WND Secretariat and SAARCLAW have entered into an MoU on 24th February 2012 to promote the objectives of their respective organizations and also to expand the horizons of NGOs in India and the SAARC region. This MoU was signed on behalf of SAARCLAW by its Secretary General, Mr. Hemant K. Batra and on behalf of WND Secretariat by Dr. Linda Spedding, Director and Chair of Advisory Group and Mr. Marcis Liors Skadmanis, Executive Director. WND Secretariat agreed to collaborate with SAARCLAW from time to time on project basis, while SAARCLAW agreed to allow WND Secretariat to use its links with the NGO community and the United Nations for their mutual benefit. The parties agreed to explore the possibility of joint programmes and projects within the confines of their respective mandate and objectives. It was also agreed that the identification of programs and projects for collaboration shall take into account South Asian development priorities and other relevant factors. Activities within programs and projects may include training courses, policy dialogue seminars, roundtables, technical assistance, research, and publication of materials.

Under the MOU the parties recognized their complementary role both in the field of law as well as in socio economic arena and also the wide likelihood of mutual cooperation in development activities thereby agreeing to maintain a close, collaborative and continuing working relationship to achieve their respective mandates and objectives.

About WND and its initiative: WND is a day dedicated to all Non-Governmental Organizations, Non-Profit Organizations operating throughout the world in recognition of the great and valuable work these organizations do every day of the year. This day is also dedicated to raising awareness for the activities, projects and initiatives of these organizations that benefit humanity, environment and our planet.

The vision for this initiative is that the United Nations (UN) General Assembly will pass a resolution establishing a day when the contribution of all NGOs to society throughout the world will be celebrated through local events, global awards and projects that will further enhance their role and develop their capacity to continue their vital activities and contribution. The UN has recognized through much of its work that NGOs are a key partner to ensuring the success of development, relief, education, human rights and conflict prevention schemes that the UN pursues. This day will highlight this contribution and raise the profile of NGOs and all that they do at the highest levels. In order to achieve the adoption of such a resolution the General Assembly requires a considerable degree of development of the concept, lobbying of key decision makers and demonstration of how the concept will work through country, regional and local events or projects.
MESSAGE FROM THE PATRON-IN-CHIEF

Dear Readers and SAARCLAW Family,

The SAARCLAW has been part of a number of conferences and meetings in the last few months, the notable one being the “Inaugural Congress of the Association of Asian Constitutional Courts and Equivalent Institutions” in Seoul, South Korea. The SAARCLAW’s reach has been broadened. A number of MoUs have been signed with various partners. We have a number of programs lined up for this year. Please seize the opportunity to be part of them.

With warmest regards,

Lyonpo Sonam Tobgye
President, SAARCLAW
Patron-in-Chief, SAARCLAW Newsletter

MESSAGE FROM THE EDITOR-IN-CHIEF

Dear Readers,

My heartfelt greetings!!

With pleasure we present to you, the Fifth Issue of SAARCLAW Newsletter.

We are happy to share that this year SAARCLAW has proactively participated in various Conferences and events of social importance. In addition to this, SAARCLAW has ventured into various projects with prestigious international bodies and entities; to name a few: World NGO Day Initiative (WND), UNAIDS, South Asia Initiative to End Violence against Children (SAIEVAC), UNDP, IDLO, Asia Pacific Forum, etc. In this Issue, we have tried to provide all information on SAARCLAW’s recent alliances, projects, visits and updates. This Issue also covers latest news from all member countries.

I would like to thank all those who have worked towards the release of Fifth Issue including the members of the Editorial Board, Patron, Advisory Board, Expert Observers and Mr. Animesh Acharjee for their efforts in making this release possible.

Your views and opinion matter to us; send us your feedback on the contents of SLN at info@saarclaw.org

Best Regards,

Hemant K. Batra
Secretary General, SAARCLAW
Editor-in-Chief, SAARCLAW Newsletter
hbatra@saarclaw.org
**THE COPYRIGHT (AMENDMENT) ACT, 2012**

Empowering the creative sector, Indian Parliament recently enacted a law that strengthens the royalty claims of artistes, song and script writers, musicians and those in similar fields and addresses newer issues related to the digital world and internet.

