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Tracking the History of Alternative Dispute Resolution in India

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ABSTRACT

In order to carry out the proper functioning of the government, Constitution of India provides its 3 distinct machinery and Judiciary is one of them. The ultimate goal of judiciary is to interpret the Constitution and to resolve disputes between parties. But it's a well- known fact that despite setting up more than a thousand fast-track courts Indian judiciary is becoming inefficient to deal with pending cases. Since, there was an urgent need of such mechanism which could be generally faster and less expensive than going to the Court, the method of Alternate Dispute Resolution was introduced. Great leaders like Mahatma Gandhi and Abraham Lincoln also advocated and supported the culture of settlement.

The paper has been written with the mixture of Analytical, Expository and Argumentative approach of research. The paper analyses the evolution of the concept of ADR in different span of time. The paper further discusses the approach of judiciary in ADR giving special reference to the present condition of ADR in India (issues after the inclusion of Section 87 in The Arbitration and Conciliation (Amendment) Act, 2019, Babri Masjid Mediation, etc.)

This paper argues that such certainty components can be projected by altering the current problematic provisions of the Arbitration Act, 1940.

I. INTRODUCTION

In order to carry out the proper functioning of government, the constitution of India provides three distinct branches and Judiciary is one of them. It plays a crucial role in the way our democracy works. Dispute resolution is one of the important functions of judiciary. Whenever there is a dispute, the courts intervene in providing the solution. Whether it's a dispute between citizens, government, or between two state governments, the court is responsible for dispute resolution. It has delegated the power of dispute resolution to the ADR due to pendency of cases.

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Alternative Dispute Resolution is also known as external dispute resolution. Alternative Dispute Resolution which is commonly known as "ADR" is an alternative to the normal judicial system. It is a procedure for settling disputes without litigation. It should be remembered that it is not the solution to all disputes or conflicts. Section 89 of the Civil Procedure Code specifically mentions the ways in which disputes can be settled between the parties. Alternative Dispute Resolution is a method which provides speedy justice as well as it is less expensive than going to the Court.

ADR is not a new concept for the society. The concept of Dispute Settlement has been in existence for more than thousands of years. Chanakya (350-275 BCE) gave the concept of Dispute Settlement as Sama, Dana, Danda, Bheda in the primitive society. Quran which was revealed in between (Circa 650-656) also talks about the Dispute Settlement Method. Abu Dawud said that *"There is a great reward for those who facilitate reconciliation between disputing parties".*

Moving forward to the Indian Constitution, Article 142[3] gives powers to the Supreme Court to pass such orders as are necessary for doing complete justice in any case pending before it. The motive is that welfare should be done to the people of the society.

The Law Commission of India, in its 14th report[4], suggested devising of ways to make sure that justice should be uncomplicated, swift, easy on the pocket, effectual and substantial. In its 245th report[5] titled "Arrear and Backlog: Creating Additional Judicial (WO) manpower, Law Commission mentioned that 4407861 and 10544695 cases are pending in the Higher Judicial Services and Subordinate Judicial Services respectively. Denial of timely justice amounts to denial of justice itself. Law Commission specifically mentioned that appropriate ADR methods can divert cases outside the Court system and lead to overall reduction in pendency in the judicial system. Therefore a piecemeal approach to delay reduction should be achieved in favour of a systematic perspective.

The supervision of the ADR mechanism by Judiciary is necessary for its proper functioning. ADR is only a branch of Government. It cannot be left as a Car without break, the supervision by Judiciary is essential.

