Study of Alternate Dispute Resolution system (ADR) during pre and post independence in India

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Abstract : Dispute resolution outside of courts is not new; societies world-over have long used non-judicial, indigenous methods to resolve conflicts. What is new is the extensive promotion and proliferation of ADR models, wider use of court-connected ADR, and the increasing use of ADR as a tool to realize goals broader than the settlement of specific disputes. Alternate Dispute Resolution system is not a new experience for the people of this country also. It has been prevalent in India since time immemorial. Legal history indicates that down the ages man has been experimenting with procedure for
making it easy, cheap, unfailing and convenient to obtain justice2. Procedure for justice is indicative of the social consciousness of the people. Anywhere law is a measuring rod of the progress of the community.

Alternative Dispute Resolution during British Period:

The British East India Company opened their first trading centre at Surat, Gujarat in 1612. This was as per the deed of right Mughal Emperor Jehangir granted to them. Their first major interference with the internal politics of India was when they supported Mir Kasim, a minister of Bengal, militarily to sabotage Siraj-ud-Daula, the Nawab. On 23rd June, 1757, the Nawab was defeated by a joint military action of Robert Clive's troops and those of Mir Kasim in a battle at Plassey. And this was the turning point where the British formally entered the political arena of India and began to play a direct role in the administrative supremacy. They managed to bring under their administrative control most of the princely states of India either by direct annexation using force or by giving military support. They brought Punjab also under their control in 1849. Along with Punjab, the North West Frontier Province, which is now under Pakistan, was also brought under them. And in those states where a legitimate heir apparent to the crown was not available they were brought under the British rule. Sattara (1848), Udaypur (1852), Jhansi (1853), Tanjore (1853), Nagpur (1854), Oudh (1856) were some of the princely states the British

annexed using this excuse – that there were no legitimate heir apparent. When Tipu was defeated in 1792, they annexed Malabar

too.43 Judicial administration was changed during British period. The current judicial system of India is very close to the judicial administration as prevailed during British period. The traditional institutions worked as recognised system of administration of justice and not merely alternatives to the formal justice system established by the British. The two systems continued to operate parallel to each other.44 The system of alternate dispute redressal was found not only as a convenient procedure but was also seen as a politically safe and significant in the days of British Raj.

However, with the advent of the British Raj these traditional institutions of dispute resolution somehow started withering and the formal legal system introduced by the British began to rule.45 Alternate Dispute Resolution in the present form picked up pace in the country, with the coming of the East India Company. Modern arbitration law in India was created by the Bengal Regulations. The Bengal Regulations of 1772, 1780 and 1781 were designed to encourage arbitration.46 Bengal Resolution Act, 1772 and Bengal Regulation Act, 1781 provided parties to submit the dispute to the arbitrator, appointed after mutual agreement and whose verdict shall be binding on both the parties. Hence, there were several Regulations and legislation that were brought in resulting considerable changes from 1772. After several Regulations containing provisions relating to arbitration Act VIII of 1857 codified the procedure of Civil Courts except those established by the Royal Charter, which contained Sections 312 to 325 dealing with arbitration in suits. Sections 326 and 327 provided for arbitration without the intervention of the court.

After some other provisions from time to time Indian Arbitration Act,1899 was passed, based on the English Arbitration Act of 1889. It was the first substantive law on the subject of arbitration but its application was limited to the Presidency – towns of Calcutta, Bombay and Madras. Act, however suffered from many defects and was subjected to severe judicial criticisms. In 1908 the Code of Civil Procedure was re-enacted. The Code made no substantial changes in the law of arbitration. The Arbitration Act of 1940 was enacted replacing the Indian Arbitration Act of 1899 and section 89 and clauses (a) to (f) of section 104(1) and the Second Schedule of the Code

of Civil procedure 1908. It amended and consolidated the law relating to arbitration in British India and remained a comprehensive law on Arbitration even in the Republican India until 1996.

Alternative Dispute Resolution post independence:

Bodies such as the panchayat, a group of elders and influential persons in a village deciding the dispute between villagers are not uncommon even today. The panchayat has, in the recent past, also been involved in caste disputes.47 In 1982 settlement of disputes out of courts started through Lok Adalats. The first Lok Adalat was held on March 14, 1982 at Junagarh in Gujarat and now it has been extended through out the country. Initially, Lok Adalats functioned as a voluntary and conciliatory agency without any statutory backing for its decisions. By the enactment of the Legal Services Authorities Act, 1987, which came into force from November 9, 1995, the institution of Lok Adalats received statutory status. To keep pace with the globalization of commerce the old Arbitration Act of 1940 is replaced by the new Arbitration and Conciliation Act, 1996. Settlement of matters concerning the family has been provided under Order XXXIIA of the Code of Civil Procedure, 1908 by amendment in 1976. Provisions for making efforts for reconciliation under Sections 23 (2) and 23 (3) of the Hindu Marriage Act, 1955 as also under Section 34 (3) of the Special Marriage Act, 1954 are made. Family Courts Act was enacted in 1984. Under Family Courts Act, 1984 it is the duty of family court to make efforts for settlement between the parties.

Introduction of section 89 and Order X Rule 1A, 1B and 1C by way of the 1999 Amendment in the Code of Civil Procedure, 1908 is a radical advancement made by the Indian Legislature in embracing the system of "Court Referred Alternative Disputes Resolution".

Conclusion :

India has a long history of settlement of disputes outside the formal justice delivery system. The concept of parties settling their disputes by reference to a person or persons of their choice or private tribunals was well known to ancient India. Long before the king came to adjudicate on disputes between persons such disputes were quite peacefully decided by the intervention of the kulas, srenis, pugas and such other autonomous bodies.48 These traditional institutions worked as main means of dispute resolution, not an alternative. During the British rule the system of dispute resolution was

changed and a new formal, adversary system of dispute resolution originated. Arbitration was recognised as out of court method of dispute resolution and several provisions were enacted relating to that. The ADR system as is understood in the present scenario is the result of the shortcomings of that formal judicial system. Now the alternative disputes resolution techniques are being used to avoid the costs, delays and cumbersome procedure of the formal courts.

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