The Copyright (Amendment) Bill, 2012, was passed by the Lok Sabha (lower House of Indian Parliament) with members from both the treasury and opposition benches supporting it in one voice. They said those from the creative sectors were denied their due for long and that the money earned from their creative works was garnered by the producers and those commissioning them.

The law provides for declaring authors as the owners of the copyright for their creative work and that this right cannot be assigned to producers, unlike the practice till now. This will clearly help the artists who were previously in a disadvantageous position.

It also makes it mandatory for broadcasters from both the radio and television industry to pay royalty to the owners of copyright each time a work of art is broadcast. Such a step would help the artist to have control over the broadcast of his work or performance and also help in demanding royalties from broadcasting houses which gain huge profits from the broadcast of their work and performance.

The law also bans cover versions of literary, dramatic or musical work for five years from the first recording of the original creation. And most significantly, Bill also seeks to bring the Indian law in conformity with international norms and World Intellectual Property Organization (WIPO) guidelines.

Some sections of the music industry are, however, disappointed that the Bill has not delved deep into the issue of piracy and statutory licence for broadcasters while some artists have raised concerns about the distribution of royalty.

The Copyrights (Amendment) Bill, 2012 was earlier passed by Rajya Sabha (upper House of Indian Parliament) on 17th May, 2012, and has become an Act of the Parliament after it was re-approves in Rajya Sabha, upper house of Indian Parliament, recently. The Bill seeks to amend the Hindu Marriage Act, 1955 and Special marriage Act 1954 which respectively deal with marriage among Hindus and marriage in certain special cases.

The Bill introduces “irretrievable breakdown of marriage” as a ground for divorce whereby either party to marriage may file a petition for divorce on the grounds of “irretrievable breakdown of marriage” provided it is evidenced that the couple has been living apart for a period of three years or more prior to filing of the petition. However, if the wife satisfies the court that the divorce would be disadvantageous for her and her financial position or for her children, it may reject the petition.

Few members of Rajya Sabha have strongly opposed the inclusion of such provisions as ground for divorce. These members feel that the clauses relating to “irretrievable breakdown of marriage” could be misused to the disadvantage of Indian women and that there is a need to define cogently the expression “irretrievable breakdown of marriage”.

The Bill allows waiver of the mandatory cooling period of six months in divorce petition if the couple seeking divorce had mutual consent to it and also provides women a right in the property of the husband. She would not only have rights in her husband’s residential property acquired after marriage but also in those that are acquired before marriage. Such a step would be a first in India except in Goa, where such laws already exist.

**PROTECTION OF CHILDREN FROM SEXUAL OFFENCES BILL, 2011**

Article 15 of the Indian Constitution confers upon the State powers to make special provision for children. Further, Article 39 provides that the State shall in particular direct its policy towards securing that the tender age of children are not abused and their childhood and youth are protected against exploitation and that they are given facilities to develop in a healthy manner and in conditions of freedom and dignity.

Protection of Children from Sexual Offences Bill, 2011 affirms India’s commitment to the aforesaid provisions of the Constitution. Rajya Sabha, the upper House of Indian Parliament, has recently passed the Bill. The Bill classifies sexual offences into six categories namely, Penetrative
Sexual Assault, Aggravated Penetrative Sexual Assault, Sexual Assault, Aggravated Sexual Assault, Sexual Harassment and Using Child for Pornographic Purposes and provides for special courts and stringent punishment including life imprisonment for sexual assault against a minor.

This Bill purports to be a self contained comprehensive legislation inter alia to provide for protection of children from the offences of sexual assault, sexual harassment and pornography with due regard for safeguarding the interest and well being of the child at every stage of the judicial process. It incorporates child-friendly procedures for reporting, recording of evidence, investigation and trial of offences and provision for establishment of Special Courts for speedy trial of such offences.

