

**2nd China-South Asia Legal Forum
Kunming, Yunnan Province**

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*Justice Surendra Kumar Sinha
Chief Justice of Bangladesh.*

*“Protocol Speech at the opening ceremony
of the 2nd China-South Asia Legal Forum”*

Mr. President of the Session;
Esteemed Chief Justices, Justices;
Distinguished, Participants, Judges, Lawyers, Revered Educationists and Delegates;
Ladies and Gentlemen.

Very Good Morning.

It is indeed a great honor and privilege for me to be part of this global event. It is also an immense tribute and enormous pleasure for me to be accorded an opportunity to deliver a Protocol Speech at the opening ceremony of the 2nd China-South Asia Legal Forum in the presence of very eminent and esteemed participants, key note speakers from China and other South Asian countries who have long experience and understanding of the crucial issues to be discussed in the two day long sessions. At the very outset, I express my deep gratitude to China Law Society, the organizers of the 2nd China-South Asia Legal Forum. Undoubtedly, I feel proud to remain present in the congregation of esteemed justices, eminent lawyers, high level government officials and distinguished teachers, academics of China and South Asian countries. I am pleased to extend special thanks to China Law Society for establishing China-South Asia Legal Research Centre and China-South Asia Legal Training Base on the basis of the legal framework of the China-South Asia Legal Forum.

1. Law and Policy on Sustainable Development:

We know that sustainable development is conceived to be anchored on three pillars, which are to evolve concomitantly on sustainable factors, namely, economic, social and

environmental and to be centered on the human being, implying that the process of sustainable development is necessarily inclusive and should promote unity in cultural and other forms of diversity. But it is essential, in the context of establishing this unity, that diverse cultures, interests and wishes, particularly of the downtrodden and disadvantaged groups, are facilitated to flourish and find proper expressions in appropriate forms. Sustainable development also invokes intra- and intergenerational equity, i.e. equity among and within nations at the present time and the management of natural and other resources so that while the present generation meets its needs, the future generations can meet theirs too.

Bangladesh has achieved significant progress in respect of all three pillars of sustainable development, especially the social front. Bangladesh is fully committed to pursuing sustainable development, seeking to establish and maintain economic vibrancy, social equity and inclusiveness, human dignity for all, and a healthy environment and a sound natural resource base. However, given its resource limitations, the country needs finance and technology transfer as well as capacity enhancement support, consistent with the properly defined tasks that it will take to move steadfastly towards the goal of sustainable development.

Sustainable development in the realm of law and policy has only begun to be addressed by existing institutions, but not in an adequately integrated way. In public international law, the overarching concept of sustainable development vitiates fragmentation. It inspires cooperation, coherence and innovative governance systems. The Centre for International Sustainable Development Law (CISDL) is undertaking research on the necessary principles, rules and policies, in order to make a valuable contribution to the development of this field, assisting scholars, countries and international institutions to formulate international law in a more integrated, principled manner, to address intersections between different international legal regimes and to implement the myriad new international treaties and instruments in the field of sustainable development.

2. Relationship between Bangladesh and China have Gained a Momentum

Since Bangladesh gained its independence in 1971, it has followed Bangabandhu Sheikh Mujibur Rahman's principle of friendship towards all and malice towards none in dictating its foreign policy. Since the establishment of diplomatic ties 41 years ago, Bangladesh and China have had a relationship of shared mutual cooperation in the economic, military,

technological and cultural fields. Both countries also share the same outlook on a number of important international and regional issues. During the 41-year period, there have been Presidential/Prime Ministerial State visits and high level Official visits from both countries. This is a clear sign that Bangladesh gives significant importance to its relations with China, and vice versa.

Since the mid 1970s, China's contribution to Bangladesh's development in the form of economic aid, military assistance and infrastructure development has been a prominent feature of the bilateral relationship. In June 2010, Vice President Xi Jinping paid an official visit to Bangladesh during which nine agreements were signed including an agreement on capacity building of law enforcement agencies, telecommunications and the peaceful use of nuclear energy. In March 2010, Prime Minister Sheikh Hasina paid an official visit to China during which, the two sides issued a joint statement and decided to extend the cooperation between China and Bangladesh to cover agriculture, flood prevention, disaster reduction and culture, among other areas.

Economic issues include those concerning economic imbalance, productivity slowdown, regional integration and disparity, demographics and labour supply, aging and social security, resource constraint, environmental pollution, interest rate and exchange rate deregulation, currency and capital account convertibility, etc. Economic cooperation between the two countries has grown significantly during the past 41 years. Notwithstanding the very warm and cordial relations between the two countries, free of any major irritants, the issue of Bangladesh's increasing trade deficit with China has been raised by Bangladesh from time to time. Without question the single most important aspect of China-Bangladesh relations has been the extensive defence cooperation between the two countries. By the end of 1990, nearly 90% of the equipment used by the Bangladesh Armed Forces was provided by China on very special terms. The defence cooperation covered training and technical assistance and regular exchange of high level visits. China also earned goodwill by constructing on a grant basis, six China-Bangladesh friendship bridges since the 1980s with a seventh currently under construction. It also built a large conference centre in Dhaka.

