organizations are keen to promote in South Asia understanding of rights based approaches and frameworks to respond to HIV and to support people at risk of or living with HIV; advocate for the reform of unjust practices and laws which block effective responses to HIV and contribute to the vulnerability of key affected populations; and work to eliminate all forms of discrimination and stigmatization of people living with or affected by HIV.

As a step forward to the above initiative of AIDS free South Asia, these organizations are co-hosting a Roundtable on ‘Legal and Policy Barriers to the HIV Response’ in Kathmandu on 9th – 10th November 2011. The Roundtable aims to bring together legal professionals, advocates and government representatives from South Asian countries to discuss the legal and policy barriers to the HIV response, and analyze the impact of such barriers upon the ability of key populations - men who have sex with men (MSM), transgender persons, sex workers and injecting drug users to access HIV prevention, treatment, care and support services.

The overarching goal of the Roundtable is to promote a legally enabling environment for and strengthen the legal response to HIV in South Asia. More specifically, the Roundtable seeks to engage legal professionals in SAARC member states  with the legal response to HIV by enlisting their support to:

a) identify and understand legal and policy barriers to HIV prevention, treatment and care services for PLHIV, MSM, transgender persons, sex workers and injecting drug users;

b) identify and discuss strategies and initiatives to address/ dismantle these barriers (for example law and policy reform, legal aid services and training); and

c) strengthen rights-based response to HIV.

It is expected that the delegates will leave the Roundtable with an understanding of marginalization and criminalization of people due to their sexual orientation, gender identities, and how the behavior of these people (different form the behavior of so called mainstream people) adversely impacts their ability to access HIV and health services; strategies adopted elsewhere in the world to address claims of stigmatization and discrimination of People living with HIV (PLHIV), MSM, transgender persons, sex workers and injecting drug users; and with a strengthened capacity to advocate and support the reform of discriminatory laws and policies which block effective responses to HIV and contribute to the vulnerability of key affected populations.
MESSAGE FROM THE PATRON-IN-CHIEF

Dear Readers,

The Executive Council of the SAARCLAW met in Delhi last month. We had fruitful discussion on the future activities of SAARCLAW. The date and the host for the Annual SAARCLAW Conference have been finalized.

At a personal level, it was indeed a pleasure to enjoy the company of Executive Council members of the SAARCLAW amidst the excellent hospitality extended by the India Chapter of SAARCLAW. I look forward to the SAARCLAW reclaiming the past glory envisioned by its founders and marching ahead to play a significant and bigger role in the region and the world at large.

With warmest regards,

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

MESSAGE FROM THE EDITOR-IN-CHIEF

Dear Readers,

Overwhelming response from the Readers is one of the main reasons behind the release of SAARCLAW Newsletter (SLN) every quarter and with this thought in mind we bring out the Third Issue of SLN.

This Issue contains various interesting articles, news, information about upcoming events and achievements of distinguished personalities and interesting updates about the SAARC countries. In this Issue, two pages have been dedicated to the photo gallery of the events successfully organised by SAARCLAW. Also, a new feature has been introduced i.e. “Interesting Facts of the SAARC Countries”. We hope to keep improving the newsletter with all your support and encouragement.

I would like to thank all those who have worked towards the release of Third 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
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PREVENTIVE ARREST ONLY WHEN PEACE IS IN IMMENENT DANGER: SUPREME COURT OF INDIA

In an appeal to the Supreme Court of India against an order of the Delhi High Court asking police officials to pay compensation to persons whom they took into preventive custody after the Central Bureau of Investigation (CBI) submitted its report, the Supreme Court has cautioned the police to invoke this provision only when there is an imminent danger to the peace or likelihood of breach of peace under Section 107 of Code of Criminal Procedure, 1973 (Cr.PC). Such a preventive arrest could be made only if it “appears to the police officer concerned that the commission of an offence cannot otherwise be prevented,” said a Bench of Justices P. Sathasivam and B.S. Chauhan.

Writing the judgment, Justice Chauhan pointed out that Section 151 Cr.PC “lays down conditions” and “expressly lays down the requirements for exercise of the power to arrest without an order from a magistrate and without a warrant”. But, the Bench said, “if these conditions are not fulfilled and a person is arrested under Section 151 Cr.PC, the arresting authority may be exposed to proceedings under the law for violating the fundamental rights inherent under Articles 21 (right to life) of the Constitution”.