Source: [http://www.prsindia.org/uploads/media/Protection%20of%20children/SCR%20Protection%20of%20Children%20from%20Sexual%20Offences%20Bill%202011.pdf](http://www.prsindia.org/uploads/media/Protection%20of%20children/SCR%20Protection%20of%20Children%20from%20Sexual%20Offences%20Bill%202011.pdf)

[BHUTAN INSTITUTE OF MEDICAL SCIENCES BILL, 2011](http://articles.timesofindia.indiatimes.com/2012-05-11/india/31668610_1_medical-college-bhutan-medical)

Bhutan Institute of Medical Sciences Bill, 2011 has been introduced in Bhutan’s Parliament, National Council. During the introduction of the Bill, Hon’ble Minister for Health, Lyonpo Zangley Dukpa, stated that the Bill was found extremely needed after doing a need assessment in collaboration with WHO & AIIMS, India in 2008 and 2009. He said that having a Medical College in Bhutan would solve the current shortage & lead to sustainable recruitment of professional health workers in the country. He also added that the Medical College was mainly for providing greater services to the public.

The Bill was deliberated upon by the members of the National Council and eventually adopted in the month of January, 2012. During the deliberations on the Bill the members debated on whether the institute that would be established under the Bill would be an independent body or an autonomous one. While some members argued that the institute would function as an independent body, the status of which had not been granted even to Constitutional Bodies, other members felt that the institute should be on similar footing as the Royal University of Bhutan, and function as an independent body, and not just as an autonomous body. The debate, finally, resolved on the note that institute sought to be established under the Bill shall function as an independent body.


PAKISTAN PARLIAMENT PASSES LANDMARK INDUSTRIAL RELATIONS BILL, 2012

Recently Pakistan’s Parliament has unanimously passed the Industrial Relations Bill, 2012 to ensure more rights to labourers. The landmark Bill was moved by Pakistan People’s Party (PPP) member Qamar Zaman Kaira and the opposition parties did not raise any objection on the Bill and passed it unanimously. The members across all political parties had unanimity of thought that the Bill will make way for better rights to workers and contribute towards better relations between the employers and the employees as well as industrial growth in the country.

Pakistan has ratified ILO Convention No 87 on ‘Freedom of Association and Convention’ as well as No 98 on ‘Right to organize and collective bargaining’. This Bill will help consolidate and rationalize the law relating to formation of trade unions and federations of trade unions, collective bargaining agents, regulation of relations between employers and workers, the avoidance and settlement of any differences or disputes arising between them or matters connected therewith and ancillary thereto.

However, the Bill shall not be applicable to (i) Police, (ii) Defense Services or installations connected to Armed Forces; in the administration of State other than those employed as workmen; (iii) on the members of the security staff of the Pakistan International Airlines or drawing wages in pay group not lower than group V; and (iv) at Pakistan Security Printing Corporation or the Security Papers Limited and to an establishment or institution for the treatment or care of sick, infirm, destitute or mentally unfit persons excluding those being run on commercial basis.

Source: [http://dawn.com/2012/03/14/na-passes-industrial-relations-Bill-unopposed/](http://dawn.com/2012/03/14/na-passes-industrial-relations-Bill-unopposed/)

EMPLOYMENT GUARANTEE ACT TABLED IN NEPAL

The government of Nepal has recently tabled before its Parliament the Employment Guarantee Act (EGA). The Act seeks to provide employment guarantee for the people living below the poverty line for a specific period.

The Act, according to National Planning Commission (NPC) Vice Chairman Deependra Kshetri, will be implemented from next fiscal year after the Parliament’s endorsement.

The Act is inspired by India’s job guarantee scheme — the Mahatma Gandhi National Rural Employment Guarantee Act which promises a minimum of 100 days of job per year to at least a member of poor families living below the poverty line and fetches him income equivalent to the minimum wage fixed by the government.

Under the provisions of EGA, jobs will be provided in sectors like construction, infrastructure, industries and other
Development projects. If the government fails to provide the promised jobs, the government should pay unemployment allowance to the families concerned. The unemployment allowance shall be a compensation amounting to 50-60 percent of the fixed wage.


