

NATIONAL JUDICIAL ACADEMY



WORKSHOP FOR SAARC JUDGES.

Report by: Sanidhya Sadanand Nayak.

4th year, B.A. LL. B.,

Bangalore Institute of Legal Studies.

Karnataka State Law University.

Background:

Prof. (Dr.) Geeta Oberoi initiated the sessions for Day 3 of the Workshop for SAARC Judges.

The representative Judges from all the Member States of SAARC except Maldives were present. The sessions were to envisage SAARC Arbitration Council (SARCO) and Case, Court and Docket Management Systems. The sessions were respectively addressed by Mr. Ajay Thomas and Justice Roshan Dalvi.

Mr. Ajay Thomas is currently the Registrar, London Court of International Arbitration-India who addressed Session 9: Regional Commercial Arbitration Council- the Idea whose time has come. The ADR Mechanisms in each of the Member States was envisaged. Further, the reasons as to why no matter has been submitted to SARCO was also pondered.

Justice Roshan S. Dalvi Former Judge, Bombay High Court addressed Session 10 on Case/ Court and Docket Management developed within SAARC. The techniques as to optimum usage of time though management were envisioned. The methods which need to be adopted by the staff of the court was also enlisted.

The program coordinators of this work shop were Mr. Sanmit Seth, Law Associate at the National Judicial Academy; Mr. Prasadh Raj Singh, Law Associate at the National Judicial Academy and Mr. Milind Bhaskar Gawai, Research Fellow, National Judicial Academy.

SAARC Regional Arbitration Council-Is it an idea whose time has come?

Resource Person: Ajay Thomas.

The SAARC Arbitration Council established the arbitration council with an object to create favorable conditions for fostering greater investments by investors of Member States with other Member States. The Member State further have an object to have regional forum for settlement of commercial disputes by conciliation and arbitration.

The importance of the Arbitration Council of the European Council is well known and SAARC needs to attain the similar if not the equal level of importance within the Member States. The SAARC Arbitration Council (SARCO) was established in 2005 via the Agreement for Establishment of SAARC Arbitration Council. The Council is based in Islamabad, Pakistan. It has been years since inception and yet not a single matter has been registered in the said Council.

The fact is that the level to be attained between SAARC Member States has not been achieved yet, this depicts that the Member States have not been able to optimally promote trade and commerce between themselves. Furthermore, it is to be noted that the global market has so many options for the individual Member States to explore that we have ignored the fact the market potentialities between the Member States of SAARC.

The Resource Person who addressed the session in this matter Ajay Thomas is currently the Registrar in the London Court of International Arbitration (LCIA) – India. LCIA is one of the oldest arbitration council established at London in 1892. The question at the base which is put up is why arbitration as a method of dispute resolution. It is a known fact that there exists pendency of cases in mostly all the Members States of SAARC. The burden on the court has increased to level were the need of Alternative Dispute Resolutions (ADR) Methods is well acknowledged. The Member states are in a way or other are not only promoting ADR Methods but are also practicing it at their respective National Levels. This mitigates pendency of cases at a miniscule level if not on a great level. The promotion of Arbitration as an ADR Methodology has found great significance as most of the contracts now specifically contain Arbitration

Clauses for adjudication of disputes if any arise. It has been quoted by Fali Nariman that the future of arbitration is bright as that of litigation is not which was stated in context of Indian disputes. The unique facet of ADR in India is that even on the valet tickets of various hotels and restaurants it is stated that dispute shall be resolved as the Arbitration and Conciliation Act, 1996.

The position of arbitration in each of the countries was also envisaged. In Sri Lanka ADR is a requirement before the inception of the case in the court. In Sri Lanka the appointment of Specialist Arbitrators is preferred as opposed to Generalist Arbitrators. In India the Arbitration and Conciliation Act has been recently amended i.e. in 2015. It was further stated as to how the New York Convention of United Nation in 1958 being ratified by the all of the SAARC countries expect for Maldives. In sharing further experience regarding arbitration the other Member State depicted the practices in their respective nations. In Pakistan there is no practice of ADR. The process of ADR is very active in Sri Lanka. In Nepal there exists an Arbitration Council. Further in Bhutan ADR is suggested at grass root level. In Bangladesh, ADR is suggested in Family Courts and in settlements of financial matters.