Bangladesh-China bilateral trade has been increasing significantly over the years, both in terms of absolute amount and percentage change among Bangladesh's top trade partners. As per the statistics of Export Promotion Bureau of Bangladesh, the country's total

merchandised export to China was USD 808.14 million in the year 2015-16, which was only USD 319.66 million in 2010-11. Thus, Bangladesh's export to China grew at an annual average of 30 percent in the last five years. Chinese involvement in Bangladesh's two special economic zones (SEZs) and establishing a dedicated export processing zone (EPZ) for China would help boost bilateral trade and increase Bangladesh's exports to the global market.

3. China's One Belt One Road Project:

China's "One Belt One Road" (OBOR) initiatives has implications for huge cross border business activities spanning more than 40 countries, 4 billion engaged population involving USD 21 trillion of GDP. In fact, OBOR, is a development strategy initiated by Chinese President XI Jinping in 2013. OBOR's significance lies in that-

- It is a key initiative for China's government to build stronger economic links between Asia and Europe;
- Provides the premise for a Chinese framework for organizing multinational economic development through the land-based "Silk Road Economic Belt" and oceangoing "Maritime Silk Road"; and
- Incorporates the principal aim to boost connectivity and commerce between China and 64 countries with a total population of 4.4bn by building infrastructure and boosting financial and trade ties.

It cannot be denied that OBOR aims to redirect China's own domestic overcapacity and capital for regional infrastructure development to improve trade and relations with ASEAN (Association of Southeast Asian Nations), Central Asia and European countries. It could have as much impact on China's internal economy as it will have internationally. China's top priority is to stimulate its domestic economy via exports from industries with major overcapacity such as steel, cement and aluminum. Many will be build-transfer-operate schemes in which large state-owned enterprises (SOEs) will lead the way, but smaller companies will follow. The domestic plan divides China into five regions with infrastructure to connect neighboring countries and increase connectivity. Each zone will be led by a core province: Xinjiang in the Northwest, Inner Mongolia in the Northeast, Guangxi in the Southwest and Fujian on the coast. During the recent visit of Chinese President Xi Jinping to Bangladesh, both countries have signed 27 deals on cooperation in a

number of sectors including coastal disaster management and construction of the Karnaphuli tunnel. In fact memoranda of understanding have been signed under China's "One Belt, One Road" initiative, for cooperation, maritime cooperation, joint feasibility study on a free-trade area, new ICT framework, counter-terrorism collaboration, capacity building and sharing of information, tackling climate change risks, regional and international cooperation, and cooperation on power and energy sectors. Of these projects, the estimated loan to come for the Padma Bridge rail link project is \$2.57 billion, Dhaka-Chittagong railway project \$3.03 billion, Dhaka-Ashulia elevated expressway \$1.39 billion, Sitakunda-Cox's Bazar marine drive expressway and coastal protection project \$2.85 billion and four-lane Dhaka-Sylhet highway project \$1.6 billion.

4. China-South Asia Legal Cooperation in Infrastructure Constructions, Investment and Finance:

China-South Asia Legal cooperation is *sine a qua non* so far it relates to investment, both direct and indirect; infrastructure construction and operation, planning, design, supply, construction, operation and technical cooperation; construction of economic and industrial zone, scientific park, process zone, development zones and special economic zones; technology communication and transfer; personal exchange and training; and labour service cooperation etc. Chinese and South Asian countries laws should be recast to facilitate those activities in order to improve the GDP of the region. Members of China-South Asia Legal Forum may help and facilitate their respective Governments to take necessary steps for doing away with the impediments of trade and commerce which are creating obstruction in smooth investment.

In this respect I must acknowledge that since Bangladesh's independence, China has provided it with \$1,519 million in soft loans and grants. Of the sum, \$916 million came in seven years from fiscal year 2010 to 2016. The amount was \$303 million in the preceding seven years from FY 2002 to FY 2009.

In this respect I may mention here that for becoming a middle-income country Bangladesh has under taken some possible efforts on maintaining macroeconomic stability; strengthening revenue mobilization; tackling energy and infrastructure deficits; deepening financial-sector and external trade reforms; improving labor skills, economic governance, and urban management; and adapting to climate change. Bangladesh expects to become an

export powerhouse, with its labor-intensive manufactured and service exports growing at double digits on a sustained basis. Be that as it may, Bangladesh firmly believes in Home Grown Development Philosophy.