**SRI LANKAN GOVERNMENT TO ENACT WITNESS PROTECTION LAW**

The Sri Lankan government has assured the international community that Witness Protection Bill would be made a law soon. The government first introduced this Bill in Parliament in June, 2008, and later it was referred for further discussion after a debate. Currently, the Legal Draftsman’s Department is adding finishing touches to the Bill.

The Bill seeks to ensure the credibility of evidence extracted from witnesses through video conferencing. When evidence is recorded from witnesses through video conferencing, there can be concerns about the credibility of such information. The witnesses can be influenced by someone in the background when evidence is being given through video conferencing from a different location. The proposed law will address such issues, and it will enable the authorities concerned to take measures to ensure the credibility of information extracted from witnesses through video conferencing.

The Bill will also provide for a new methodology to facilitate witnesses in difference contexts.


**BANGLADESH TO MAKE HINDU MARRIAGE REGISTRATION MANDATORY**

Bangladesh is set to make mandatory the registration of Hindu marriages to ensure rights of the followers of the faith by bringing in a law on the lines of India. This was declared by the country’s law Minister, Mr. Shafique Ahmed, at a seminar on the Rights of Hindu community with regard to marriage registration organized by Citizens for enactment of Hindu Marriage Law.

Mr. Ahmed also said that stakeholders’ opinions regarding the proposed law had already been elicited and the matter was also discussed in the Parliamentary Standing Committee on Law, Justice and Parliamentary Affairs Ministry. He also assured that no laws would be formulated that would hurt religious sentiments.

Activists and representatives of minority community from across Bangladesh were present at the seminar and applauded the law minister’s declaration. They also threw light on the importance of enacting a law that recognizes Hindu wives’ rights of separation.

“Hindu wives in many cases were compelled to run their families withstanding physical and mental tortures from their husbands and in-laws in absence of provisions for marriage separation," rights activist Sultana Kamal told the seminar.

Community leader, Subrata Chowdhury pointed out that a Hindu wife cannot seek separation even if the husband does not bear her daily expenses, opts for a number of marriages or keeps contact with other women and refrains himself from contact with his wife for years together.

However, the Minister said that the legislations for separation and hereditary laws could take a longer period. He added that a commission could be constituted to prepare a draft for Hindu marriage separation and hereditary issues.


**KEY DEVELOPMENTS AT SAARCLAW**

- **CONFERENCE: SOUTH ASIA REGIONAL CONSULTATION ON THE UN STUDY ON VIOLENCE AGAINST CHILDREN FOLLOW UP ACTIONS DATED MAY 27-29, 2012**

  The President and Secretary General, SAARCLAW attended South Asia Regional Consultation on the UN Study on Violence against Children Follow up Actions from May 27-29, 2012 at Colombo, Sri Lanka. The Conference was organized by the South Asia Initiative to End Violence Against Children (SAIEVAC), A SAARC APEX BODY. The new Secretary General of SAARC, Mr. Ahmed Saleem was also present during the event. SAARCLAW President, Chief Justice Lyonpo Sonam Tobgye, was the Guest of Honour and had delivered the special address. Mr. Hemant K. Batra, Secretary General SAARCLAW, was a special Invitee at the event. During the Conference, the organizers had proposed that SAARCLAW and SAIEVAC should join hands for future projects.

- **NEW PROJECT WITH THE INTERNATIONAL DEVELOPMENT LAW ORGANIZATION (IDLO), THE UNDP HIV, HEALTH AND DEVELOPMENT PRACTICE AND THE DEMOCRATIC GOVERNANCE PRACTICE (UNDP) AND THE ASIA PACIFIC FORUM**

  SAARCLAW has entered into a new project with the IDLO, the UNDP HIV, Health and Development Practice and the Democratic Governance Practice (UNDP) and the Asia Pacific Forum. The aim of the project is to engage human rights commissions, to begin with, in five South Asian countries (India, Nepal, Pakistan, Afghanistan and Bangladesh) on the issue of rights of sexual minority population. The project will also engage three countries in Southeast Asia (Indonesia, Malaysia and the Philippines).

