ADR APPROACH TO ENVIRONMENTAL LITIGATION

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Though in the beginning ADR was restricted to civil litigation slowly it has entered into the sphere of criminal law. With the changing times, we have to introduce ADR to other areas also, where there is more litigation and where the traditional courts would take time in resolving the issues. One such area is environmental litigation. The nature of the litigation in the environmental sphere is not complex. In case mediation is used as a tool of dispute resolution rather than litigation in the traditional courts, the results would be more fruitful. The unique characteristics of environmental litigation require a change in the application of ADR.

Environmental litigation is unique in its own way, unlike the traditional litigation. Another hurdle in the resolution of environmental litigation is the issues involved are highly technical and the vocabulary used is highly scientific. The language is very complex and only intelligentsia of the specific field alone is capable of understanding the problem. It would be difficult to do justice for the traditional judges, who are familiar with this kind of scientific knowledge. In ADR, where the parties have a choice of appointing their own arbitrator, mediator or conciliator they can choose a person having special knowledge in environmental science.

Environmental litigation is a unique kind of litigation to which the traditional courts have yet to get adjusted. The technical complications make the job of a judge difficult. When an expert is called to depose before the Court for his opinion it not viable not only cost wise but also time wise. With these reasons in mind in most of the western countries ADR is introduced to resolve environmental litigation. The parties to the litigation voluntarily and actively participate in the dispute resolution. At any point of time and stage of the proceeding any one of the parties can withdraw from the litigation.

To make arbitration, mediation and conciliation a success in the field of environment litigation governments have to take certain precautionary measures. The Governments have to frame rules for the appointment of mediators and identify the cases, which can be tried by Alternative Dispute Resolution mechanism. Rules are to be framed indicating certain guidelines. As in the case of Motor Vehicle Accident Claims monetary benefits for the loss are to be indicated in the framed rules themselves so as to rule out arbitrary awards by the mediators. The intent of this mandate must be “to establish an informal system of settling tort claims arising out of environmental problems. In the absence of such guidelines, the awards would be arbitrary and the pending would pile up cases on par with the
traditional courts defeating the very purpose of introducing mediation in the field of environmental litigation.

In several environmental disputes most of the times government is one of the parties. If it is an issue related to water or sewerage local municipalities become parties. At times even the corporations are involved. ADR methods are simply better at addressing the issues and interests that arise from environmental law cases.

Environmental conflict resolution through ADR seeks to resolve some of the cited critical issues by mandating the elimination of the adversarial process, and replacing it with a forum in which everyone involved has a chance to express their interests and concerns, and where the third-party mediators are not bound by the same rules and restrictions that often tie judge’s hands in such cases. State should insist ADR as a preferred, if not primary, means of resolving environmental conflicts. It makes sense in terms of the benefits it offers, not only to the plaintiff and defendant, but also to the public impacted by its outcome.