

Issues The Investors And Traders in SAARC Countries Face Due to Lack of Professionalism with Regard to the Way We Practice Law

transcribed plenary speech of

Mr.Thusantha Wijemanna

Director General SARCO Arbitration, Islamabad, Pakistan

thusanthaw@gmail.com

There are a certain issues regarding the investors and the traders in the SAARC countries faced with because of certain lack of professionalism with regard to the way we practice law. There is about inculcating professionalism into legal profession, professional ethics for legal practice, before looking at the legal prospective, it can be seen that out of the world population of 7.3 billion in the SAARC region we have about 1.3 billion which is about 23% of the world population, you take the youth population of SAARC it's 494 million which is 27% of the world youth population. In the South Asia the Foreign Direct Investment in 2014 is 41 billion which 1.7% of the world total FDI. We have 27% of the population but only 1.4% of the FDI, out of the world 1.4 billion of people in South Asia earn only 1.25\$ per day, before looking at the total infra trade in the south Asian region it's only 2% in GDP in South Asian countries, where as it is 40% of GDP in ASEAN countries.

We have a market of 25% of the world but we're unable to sell our goods, why is that? Why is there a hindrance of trade? No inter regional trade? You will ask me what law has got to do with this. My argument is one of the reasons for non-expansion of trade and investment is in the part of the investor or the trader to be subjected in to the jurisdiction of the investee when it comes to dispute resolution or vice versa, as long as this intervention exist people will be dealing with trade precautions, what happens there is having spoken to many traders in both sides of the borders in Pakistan and India I could see that neither party trust each other when it comes to dispute resolution, so how do we get out of this, they refuse to go to court because they do not trust the jurisdiction of each other, alternate dispute resolution can succeed in these areas but the question is do we as lawyers practice ADR in a professional manner? Because of this issue the trade has been hindered for the development of trade in the region. One possible way is to have a mechanism to build the mental trust among the parties in which as a result SAARC arbitration council can function. We have brought all the requirements for arbitration, the question is why people don't want to come for arbitration, and they do not want to go through it, arbitration council is a very independent institution which is not controlled by

any of the SAARC countries, attributed by all SAARC countries, appointments are rotational, professionals are recruited from all the countries, the only thing is that the secretaries is at Islamabad for the reason that it should be somewhere in the region, the real question is why people are not coming there? In all these countries when you go to meet the business community they want to go Singapore Malaysia, but does not look at the other countries, why is that, I asked them and the response was they said if we go to Singapore we can get our work done very fast and flexible, they handle it in a very "professional manner" in other words the arbitration centers in the SAARC region, we are not handling it in a professional manner or if in the past we used to go to London or to the Hague but all this has a cost to the trader or the investor so that is why the setting up of the arbitration council in Islamabad was to provide a legal frame work within the region for fair and efficient settlement of commercial industry regarding dispute or any sort in a method of dispute resolution or arbitration and to promote the grown dispute resolution and to promote the growth of arbitration by providing fair and inexpensive arbitrary service. I have a context that I'm prepared to deliver it but I'm unable to get people to make use of it, I have the best set of rules, they are based on an arbitration model but I'm unable to get this expectedly going, I'm trying to do it now by setting up limits. If you come before the SAARC you have to go through that process and the results will be awarded within 6 months or one year, we are trying to fix up the times because otherwise what has happened today is even in the legal profession to whom this arbitration is been entrusted by the business community has become, I hope that I'm not offending anybody, but it has become the evening practice of the practicing lawyers, they come in the evening at 3 or 4.30 and hold it for one or two hours and go off, but that is not arbitration, so the purpose of an ADR expectedly is not awarded. Sometimes it takes three years to get an arbitration award, but still it is fast because your import will take five years, the question is we as professionals we're taking it to arbitration to decide or accept for arbitration making the traders or the investors sit in the arbitration centers from morning till evening to finish the arbitration. I'm

sorry to say but some of the reasons per say when you're selecting an arbitrator you will always think that the older they are they've wisdom but you have younger people who has wisdom, I'm saying matured middle aged people, who are prepare to sit for long hours, I'm telling with experience I have gone before arbitrations where lawyers are not prepared to sit for more than two hours because they physically cannot sit for more than 2 hours, this is not exaggeration, I'm telling you with experience and therefore arbitrations are postponed so if we a s a country go forward, to develop, if we are to encourage foreign direct investment to this country we must have an arbitration mechanism where the disputes can be recovered quickly.

The business community is not happy to come and sit here for two or three years for investments, they want it in six months or so and if there are disputes they want solutions and the solutions can be done, we have that infrastructure, we have the rules and regulations but we have to change our mindset of the people who are making use of this arbitration center. So this is how professionalism can win your team to help the development of the country as lawyers because we think another reason that you think why do you want to go for arbitration, the procedure is simple, you'll never hear about losing an arbitration on a technical error, but what has happened is the easy procedure to be used has become so complicated because you have selected the wrong people, as your arbitrators I was told in India most of the retired supreme court judges are now arbitrators and sometimes in fact one lawyer was saying the

procedure that he has adopted is much more stringent than the procedure in the court because he has the freedom of deciding his court procedure. So therefore we have to, my appeal to the younger generation is if we're go into the encouragement of investment to our region and once you become lawyers we have to change the mindset saying that lawyers who are practicing ADR should practice it fulltime basis. Arbitration reconciliation cannot be considered as part time practice we should consider this as full time practice. They should come and work the same time lawyers appear in courts. Appear continuously for 3,4 days and come up with solutions, if that is possible then we will be able to attract more foreign investment to this part of the region otherwise this region will always be stagnating. We have the markets, we distrust each other and we will allow the outsiders to come and dump their goods in these markets, when 40% of the trade is happening with the ASEAN countries we are doing only 2% so this is something we have to seriously look upon.

My appeal to the younger generation is please look at the future of the country in your hands and when you're practicing think that the country is at first, and therefore we must do things suitable for the country. I'm not saying that you'll should not go to court and do only at ADR practice you can continue the judicial practice, but if anybody is going to ADR take it as full time and do it full time and this is the only way this country can go forward. The international ADR center in the World Trade Center and I hope in time to come we can do this fulltime and bringing people for this.