  This project is grounded in the following international and regional recommendations/statements: (i) The ESCAP Asia-Pacific High-level Intergovernmental Meeting on the Assessment of Progress against Commitments in the

In South Asia, the project proposes to work with statutorily established National Human Rights Institutions in four countries: Afghanistan, Bangladesh, India and Nepal; as well as one non-governmental organisation, the Human Rights Commission of Pakistan. The team will visit each country twice, to foster dialogue and analysis, and conduct meetings with key stakeholders. It is proposed that SAARCLAW leaders in each of the five named South Asian countries will provide technical advice on local laws/context and law and justice systems.

> MR. HEMANT K. BATRA, SECRETARY GENERAL – SAARCLAW, APPOINTED AS DIRECTOR - SOUTH ASIA REGION ON THE ADVISORY GROUP OF THE WORLD NGO DAY INITIATIVE (WND)

Mr. Hemant K. Batra was invited to be the Director - South Asia Region on the Advisory Group of WND by the Executive Director of WND Secretariat. Mr. Batra accepted the invitation and committed himself to the responsibilities & duties associated with the designation.

> LUNCHEON MEETING HOSTED FOR THE PRESIDENT & SECRETARY GENERAL – SAARCLAW BY THE OFFICERS OF UNAIDS

On May 24, 2012, President of SAARCLAW and its Secretary General were invited to attend a luncheon meeting in Bangkok hosted by Steve Kraus - Regional Director, UNAIDS; Geoff Manthey – Regional Programme Adviser, High Impact Prevention Regional Support Team, Asia and the Pacific, UNAIDS; Brianna Harrison - Human Rights Officer, UNAIDS; Mohammed Ali Bhuiyan - Regional Programme Adviser, UNAIDS Regional Office for Asia and the Pacific; Nashida Sattar- HIV/AIDS Programme Specialist, United Nations Development Programme (UNDP), Asia-Pacific Regional Centre along with other UNDP & UNAIDS senior functionaries. The meeting was also attended by communication/media team of the UN. The agenda of the said meeting was to discuss the probable event/conference on women and related issues to be organized in Bhutan.

> HON’BLE PRESIDENT & SECRETARY GENERAL OF SAARCLAW MET CHIEF JUSTICE OF SRI LANKA

During the recent visit of Chief Justice Lyonpo Sonam Tobgye, President, SAARCLAW and Mr. Hemant K. Batra, Secretary General, SAARCLAW to Sri Lanka, they got the opportunity to meet the Chief Justice of Sri Lanka, Justice Shirane Bandaranaike and were also invited to a dinner hosted by Justice P. A. Ratnayake, Judge Supreme Court, Sri Lanka.

> ANNUAL GENERAL BODY MEETING: SAARCLAW NEPAL CHAPTER

Saarclaw Nepal Chapter recently convened its Annual General Body Meeting and elected new office bearers of the Executive Council. The newly elected Council comprises of Justice Kalyan Shrestha as the President; Prof. Dr. Amber Pd Pant as the Vice President; Ms. Sapana Pradhan Mallia as the Secretary; Mr. Ramesh Guragain as the Treasurer; and Mr. Purna Man Shakyia, Mr. Laxmi Upreti, Matrika Prasad Niraula, Mr. Harish Chandra Subedi, Mr. Saroj Shrestha as Executive Members.

> ANNUAL GENERAL BODY MEETING: SAARCLAW INDIA CHAPTER

Saarclaw India Chapter convened its Annual General Body Meeting on 24th March, 2012 at India International Centre, Delhi. Hon’ble Mr. Justice U.C. Banerjee, President, Saarclaw India Chapter presided over the meeting. The key item decided was that the existing committee shall continue for one more term with only one change; Ms. Manila Sarkaria, Chief Coordinator – Saarclaw Secretariat & Associate Editor – Saarclaw Newsletter, was appointed as the new Assistant Treasurer. Various sub-committees were also constituted for undertaking diverse projects/activities for SAARCLAW India Chapter.