It was found that in 74% contracts in India had an arbitration clause. This depicts as to how arbitration is now becoming the first choice for dispute resolution in India. Arbitration at the grass-root level is extremely famous as a dispute redressal system with regard to commercial transactions. With the advent of Information Technology in ADR like tele conference; video conference and real time transcriptions have come into great use for the process of hearings. The allocations of costs, cost of facilities and support services like hearing rooms, translators and transcriptions are provided as a whole in ADR. The measures in ADR are aimed at reducing costs.

In Pakistan, arbitration is favored with regard to commercial transactions. With regard to arbitration in Afghanistan, the various commercial committees which exist envisage the ADR method as a mechanism to adjudicate matters. There exists an Arbitration Act in Nepal as well. However, in Bhutan arbitration has been one of the oldest ADR methods. They are now attempting to redefine arbitration specifically

in connection to construction matters. The training of domestic arbitrators is being concentrated on and the perspective of mediation; socially and economically is also being envisioned. In Bhutan, the cases are not as voluminous as in other Member States as it is a mandate for the courts in Bhutan to dispose of matters within a year of its inception and if not done so then they will have to report the matter to their Apex Court with satisfactory reasons as to the delay.

It was further discussed as to the Arbitration Center in Bangalore functioning under the Hon'ble High Court of Karnataka. There is plenty of work and is currently working on the disposal of civil disputes. The arbitrator's fee is fixed as per the Arbitration Rules, 2012. The process is not new but has been institutionalized and is typically less expensive. The aim was to make it more accessible; financially.

It was discussed as to the difference between ad-hoc arbitration and institutional arbitration. Ad-hoc arbitration is a high fuel consumption mechanism. The fees of the arbitrators are based on sittings. It takes almost an eternity for completion. Institutional Arbitration takes you to the same destination with greater speed, higher efficiency and dramatically less fuel consumption.

With regard to arbitration it was discussed as to the existence of Arbitration Councils in nations of the Member States of SAARC. It was observed that there are:

- In India, there are various levels of Arbitration Centers. There are Arbitral Institutions, Specialist Arbitral Institutions, Business Chambers that have Arbitration mechanism, Court appropriated Institutions and International Arbitral Institutions. The Court appropriated Institutions for Arbitration are placed in places like Delhi, Chennai, Bangalore and Chandigarh all of them functioning under the High Courts of respective States.
- There are 2 Arbitration mechanisms in Bangladesh. They are the Bangladesh International Arbitration Centre and Bangladesh Council of Arbitration.
- In Pakistan there is no institution as such for arbitration. However, there is Karachi International Arbitration Centre which is a facility and not an institution. In regard to other ADR methods there exists

National Centre for Dispute Resolution which is Pakistan's first mediation center.

- In Afghanistan, there exists Afghanistan Center of Commercial Dispute Resolution which has been very recently established i. e. in June 2015. It delivers mediation to domestic and international business communities by supplying mediation services.
- There are 2 mechanisms in Sri Lanka. They are: Institution of Development of Commercial Law and Practice Arbitration Centre and Sri Lanka National Arbitration Center. The latter is the sole center which has been institutionalized.
- In Nepal there exists no institution for Arbitration. However, the Nepal Council of Arbitration was founded in 1999 and is an autonomous and non-profitable organization.
- The Alternative Dispute Resolution Act of 2013 in Bhutan calls into existence of Bhutan ADR Center. But this has not come into existence yet.
- Maldives provides a legislation i. e. Arbitration Act, 2013 which requires for Maldives International Arbitration Centre to be formed.

The Agreement for Establishment of SAARC Arbitration Council (SARCO) was signed in 2005 by all the Member States of SAARC and entered into force on 2 July 2007. The Secretariat of SARCO came into existence in 2010. The current Director General is Mr. Thusantha Wijemana from Sri Lanka. The rules have been modelled on the UNCIRA Arbitration Rules. SAARC is also on track to establish South Asian Economic Union.

The SAARC Arbitration Council (SARCO) was established to decide on arising disputes within the Member States especially regarding trade. There has been no single matter reported to the stated council in its history. The Agreement provides for the service to be accrued by anyone having business in any SAARC Country. Another unique feature is that the Agreement has stated that the parties to an agreement executed in a country outside SAARC country region are not restricted from seeking solutions for their respective conflicts. The major reason for this has been the limited intra- regional trade between SAARC members is less than 5%. The reason as to why such hesitations exist between Members States needs to be thoroughly examined.