[3] Indian Constitution
[4] Report on Reform of Judicial Administration
[5] Report on Urban legislation mediation as alternative to adjudication

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II. HISTORICAL BACKGROUND OF ALTERNATIVE DISPUTE RESOLUTION

Dispute Settlement is not a new concept for the society. It has been prevalent in India since time immemorial. The earliest evolution of the concept of arbitration can be traced back to the time when King Solomon settled the dispute between two mothers where each one was claiming the right on the baby boy and the issue was who the true mother of a baby boy was.[6]

The first Arbitration Act was passed in the year 1698 under William III. Later on changes were made in accordance with the need. In India, first Arbitration Act was passed in the year 1899 and then after Arbitration Act, 1940 was enacted but it was also rejected due to some ambiguities in it. Finally in the year 1996, Government came up with "The Arbitration & Conciliation Act" which is in continuance with the recent amendment in August, 2019.

Chanakya also discussed the four methods of Dispute Resolution method as:-

- ***Sama-*** *It is a type of conciliar approach*
- ***Dana-*** *It means to pay value or compensation*
- ***Danda-*** *Use of coercive force*
- ***Bheda-*** *Use of trickery, logics to influence the mind of others*

(A) DISPUTE SETTLEMENT UNDER HINDU LAW

Under Section 23(2) of **The Hindu Marriage Act, 1955**[7], it shall be the duty of the Court in the 1st instance, in every case where it is possible so to do consistently with the nature and circumstances of the cases, to make every endeavour to bring about reconciliation between the parties.

The objective of **The Family Court Act, 1984**[8] was to promote conciliation and to secure speedy settlement of disputes relating to marriage and family affairs.

Section 9 of the above said Act[9] says that in every suit or proceeding, endeavour shall be made by Family Court in the first instance, where it is possible to do so consistent with the nature and circumstances of the case, to assist and persuade the parties in arriving at a settlement.

(B) DISPUTE SETTLEMENT UNDER ISLAMIC LAW

The validity of ADR in Islam can be derived from the verse of Quran[10] which says:-

[6] http://www.dhirassociates.com/images/Evolution-of-Arbitration-in-India.pdf
[7] Act 25 of 1955 (18th May, 1955)
[8] Act 66 of 1984
[9] The Family Courts Act, 1984
[10] Koran 4 :59

"O ye who believe; Obey God and obey the Prophet and those of you who are in authority, and if ye have a dispute concerning any matter refer it to God and the Prophet".

In a simple language, Ijma has been defined as *"the agreement of the Muslim jurist consults in any particular age on a juridical rule. The authority of Ijma as a source of law is founded on Koranic and Sunnah texts."*[11]

The verse of Quran[12] says:-

"The believers are but a single brotherhood, so make peace and reconciliation (sulh) between two (contending) brothers; and fear Allah, that ye may receive mercy."

In the same line, the other ayat of the Quran[13] says:-

"If two parties among the believers fall into a quarrel, make ye peace between them...with justice, and be fair; for Allah loves those who are fair and just."

In the Surah Al-Ma'idah, Chapter 5 Verse 42 of the Holy Quran, it clearly states that:-

"If you judge in equity between them, for Allah loves those who judge in equity."

It is argued by most of the people that in Islam it is an assumption that adjudication is considered to be the best formulae for dispute resolution.[14]

(C) ADR UNDER THE INDIAN CONSTITUTION

M.C. Setalvad, the first Attorney General of India said: *"No doubt, the British system of administration was very good and led to excellent results, but it had its defects which have been accentuated in two ways. We are now a democratic and a very populous country. In these days, therefore, what is required is a radical change in the method of administration of justice. We want court to which people can go with ease and with as little cost as possible. It is not merely the quickness of justice but it is the easy approach and quick disposal both of which are needed and that only can be achieved if the system is completely overhauled."*[15]

The preamble of the Indian Constitution seeks to provide JUSTICE- social, economic and political to every individual. The preamble in unequivocal terms declares that the source of all authority under the Constitution is the people of India and there is no subordination to external authority. The sole purpose of the Constitution is to safeguard the rights of the Individual. In case dispute arises between the individuals, institutions, etc. Dispute resolution

[11] Syed Khalid Rasheed's Muslim Law, Vth edition (2018)
[12] Surah 49 :10
[13] Surah 49:09
[14] Othman, And Amicable Settlement is Best: Sulh and Dispute Resolution in Islamic Law21 Arab Law Quarterly, 64 (2007)
[15] Dr. Anupam kurlwal, *An Introduction to Alternative Dispute Resolution System*, edition 201, page no. 76

is one of the major function of Indian Judiciary. The Government of India works through different organs and judiciary is one of the main organ of the government which works for the administration of justice.