SAARCLAW’S PRESIDENT AND SECRETARY GENERAL ATTENDED INAUGURAL CONGRESS OF THE ASSOCIATION OF ASIAN CONSTITUTIONAL COURTS AND EQUIVALENT INSTITUTIONS HELD AT SEOUL, SOUTH KOREA, FROM MAY 20-24, 2012

Chief Justice Lyonpo Sonam Tobgye, President, SAARCLAW and Mr. Hemant K. Batra, Secretary General, SAARCLAW were invited to attend the high powered “Inaugural Congress of the Association of Asian Constitutional Courts and Equivalent Institutions” held in Seoul, South Korea, from May 20-24, 2012. The Congress was hosted by the Constitutional Court of Korea and the theme was “Present and Future of Constitutional Justice in Asia” with two key sessions on “Promotion of Democracy and Constitutional Justice’ and “Increase in International Exchanges and Constitutional Justice - From Social, Economic and Cultural Perspectives”. The participants included Chief Justices/ Justices from the ASEAN and SAARC countries and observers from a great number of countries from Europe, Asia and Africa.

Chief Justice Tobgye and Mr. Batra participated in the above event and following were the key developments at the said event:

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The President of Constitutional Court of Korea, Hon’ble Lee, Kang-Kook, hosted a luncheon on May 23, 2012 in the honor of the President and Secretary General of SAARCLAW. During the said luncheon, it was discussed and decided that SAARCLAW may invite Judges from Asia and Europe for its future events as delegates/special invitees.

The President and Secretary General of SAARCLAW also had a detailed meeting with senior officials of different groups/bodies on various possibilities of SAARCLAW’s collaboration with them. Some of the distinguished officials were - Gianni Buquicchio, President, Europe Commission for Democracy through Law and Dr. Schnutz Rudolf Durr, Head of the Constitutional Justice Division, Venice Commission.

The Venice Commission is an independent legal think-tank, the European Commission for Democracy through Law – better known as Venice Commission of the Council of Europe – has become a benchmark in Europe for guidance on quality standards of democracy. The Commission started its activity in 1999 by helping new democracies to adopt constitutions consistent with the European constitutional culture. Today, the Commission identifies, develops and promotes European legal standards to be applied to democratic institutions, human rights, electoral law and constitutional justice.

The President and Secretary General also met Kwon, Jae-Jin - Minister, Ministry of Justice, Republic of Korea; Tissa Karalliyyada M.P. – Minister of Child Development & Women’s Affairs, Sri Lanka; Professor Wasil Noor (Muhammad)-Deputy Minister, Ministry of Labor Social Affairs, Martyrs and Disabled of Afghanistan; Ahmed Saleem –Secretary General South Asian Association for Regional Cooperation (SAARC), Kathmandu, Nepal; Park Byoung-Dae - Hon’ble Justice Supreme Court of Korea; Han, Boo-Whan-Chairman, Korean Bar Association, Law School Evaluation Committee and United Nations Marta Santos Pais – Special Representative of the Secretary-General on Violence against Children, New York and discussed various possibilities of SAARCLAW’s collaborations with them.

Mr. Hemant K. Batra, Secretary General, SAARCLAW met Poshitha Perera-Deputy Director, SAARC & South Asia Division, Ministry of External Affairs of Sri Lanka and Dr. Vivek Joshi-Joint Secretary, Ministry of Women & Child Development, Government of India, New Delhi and discussed possibilities of SAARCLAW collaborations.

Mr. Hemant K. Batra, Secretary General of SAARCLAW also met Marc Spitzkatz - Director, Rule of Law Programme Asia, Singapore and Clauspeter Hill – resident representative to Thailand, Bangkok.

THE IMPACT OF LAW ON EFFECTIVE HIV RESPONSES IN INDIA

The South Asian Association for Regional Cooperation in Law (SAARCLAW), UNAIDS Technical Support Facility for South Asia (TSF-SA) and Maitri, together hosted a one day meeting on Thursday, 16 February 2012 in New Delhi, to discuss strategies for overcoming legal barriers to HIV prevention and treatment efforts.