5. Legal Issues on China-South Asia Cross-border Business Transactions:

The boom in China of cross-border e-commerce has been dramatic and exponential. It has led to strong share price growth of brands that have been particularly favoured by Chinese consumers. It was always clear that the Chinese authorities would at some stage seek to better regulate cross-border e-commerce and two recent rules coupled with stronger implementation have caused concerns as to whether the e-commerce boom will continue in the future.

The first rule is the Circular on Tax Policy for Cross-Border E-commerce Retail Imports (E-commerce Tax Circular), which was published late last month and became effective from 8 April 2016. The E-commerce Tax Circular significantly changed the preferential tax policies that had been applied to cross-border e-commerce transactions. The changes were primarily adjustments to tax rates, introduction of an annual limit of RMB 20,000 per individual consumer and other changes that affect cross-border e-commerce but do not seek to strictly limit it.

A second more serious challenge to cross-border e-commerce involves a so-called “Positive List”. On 7 April 2016, eleven PRC government departments (covering all major government bodies relating to business trading, food and drug control, customs and tax) jointly published a “cross-border e-commerce retail list of imported goods”. This list was further updated and expanded by a “cross-border e-commerce retail list of imported goods phase 2” which was published on 15 April 2016 by the same authorities (the first list and second one, collectively, "Positive List"). Early signs are that the Positive List may lead to outright prohibition of e-commerce sales of certain categories of goods, so this second regulatory change has the potential to have a more negative effect on e-commerce than the E-commerce Tax Circular.

China has captured Bangladesh’s market in industries such as textiles, footwear and head wear, and machinery and mechanical appliances. Though Chinese products in these industries are highly competitive on price, there are many other economic and non-

economic factors that favor China and may be explored further in the spirit of greater Sino-Bangla, bilateral and mutual cooperation.

China has been very proactive in the Bangladeshi market. Apart from the price competitiveness of Chinese products, the welcoming attitude of Chinese traders and officials at customs is encouraging to Bangladeshi traders. A relatively relaxed visa and travel regime enables Bangladeshi enterprises to participate in exhibitions in China in order to obtain better information about Chinese products. Chinese exporters are even ready to redesign branded products at the request of Bangladeshi importers to cater to the price-sensitive local market. Further, Chinese businesses show considerable interest in taking care of logistics and trade difficulties and consistently follow up complaints. In most industries China has shown eagerness for technology transfers as well.

6. Legal Issues on China-South Asia Non-traditional Security cooperation

Alternative Dispute Resolution (ADR) includes Mediation, Conciliation, Arbitration and hybrid forms of these methods like Conciliation-cum-Arbitration, mediation settlements are being converted to compromise decree etc. The term ADR has been used to describe various systems that attempt to resolve dispute through methods other than litigation in Courts or Tribunals. The Indian sub-continent has a very rich tradition of ADR methods, which were existent in the form of *Panchayats*. In fact, the *Panchayat's* decisions were respected by the Judiciary also. In *Sitannav. Viranna*, AIR 1934 (PC) 105, for example, the Privy Council affirmed the decision of the *Panchayat* in a family dispute.

Arbitration is a method of settlement of disputes as an alternative to the normal judicial adversarial method. It is one of the methods of ADR. Of all the forms of ADR like conciliation, mediation, negotiations, etc., arbitration has become the dominant form of ADR in Bangladesh. It is more firmly established in its utility. The reason for its phenomenal popularity and value is that it is the only real alternative to judicial adjudication.

The Arbitration Act, 2001 confers complete power on the Arbitral Tribunal for full and final disposal of the matter presented before it by the parties to the dispute. The Act has tried to make arbitration a complete and self-contained alternative. Though judicial

interference has been kept to the minimum, the flow of cases to the courts arising from arbitrations is more than it used to be before. The growing number of cases is an affirmation of the fact that the court cannot be simply excluded. The Arbitral Tribunal has to function within the framework of the Act and the parties' agreement. The functioning being partly statutory and partly contractual, it does require judicial supervision.

We have incorporated provisions on ADR in the Code of Civil Procedure of Bangladesh, Loan Recovery Act, 2003 (Artha Rin Adalat Ain), Labour Law, Customs Act, 1969, Income Tax Ordinance, 1984, Value Added Tax Act, 1991, the Companies Act, 1994 and demonstrated Bangladesh's commitment to settle disputes relating to trade and commerce speedily by incurring less time, money and energy.

80% of the world trade is sea born. Therefore, for smooth trade and commerce, the High Sea and Maritime Zone of China and South- Asian countries should be safe and free from pirates. In the above backdrop, I am tempted to put some suggestions:

- ❖ A broad based China-South Asian Mediation Centre should be established for facilitating and speedy disposal of the international trade & maritime disputes.
- ❖ A comprehensive China-South Asian Law Training Institute should be set up in order to impart continuous quality training to the Judges, lawyers, academics and stakeholders who are closely related to international trade and commerce so that they may be well aware as to the legal system and latest jurisdiction of those countries.
- ❖ Both China and South Asian Countries should dedicate to building a closer comprehensive partnership of cooperation. They should attach high importance to high level visits and sharing experience not the least in the area of judicial reform.