III. ADR Under Different Indian Statutory Laws And Role Of Judiciary Towards It

(A) Indian Arbitration Act, 1899

Legislative Council of India, 1834 expressed the codification of Arbitration laws for the 1st time. Henceforth, Arbitration Act was enacted in the year 1899. The act was based on the British Arbitration Act, 1889. Although it was effective only in presidency towns such as Calcutta, Madras and Bombay.[16]

In the case of ***Gajendra Singh v. Durga Kunwar***[17], it was held that the Award as passed in an arbitration is nothing but a compromise between the parties. The purpose of arbitration is to settle dispute between the parties. Also in the case of ***Lakshmiprasad v. Yeshwantrai Hariprasad***,[18] Bombay High Court said that in all cases in which Section 4 of the Arbitration Act, 1899 applies, the defendant may still force on arbitration and, by obtaining an award from the arbitrators, they can solve the dispute outside the jurisdiction of the Court.

In each case where the Court has decided that it will retain in its own hands the decision of the case, there would thus be a race between it and a private tribunal which should be the first to give a decision in the matter. Thus, Court came to the conclusion that Indian Arbitration Act, 1899 was very complex, bulky and needs reform. The act was made to reduce the burden of judiciary.

(B) The Arbitration Act, 1940

India became a signatory to the Geneva Protocol on Arbitration Clauses, 1923 (1923 Protocol), and the Execution of Foreign Arbitration Awards, 1927 (Geneva Convention of 1927) in the year 1937

In result of the reformation, The Arbitration Act 1940 was enacted. It was based on the British Arbitration Act, 1934. It came into force on the 1st day of July, 1940.

Section 8 of the Arbitration Act gives power to the Court to appoint arbitrator of umpire.

Section 11 of the Arbitration Act, 1940 gave power to Court to remove arbitrators or umpires.

[16] http://www.dhirassociates.com/images/Evolution-of-Arbitration-in-India.pdf
[17] (1925) ILR 47AII637
[18] AIR 1930 Bom 98

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The Court initially was of the view that the power given to the Courts under Section 11 of the Act to appoint arbitral tribunal is only administrative in nature but later on in the case of ***S.B.P. & Co vs. Patel Engineering Ltd. & Anr***[19], it was held that it's a judicial power and not only administrative in nature.

Few provisions of the Act, for eg:- S.8, S.11 allow the Court for its interference in the Arbitration Procedure. Regular interference of the Court in the procedure will lead to the rise of dispute among the discretion of Arbitrators and Judges. The decision given by the Arbitrator had no validity. It could be challenged even on its merit.

In the case of ***Guru Nanak Foundation vs Rattan Singh & Sons***[20], While referring to the 1940 Act, Supreme Court of India observed that "the way in which proceedings are being conducted under the Act, has made the lawyers laugh and the legal philosophers weep" in view of the providing a legal trap to the unwary at every stage by making unending prolixity.

(C) ARBITRATION & CONCILIATION ACT, 1996

129th Law Commission Report[21] in the year 1988 advocated the need for amicable settlement of disputes between parties, the committee recommended to make it mandatory for courts to refer disputes, after their issues having been framed by courts for resolution through alternate means rather than litigation/ trials. The Committee submitted that there is a need for decentralisation of the system of administration of justice by:-

(i) Establishing other tiers or systems within the judicial hierarchy to reduce the volume of work in the Supreme Court and the High Court.

(ii) Establishing, extending and strengthening in rural areas the institution of Nyaya Panchayats or other mechanism for resolving disputes.