Case/Court/Docket Management Systems developed within SAARC.

Resource Person: Justice Roshan Dalvi.

The Resource Person in the session, Justice Roshan Dalvi, who is a Former Judge of the Bombay High Court Bench. The initiating statement of the Resource Person was that the stark fact is that even with advent of ADR systems, Court remains the main form of adjudication.

The Resource Person then said as to how management in one form or other exists in creatures other than human beings exists as well. The geese fly in a V formation taking turns as to lead; the penguins huddle together to keep themselves warm in cold expanses; bees have structured & defined roles in their lives; ants also perform huge tasks as a community. The facet of team work is the foundation to success.

The aim of case management is to improve efficiency, reduced delays and cutting costs. The Applicability of Lord Woolf's Report in Indian context with respect to management in courts require various deviations. They can be stated as follows:

- ⇒ Amendment of CPC / HC Rules is required.
- ⇒ Either one of Written Statement or Affidavit-in-Reply will work as in their essence they are both the same.
- ⇒ Examination-in-Chief Affidavit must be adapted.
- ⇒ Summary suits or Fast Track or Others must be explored at greater levels
- ⇒ Civil / Criminal Judges.
- ⇒ Original / Appellate Sides.
- ⇒ Package Deal meaning all particulars are to be collected.
- ⇒ ADR – Arbitration; Mediation; Conciliation & Lok Adalat are to be envisaged more.
- ⇒ Imposing realistic costs is the need of time.

The Resource Person states as to the process of Case Management. It is further stated as to the requirement of infrastructure and sensitivity for procedural and substantive law respectively. The Stages of Case Management were stated. They can be stated as:

- Written Statement-time frame to be strictly observed.
- Original documents- no hassle of attestation by proper authorities.
- Preliminary Decree-temporarily relieve the matter for sustenance.
- Issues -framed as soon as possible.
- Admissions- stricter time caps.
- Evidence- proper marking and eradicate fabricated ones.
- Compilation- the case documents in one set.
- Arguments- time restrictions on the lawyers.
- Precedents (settled principles of law)-well known.
- Judgment- ordering.
- Judgment on Arguments (Summary Judgment) - wherever necessitated.
- Costs- need to be effective and practical.
- Alternative Dispute Resolution (ADR) - wider referral scope.
- Summary Suits (Small claims) - quicker disposal to be attempted.

The Resource Person further deliberated as to the aspects of court management. The aspects which were explored:

- a) Valuation (Court fees) - required to be practical.
- b) Scrutiny- strictly undertaken.
- c) Technicalities- array of unnecessary ones.
- d) Directions- sterner time restrictions to be put.
- e) Certified Copies- movement between court rooms.
- f) Group matters - compartmentalize similar matters.
- g) New Suits- specifically tried at optimum rapidity.
- h) Case tracking- required to be efficient.
- i) Expedition Orders- to enforce as soon as possible.
- j) Discharge of Suits on Board- disposal of prior cases.
- k) Classification of Suits- at the get go.
- l) Registrar's Powers- practical enforceability is a requisite.
- m) Time accountancy (performance standards & balance sheet of cases) – to be prepared on a regular basis.
- n) Amendment of Statutes regarding notice (S.80, S.527, and S.164) - required for better attempt at disposal.

There exist various requirements for effective management in courts from the side of people other than adjudicators. The amendment of CPC by initiative of High Courts; formations of High Court Practice Directions; imparting Judicial Training at regular intervals; effective Precedents and need of efficacy in Court Administration.

The aspect of Docket Management is to be looked at.

- ✧ Service- Computer updating. Use of electronic media.
- ✧ Written Statement- updating record mechanism.
- ✧ Directions- quicker communications and actions on them.
- ✧ Case tracking- app based efficacy. Regular updates.
- ✧ Expedition orders- tracking relief enforcement.
- ✧ Discharge of board- with reference to prior matters.
- ✧ Classification- on the basis of nature.
- ✧ Delegation of Powers- to interns; clerks, etc.

The Resource Person further stated as to the two-lettered 10 words: *If it is to be; it is up to me*. This depicts that every person needs to work for achieving change for the better; for removal discrepancies and also for endowing trust in courts.