There is no denying that Bangladesh-China-India-Myanmar (BCIM) Economic Corridor needs huge funds, both from private and public sectors, to support infrastructural constructions such as harbor, railways, highways and other areas like industrial park, free trade zone and many other projects related to BCIM economic co-operation. Accelerating the much-needed cross-border construction can help ease bottlenecks of regional infrastructure requirements which will effectively guarantee smooth, convenient and efficient cross-border logistics movement as well as improve human capital and prompt industrial development in BCIM region. With this in mind, the concept of establishing a specialized regional stock exchange came into the scenario to serve as investment and

trading platform, establish a cross-border opening of China-South Asian investment cooperation in both public and private sectors, determine appropriate method for financing and selection of currency denominations for projects undertaken under BCIM and regional initiatives.

Before parting with, I must express my special thanks and gratitude to China Law Society for hosting the 2nd China-South Asia Legal Forum and extending warm reception and hospitality to me and my entourage.

May God bless you all.

May Bangladesh-China and South Asian countries friendship live long.

May China Law Society fulfill its commitment.

I wish a resounding success of 2nd China-South Asia Legal Forum.

Thanks for patience hearing.

The laws listed below are the most relevant to business related to domestic and international trade

Taxation, Customs & Revenue Laws

- The Customs Act, 1969
- The Finance (2008-09 FY) Act 2009
- The IncomeTax Ordinance, 1984
- The Travel Tax Act, 2003
- The Value Added Tax Act, 1991

Investment Related Laws

- The Bangladesh Economic Zones Act 2010
- The Bangladesh Export Processing Zones Authority Act, 1980
- The Bangladesh Private Export Processing Zones Authority Act, 1996
- The Foreign Private Investment (Promotion and Protection) Act, 1980
- The Investment Board Act, 1989

Bilateral Investment Treaties

- new

Investment Related Policies

- Bangladesh Private Sector Infrastructure Guidelines 2004
- Export Policy 2009-2012
- Import Policy Order 2009-2012
- National Tourism Policy 2009
- Plot Allocation Policy in BSCIC Industrial Estate 2010
- Policy and Strategy for Public-Private Partnership (PPP) 2010
- Policy Guidelines for Enhancement of Private Participation in the Power Sector, 2008
- Private Sector Power Generation Policy Of Bangladesh 1996 and revised 2004
- Renewable Energy Policy of Bangladesh 2009
- SME Policy Strategies -2005

Banking & Financial Institution Laws

- The Banking Companies Act, 1991
- The Financial Institutions Act, 1993
- The Money Laundering Prevention Act, 2009

Insurance Laws

- The Insurance Act, 2010

Trade, Companies, Commercial or Mercantile Laws

- The Bangladesh Small and Cottage Industries Corporation Act, 1957
- The Bangladesh Standards and Testing Institution Ordinance, 1985
- The Companies Act, 1994
- The Contract Act, 1872
- The Drugs (Control) Ordinance, 1982
- The Drugs Act, 1940
- The Negotiable Instruments Act, 1881
- The Partnership Act, 1932

Securities & Exchange Laws

- The Depository Act, 1999
- The Securities Act, 1920
- The Securities and Exchange Ordinance, 1969

Land/Property Laws

- The Registration Act, 1908
- The Transfer of Property Act, 1882

Imports-Exports & Shipping Laws

- The Bills of Lading Act, 1856
- The Imports and Exports (Control) Act, 1950

Labor and Industrial Laws

- The Bangladesh Labour Act, 2006
- The EPZ Workers Association and Industrial Relations Act, 2004

Consumer Laws

- The Consumer-Right Protection Act, 2009

Intellectual Property Laws

- The Copyright Act, 2000
- The Patents and Designs Act, 1911
- The Trade Mark Act, 2009

Foreign Trade & Foreign Exchange Laws

- The Foreign Exchange Regulation Act, 1947

ICT laws

- **The Bangladesh High-Tech Park Authority Act, 2010**
- **The Information and Communication Technology Act, 2006**

Public Procurement Laws

- **The Public Procurement Act, 2006**

Environmental Laws

- **The Bangladesh Environment Conservation Act, 1995**

Procedural Laws

- **789**
- **The Arbitration Act, 2001**
- **The Artha Rin Adalat Ain, 2003 (The Money Loan Court Act 2003)**

Tourism Laws

- **The Bangladesh Tourism Reserved Area and Special Tourism Zone Act, 2010**

Fire Service Laws

- **Fire Prevention and Extinguishment Act-2003**