Hence, to improvise the 1940 Act, Government came up with "The Arbitration & Conciliation Act, 1996". This act was made to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards as also to define the law relating to conciliation[22].

Law Commission Report 245th titled ***"Arrears and Backlog: Creating additional Judicial (WO) man power"*** says that huge backlog of cases are only due to current judges strength which is inadequate. The system is not being able to keep pace with the new cases being instituted, and is not being able to dispose of a comparable no. of cases.

[19] (2005) 8 SCC 618
[20] 1981 AIR 2075, 1982 SCR (1) 842
[21] Report on Urban Litigation Mediation as alternative to adjudication, pg.1, 2
[22] Arbitration & Conciliation Act, 1996

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Further, Law Commission of India under the chairmanship of Justice AP Shah had constituted an expert committee to work on the **246th Report** titled "**Amendment to Arbitration and Conciliation Act. 1996**." It proposed several changes to the Arbitration and Conciliation Act 1996.

(D) ARBITRATION & CONCILIATION (AMENDMENT) ACT, 2015

In 2015, Government came up with the Arbitration and Conciliation (Amendment) Act, 2015. There was a need to amend the act of 1996 in order to make the arbitration in India more popular, cost effective method of dispute resolution. The main objective was to shift the people from the court's tyrannical method of dispute resolution to the speedy justice of Arbitration Tribunal. The Act came into force on October 23, 2015. The purpose was also to make the country's dispute resolution mechanism in conformity with the International standards.

Changes which were brought up by the Act[23]:-

Section 11 of the Act allowed the judicial appointment of arbitrators which shall be final and would not be subject to appeal. The application of appointment of Arbitrator shall be disposed of within 60 days.

Section 17 of the Act grants power to the arbitral tribunal to provide all kind of interim measures which the Court is empowered to grant under the Section 9 of the Arbitration Act.

Section 34 provides that for challenges to arbitral award to be disposed of by courts within a year.

In case of International Commercial Arbitration, it gives the power to appoint an arbitrator to the Honourable Supreme Court of India.

(E) THE ARBITRATION & CONCILIATION (AMENDMENT) ACT, 2019

In the year 2016, a Committee was formed under the chairmanship of Justice BN Srikrishna to look into the speedy appointment of arbitrators and to promote institutionalised arbitration. The intention was to make India a hub of Arbitration Centre. Subsequently, an amendment was done in the year 2018 but it was lapsed due to the dissolution of Houses. In 2019 NDA Government came up with the updated version of the same bill. Lok Sabha received the assent of the President on 9th August, 2019. The intention for the Amendment is to fix the loopholes created by the Arbitration and Conciliation Amendment Act, 2015. The idea

[23] https://www.legallyindia.com/views/entry/the-arbitration-and-conciliation-amendment-act-2015

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behind this amendment is to make India a hub of Arbitration Tribunal due to lots of pending cases in the Indian Courts.[24]

Sub- section 3A is added in the Section 11 of the Act. It gives power to the Supreme Court and the High Court to designate, arbitral institutions, from time to time, which have been graded by the Council under section 43-I, for the purposes of this Act. Chief Justice of the concerned High Court is allowed to review the panel of arbitrators. It is an irony that point 4(v) of Objects & Reasons, Arbitration & Conciliation Act restricts the supervisory role of Courts in the arbitration process while Section 11 of the Act demands the procedure for appointment of arbitrators. The procedure for appointment of Arbitration has never been free of judicial intervention[25]

The Arbitration & Conciliation (Amendment) Act 2019 (Amendment Act 2019) aims to diminish the intervention of Court in the appointment of an Arbitrator of Arbitration Tribunal.[26]

In the case of ***Duro Felguera SA v Gangavaram Port Ltd.***[27]**,** it was held that after the amendment, all that the Courts need to see is whether an arbitration agreement exist or not. Not more or less than it.