This meeting was one of the four regional consultations being held as part of the UNDP funded project ‘Support to the development of enabling environment by scanning of laws that impede effective HIV and AIDS responses in India.’

It is widely accepted that the effectiveness of HIV responses depends not just on the sustained scaling up of HIV prevention, treatment and care, but also on whether the legal and social environments support or hinder programmes for those who are most vulnerable to and affected by HIV and AIDS. The main challenge is to understand laws that reinforce HIV-related stigma and prejudice impeding HIV prevention efforts and access to treatment, care and support and amend them.

The first half of the meeting was devoted to a comprehensive appraisal of laws in India which impede effective HIV responses. Ayesha Mago from SAARCLAW stressed upon the importance of examining how laws create barriers to access HIV services across the country, in different key affected communities (KAC). The fundamental issues at stake are stigma and discrimination within healthcare, administrative and cultural settings; human rights violations against KAC and People Living with HIV (PLHIV); balancing confidentiality (or the right to privacy) with public health; and access to treatment for all those who are in need of it. There is a great deal of discrimination and violence, as of now, not only from law enforcers, but also from the wider community at large, and from their own families, especially in case of LGBTs, and sex workers.

According to Joe Thomas, Project Director, TSF, “Laws indeed affect public health and play a critical role in effective health responses and at times becomes a serious impediment in HIV treatment. About 80 countries still have laws that prevent PLHIV from travelling in and outside the country. Hence legal reforms are important for the development of a country.”

The Constitution of India guarantees equality for all people, prohibiting discrimination on the basis of caste, sex, religion and race. It also recognizes every individual’s right to life and liberty, which includes the right to health. Yet there are several existing laws which inadvertently work in the reverse and impede effective HIV/AIDS responses. The Immoral Trafficking Prevention Act, 1986 does not criminalize commercial sex work, but penalizes soliciting in public places and keeping of brothels, thus putting sex work and trafficking under the same category. The Bombay Police Act penalizes...
indecent/obscene behavior in public, (which denotes anything that is not socially acceptable). These and other laws often become a tool for law enforcement authorities to brutalize and blackmail innocent victims. They allow the police to harass, abuse, and extort money from sex workers on a regular basis. This drives sex workers underground, and creates barriers for them to negotiate with clients for condom use, and access HIV prevention, testing and treatment services.

People who use drugs (PWUD) face tremendous stigma from legal and health institutions and from society as well. The Narcotics Drugs and Psychotropic Substances Act, 1985, and the Prevention of Illicit Traffic in Drugs and Psychotropic Substances Act, 1988 give wide ranging powers to the government for cognizable and non bailable arrest of anyone who manufactures, consumes or possesses drugs or drug paraphernalia. These, and other similar state laws, criminalize PWUDs, who are disproportionately affected by HIV/AIDS, leaving them widely exposed to exploitation and harassment from the police and preventing them from accessing harm reduction and treatment services.

It has been universally acknowledged that harm reduction strategies are far more effective as compared to harsh criminalization, when it comes to PWUDs and HIV. The repressive laws directly impact drug users’ ability to practice harm reduction and access health services and disrupt HIV prevention programmes, preventing delivery of clean needles/syringes and hindering drug substitution therapy. All this escalates rates of HIV transmission not only in drug users, but outside their community too as they have partners. It also blocks outreach efforts by threatening outreach workers involved with needle exchange programs. Even if one is handing out leaflets, trying to talk about using drugs safely, advocating condom use, it is taken as abetment to obscenity. All this escalates rates of HIV transmission not only in drug users, but outside their community in their partners.

