation as a preferred method of resolving disputes. The commendable inclusion of provisions indirectly supporting financing expands parties options when seeking assistance, in dispute resolution scenarios.

However the Acts focus on mediation may present challenges, for third party funders in terms of litigation volumes and potential restrictions on monitoring mediation proceedings. To address these challenges and promote the practice of financing the following steps could be considered;

1. Increasing awareness and education about financing; It is important for both the legal community and potential clients to have an understanding of the advantages and potential of legal financing including its role in facilitating dispute resolution through mediation.
2. Encouraging collaboration between funders and mediators; Building partnerships between legal funders and mediators can help streamline the mediation process while addressing concerns related to confidentiality and risk assessment.
3. Exploring financing models; Legal funders should explore financing structures that are specifically tailored to the unique characteristics of mediation. For instance outcome based financing models can align funder interests with successful dispute resolution outcomes.
4. Providing guidelines; Having clear and consistent regulatory guidelines for legal financing can enhance investor confidence and encourage wider adoption of legal financing practices in India.

The Mediation Act of 2023 represents a change in Indias landscape by emphasizing mediation as a preferred method, for resolving disputes. While not explicitly addressing financing this Act indirectly supports its growth and development. Legal financiers have the chance to seize this growing opportunity by adjusting their methods and working together with mediators. This collaboration can result in solutions tailored specifically for resolving disputes, through mediation

6. Conclusion

In Conclusion this research paper explores the realm of party legal financing, in India shedding light on its current status and future possibilities. Through an examination of the existing

framework and an insightful analysis of the landscape occupied by legal financing companies it provides a nuanced understanding of the challenges and opportunities within this dynamic sector. By drawing comparisons with the model followed in the United Kingdom the research highlights the significance of learning from practices to develop an effective regulatory approach.

The paper particularly emphasizes the importance of establishing a structure to govern third party legal financing. It underscores the need for fairness and equity in the settlement process for parties seeking litigation funding. Recognizing the advantages offered by financing, such as enhanced access to justice and reduced financial barriers for litigants this study advocates for a cautious yet progressive regulatory stance that promotes industry growth while safeguarding all stakeholder's interests.

In addition to discussions, about India's evolving legal financing landscape this research offers valuable insights that contribute to these conversations.

The paper explores the importance of maintaining a balance to ensure accessible justice in India. It sparks conversations, about how legal financing can contribute to improving the efficiency and fairness of the system. This research sets the stage, for studies and policy discussions guiding the country towards a legal ecosystem that is more equitable and accessible.