Again in the case of ***Mayavati Trading v. Pradyuat Deb Burman***[28]**,** after considering theDuro Felgura case (2017)and ***Garware Wall Ropes Ltd. vs. Coastal Marine Constructions & Engeenering Ltd.***[29]Court held that the law prior to the 2015 Amendment, i.e. while entertaining S.11, Court should now only look into whether there is an arbitration agreement or not.

This latest amendment clearly shows that without the intervention of Judiciary, an arbitral tribunal cannot run.

(F) THE CODE OF CIVIL PROCEDURE, 1908

The provision under Section 89 is an attempt to bring about resolution of disputes between parties, minimize costs and reduce the burden of the Courts. It came into being in its current form on account of the enforcement of the CPC (Amendment) Act, 1999 with effect from 1/7/2002. Earlier it was repealed by Act 10 of 1940. Section 89 of the Code talks about the

[24] https://www.financialexpress.com/opinion/a-final-solution-to-arbitration-in-india/1673865/
[25] https://www.latestlaws.com/adr/arbitration/role-of-court-under-the-arbitration-conciliation-amendment-act-2019/
[26] Ibid
[27] (2017) 9 SCC 729
[28] Civil Appeal No. 7023/2019
[29] (2019) SCC SC 515

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settlement of disputes outside the Court. It empowers the Civil Courts to refer those matters to alternate dispute resolution methods which may be acceptable to the parties.

Clause 1 of the Section 89 lays down the various mechanism of Alternate Dispute Resolution. It says that if there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for:-

1. **Arbitration**- It utilizes the help of a third party. After hearing both parties, the third party issues a decision that the disputes parties may have agreed to be binding or non-binding. If parties agree, the decision can be enforced a Court.
2. **Conciliation**- The parties in a conciliation process seek to reach an amicable dispute settlement with the assistance of a Conciliator. Conciliation is a voluntary proceeding.
3. **Judicial settlement including settlement through Lok Adalat**: - The Court shall refer the matter to the Lok Adalat in accordance with the provisions of sub-section (1) of section 20 of the LSA Act, 1987 and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat.
4. **Mediation**: - It is one of the options for resolving disputes. A neutral third party helps parties resolve their dispute. The mediator has no decision-making authority and cannot tell the parties what to do. The job of a mediator is to help the parties understand their interest, to formulate creative ideas and to facilitate the negotiation.

IV. Case Laws

(A) Salem Bar Association v. Union Of India[30]

In this case SC said that the main reason why Sec. 89, CPC has been inserted is to ensure that all cases which are filed in court need not necessarily to be decided by the Court itself. Seeing the delay in judgment and limited availability of judges, it has now become important to resolve disputes by alternative dispute resolution mechanisms. The concept of ADR has been successful in certain countries to such a extend that over 90 percent of the cases are settled out of the court.

The court further said that although section 89 CPC lays emphasis on out of the court settlement in order to reduce the burden of court but it has failed in its objective. And thus

[30] WP (civil) 496 of 2002

directed to constitute a committee to make the provision of this section become effective and result in quicker dispensation of justice.

(B) B.P. MOIDEEN SEVAMANDIR & ANR VS. A.M. KUTTY HASSAN[31]

Court interpreted the meaning of Lok Adalat in this case. It was held that:-

"Lok Adalat is an alternative dispute resolution mechanism. Having regard to Section 89 of Code of Civil Procedure, it is the duty of court to ensure that parties have recourse to the Alternative Dispute Resolution (for short 'ADR') processes and to encourage litigants to settle their disputes in an amicable manner. But there should be no pressure, force, coercion or threat to the litigants to settle disputes against their wishes. Judges also require some training in selecting and referring cases to Lok Adalats or other ADR process."

The court further held that *"If parties have not arrived at a settlement before Lok Adalat, they can file a compromise Petition in court."*

(C) FOOD CORPORATION OF INDIA VS. JOGINDERPAL MAHINDERPAL[32] ,

The scope of interference of the award passed by an arbitrator was dealt with by the Apex Court when they said –

"It is the function of the Court of law to oversee that the arbitrator acts within the norms of Justice. Once they do so and the award is clear, just and fair, the Court should as far as possible give effect to the award of the parties and make the parties compel to adhere to and obey the decision of their chosen adjudicator. It is in this perspective that one should view the scope and limit of corrections by the Court of an award made by the arbitrator."