The social stigma attached with lesbians, gays, bisexuals and transgender people (LGBTs), in India results in an environment where they are subject to harassment and violence from law enforcers and are ostracised by society as well as their families. The Indian Government has taken steps towards recognising gender plurality, namely including another category in official documents such as passports-people may now opt for ‘male’, ‘female’ or ‘other’. However, without Government follow up and actions implementing these decisions, the category ‘O’ in passports may result in dire situations. For instance a few years ago people travelling on O passports to Saudi Arabia were deported as Saudi Arabia did not recognise these documents as valid. Of course, the repeal of Section 377 (which criminalized carnal intercourse against the order of nature) by the Delhi High Court in 2009 has gone a long way in de-criminalizing same sex behaviour. Yet other laws like the Bombay Police Act and Bombay Prevention of begging Act, as well as certain sections of the Indian Penal Code on public nuisance and obscenity continue to drive the LGBTs underground, impacting their ability to access HIV related services.

The archaic Prisons Act 1894 still remains unchanged. HIV is a major health challenge for prisoners. Despite India ratifying the International Covenant on Civil and Political Rights in 1979, there is extreme physical and emotional maltreatment of prisoners. The Supreme Court has now ruled that prisoners are entitled to all fundamental rights other than what has been taken away because of their offense. But they continue to face serious basic human rights violations. Those living with HIV are additionally subject to coercive measures such as segregation, isolation and mandatory HIV testing without ensuring consent. Violence, poor nutrition, lack of medical facilities and improper hygiene are endemic to the prison environment and undermine the general health of the inmates. HIV prevention and harm reduction measures like provision of condoms, clean syringes, drug substitution therapies and counseling are hindered by prison policies and legal provisions criminalizing specific behavior.

The Directive Principles of State Policy mandate equality for women and so does the Convention on Elimination of All Forms of Discrimination Against Women. The Protection of Women from Domestic Violence Act, 2005 protects women from physical, emotional and economic violence. Yet the ground reality is very different, and most women are generally unaware of their legal rights. This has serious repercussions on their day to day living, especially in case of women living with HIV or those with alternate sexuality. Women are generally more vulnerable to HIV than men—both by virtue of their biology and due to the gender inequity existing in our patriarchal society.

Women found to be infected with the HIV virus are commonly ostracized, abused, separated from their children, forcibly sterilized and labeled as promiscuous. Many of them are thrown out of their marital home, especially after the death of the husband, and are invariably denied a share in assets acquired by the husband despite being legally entitled to them.

Thus, very often laws enacted in good faith are interpreted and implemented in a manner which impacts affected communities negatively. The HIV Bill, which was drafted keeping affected communities’ interests in mind, has been sitting on the table since 2007. It could be a panacea for many problems as it addresses (i) the right to access treatment; (ii) prohibition of discrimination; (iii) confidentiality; (iv) risk reduction strategies; (v) informed consent for testing, treatment and research. But one does not know if it will ever be passed and in which form. Till then, we will have to seek proper interpretation and implementation of existing laws.

It was overwhelmingly felt at the meeting that dissemination of information, especially in terms of HIV and Law, is a crying need because very few people from KAC are even aware of it. Awareness about HIV and Law, at the ground level is very poor. There should be an HIV and Law forum in which more
representatives from KAC participate and come together to know about their constitutional rights, about what the legal system supports and what it does not support, about the existing laws and how they are affecting the community, about the community needs which can be transferred into positive laws. We need to work together and make available all the relevant information to all community members and at the same time endeavor to harmonize our laws with the international standards of law aimed at getting to zero new infections, zero new deaths and zero discrimination in the field of HIV/AIDS.


SAARCLAW NEWSLETTER’S ASSOCIATE EDITOR APPOINTED AS THE ASSISTANT TREASURER OF SAARCLAW, INDIA CHAPTER

The Associate Editor of SAARCLAW Newsletter, Ms. Manila Sarkaria, has been unanimously appointed as the Assistant Treasurer of Saarclaw - India Chapter. She was appointed on 24th March, 2012 during the Annual General Body Meeting organized at the India International Centre, Delhi. She has Succeeded Dr. Mukulita Vijayawargiya. The Executive Council welcomed her on-board and wished her luck for all future endeavors.

EDITORIAL BOARD

Hon’ble Chief Justice Lyonpo Sonam Tobgye
Patron-in-Chief

Mr. Hemant K. Batra
Editor-in-Chief

Ms. Manila M Sarkaria
Associate Editor