(D) BRIJ MOHAN LAL VS. UNION OF INDIA[33]

It was held thatan independent and efficient judicial system is one of the basic structures of our Constitution. It is our Constitutional obligation to ensure that the backlog of cases is decreased and efforts are made to increase the disposal of cases.

(E) ONGC V. COLLECTOR OF CENTRAL EXCISE[34] (ONGC II)

In this case it was held that public undertaking to resolve the disputes amicably by mutual consultation in or through or good offices empowered agencies of govt. or arbitration avoiding litigation. Government of India directed to constitute a committee consisting of representatives of different departments. To monitor such dispute and to ensure that no

[31] CIVIL APPEAL NOS. 7282-7283 OF 2008
[32] 1989(2) SCC 347
[33] TRANSFER CASE NO. 23/2001
[34] 1995 (79) ELT 117 Tri Del

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litigation could come to the Court or tribunal without the Committee's prior examination and clearance. The order was directed to communicate to every High Court for information to all subordinate courts.

(F) CHIEF CONSERVATOR OF FORESTS V. COLLECTOR[35]

It was said that state/union govt. must evolve a mechanism for resolving interdepartmental controversies- disputes between departments of Government cannot be contested in court.

(G) SUNDRAM FINANCE LTD VS. NEPC INDIA[36]

Supreme Court said that the 1996 Act is different from that of 1940 act. Some provisions of 1940 act lead to some misconstruction and so the Act of 1996 was enacted or rather repealed. In order to get help in construing these provisions made in Act of 1996, it is more relevant to refer to the UNCITRAL Model Law besides the Act of 1996 rather than following the provisions of the Act of 1940.

V. AYODHYA TITLE DISPUTE

Hon'ble Supreme Court in one of the most politically sensitive cases *(Ayodhya Title Suit Case)* referred Mediation. The apex court in its hearing observed that the issue is not about 1,500 square feet land, but about religious sentiments. The bench said they believed this to be a better course of action than insisting on a judicial pronouncement and that the dispute be resolved amicably.

Supreme Court decision in Ayodhya Title Suit Case shows the importance Judiciary emphasis on ADR mechanisms. ADR is not only seen as an alternate mechanism but is also considered as a harmonious method of solving the dispute where focus is not only on solving dispute but on satisfying the parties.

VI. CRITICAL ANALYSIS

This paper contains the detailed examination of the evolution of Dispute Settlement mechanism with reference to the role of judiciary towards it.

In ancient time, the mechanism was not known by the society at large. Dispute between parties were settled by assemblies of learned men in a locality who knew law. The practise is still prevalent in this contemporary society but its scope has widened.. Earlier it was only the work of judiciary to solve dispute between parties. The delay in delivery of Justice was the biggest challenge before the Indian Judicial system. But after the evolution of ADR methods,

[35] (2003) 3 SCC 472
[36] Appeal (civil) 141-143 of 1999

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the amicable settlement of disputes became possible without the intervention of Court. It enabled speedy justice to the society. It also helped the Judiciary by reducing its burden. The mechanism is different from judiciary because judiciary act as a binding force but ADR method enables the parties themselves to settle their dispute. Unlike Judiciary, it never compels its decision on parties who are unwilling to accept it.

The first Arbitration Act in India was enacted in the year 1940. The Act empowered the Indian Courts to modify the award, remit award to arbitrators for reconsideration and to set aside the award on specific grounds. It allowed courts to interfere at every stage of the arbitration proceeding. This developed the culture of the Court overseeing the arbitration proceeding and not giving Arbitration the status of Alternate Dispute mechanism. Many more ambiguities were there in the Act due to which it was rejected. After it, The Arbitration & Conciliation Act, 1996 was enacted. It tried to overcome the ambiguities that were there in the act of 1940. Unlike 1940 Act, The Act of 1996 recognised the Arbitrator as a Conciliator. Under the Act of 1940, the decision of the Arbitrator regarding jurisdiction was deemed to be final. But changes have been made in the Act of 1996 due to unavailability of the provision of Judicial Review in the previous Act. If the Arbitrator has decided the issue of jurisdiction, the decision can be challenged before the court of law by the virtue of the new Act of 1996.

Further amendments have been made under the Arbitration & Conciliation Act in the year 2015. The amended Act provided that once arbitral tribunal has been constituted, the Courts cannot entertain application of interim relief. In the judgement of ***Bharat Aluminium and Co. vs. Kaiser Technical Services and Co***[37], it was held that Part I of the Act would not apply to the International arbitration. The decision in BALCO reduced the scope of judicial interference in International Arbitration connected to India.

Recently, an amendment[38] has been done in the Arbitration & Conciliation Act, 1996. Section 87 has been inserted via the amendment which states that the 2015 amendment will not apply to Court proceedings arising out of or in relation to arbitral proceedings irrespective of whether such court proceedings are commenced prior to or after the commencement of the Arbitration & Conciliation (Amendment).

Justice RF Nariman expressed his criticism about section 87 of the Act while hearing a petition challenging constitutionality of Section 87 on October 3, 2019. He commented that India cannot become hub of Arbitration if you go on like this. The above said goes against the

[37] Civ. App 3678 of 2007 (28 January 2016).
[38] The Arbitration & Conciliation (Amendment) Act, 2019

spirit of the ***BCCI v. Kochi Cricket Private Limited***[39] judgement. In the judgement it was held that the 2015 amendment to Section 36 will apply only to:-

1. Arbitral proceeding commenced on or after the date of commencement of the Amendment Act
2. Arbitration- related court proceedings filed on or after the date of commencement of Amendment Act, even where the arbitral proceedings had been commenced before the amendment came into force.

VII. CONCLUSION

Although, ADR mechanism got a new dimension after it's codification but still it's application seems to be very limited and subject to various restrictions which makes it vague. Judiciary has played very crucial role in enhancing the application of ADR but question always arises regarding the extent of interference by courts in ADR. The reason for such conflict is Lack of Consistency in decisions by Indian Judiciary on Arbitration. Inspite of some drawbacks, the scope of Alternate dispute resolution has widened in last few decades and it has been successful in it's prime objective (reducing the burden of judiciary).

After analyzing the background and scope of ADR, the paper provides for some suggestive measures which need to be considered in order to enhance the efficiency of ADR mechanisms.

1. ADR in present context is limited only to certain type of cases, the application of ADR need to be widened.
2. ***Conduct Model of Countries like*** **-** Singapore where ADR is huge success need to be looked upon and its provisions should be adopted.
3. Each Court must have Arbitration and Mediation Centres. This would ensure that the disputes capable of being solved through any of the ADR methods be first taken over by the ADR forum. If parties fail to arrive at settlement, only then the matter be taken to the Courts.
4. ***Need for more ADR centers*** **-** In cities like Delhi there is one centre for ADR and few in other cities, which is not sufficient in view of a large number of disputes arising. At least one ADR centre at each district headquarters needs to be established.
5. ***Arbitration Advocacy*** **-** Lawyers and personnel needs to be trained in techniques of Negotiations, Mediation, Conciliation, Arbitration or Counseling.

[39] CIVIL APPEAL Nos.2879-2880 OF 2018

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6. Currently ADR mechanism is limited only to urban areas. The knowledge of ADR option needs to be given to the people especially in rural areas so as to increase its application.
7. Referring some particular type of cases *(family disputes, breach of contract etc.*) to ADR should be made mandatory.
8. Application of ADR mechanism should be increased in Commercial matters.

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