The object of Sections 107 and 151 is “preventive justice and not punitive. Section 151 should be invoked only when there is an imminent danger to peace or a likelihood of breach of peace under Section 107. An arrest under Section 151 can be supported when the person to be arrested designs to commit a cognizable offence. A further condition for the exercise of such power, which must also be fulfilled, is that the arrest should be made only if it appears to the police officer concerned that the commission of the offence cannot otherwise be prevented.”

The Bench said: “The jurisdiction vested in a magistrate to act under Section 107 is to be exercised in an emergent situation.”

Source: http://www.thehindu.com/news/national/article2366801.ece

LATE COMPLAINT OF SEXUAL ASSAULT CANNOT BE DEFENCE FOR ACCUSED: MUMBAI HIGH COURT (INDIA)

The Bombay high court has said that it is normal if a victim of molestation files her complaint a few days after the crime has occurred and that it can’t be considered a defence for the accused, as it is a very difficult decision for the victim to take the case to court.

The court stated this while dismissing an appeal filed by an accused against the three months sentence he was handed for outraging the modesty of a child.

Single judge AP Bhangale, while dismissing the appeal of Vikas Motiram Ghodke, 29, observed: “It is a difficult decision to take such a matter to the court. Ordinarily, the victim’s family would not like any stigma to be attached to her.”

Justice Bhangale also rejected Ghodke’s claim that he was being falsely implicated by the victim. The court said: “I find it difficult to digest that a school girl will put her character at stake in order to falsely implicate the accused.”

According to the prosecution, the victim registered a complaint on February 16, 2006, stating that two days earlier when she had gone to Ghodke’s shop, he outraged her modesty. The victim narrated the incident to her aunt and uncle.

The accused was arrested and charged under section 354 of the Indian Penal Code. During the trial, the court examined five witnesses. Considering the evidence, the magistrate sentenced the accused to imprisonment for three months and a fine of Rs300. Ghodke challenged the sentence in sessions court which was rejected and he moved the high court.

Justice Bhangale, while rejecting the defence that no independent witnesses were examined, said: “Knowledge and intention cannot be demonstrated like physical objects. The existence of intention or knowledge has to be culled out from various circumstances. A victim of molestation and indignation is in the same position as an injured witness and her testimony should receive the same weight.


CENTRAL BANK OF SRI LANKA GETS MORE TEETH TO DEAL WITH MONEY LAUNDERING

September 21, 2011 is a significant day for Sri Lanka’s parliament. It carried out a series of changes to its existing legislation and passed a new bill to strengthen its anti-money laundering and Countering Financing of Terrorism (AML/CFT) laws

Prevention of Money Laundering Act, 2006 and Convention on the Suppression of Terrorist Financing Act, 2005 were amended and the proposed Finance Business Bill to repeal and replace the Finance Companies Act, 1988, (the current law relating to finance business) was passed in Parliament on September 21, 2011.

With the above changes Sri Lanka’s AML/CFT regime is now fully compliant with international standards. The amended AML/CFT laws will not only strengthen AML/CFT regime, but will also facilitate the implementation initiatives undertaken by the Financial Intelligence Unit of the Central Bank of Sri Lanka, law enforcement agencies and prosecutors.

The following are the salient features of the amendments:

Convention on the Suppression of Terrorist Financing Act (CSTFA) No. 25 of 2005:
Applicability of terrorist financing law to include citizen of Sri Lanka and non-citizens while present in Sri Lanka.

The “funds” is defined to include “assets of every kind are it tangible or intangible, movable or immovable” which are kept in Sri Lanka or outside Sri Lanka.
Terrorist financing offences which before the amendment was confined to terrorist group is widened to include financing by a terrorist (single terrorist) and/or for any terrorist act.

Authority for Police to freeze/suspend terrorist funds and properties relating to the terrorist financing or activities before indictment.

Prevention of Money Laundering Act (PMLA) No. 5 of 2006:
Applicability of the law has been expanded to cover any person who has committed a Money Laundering offence while in Sri Lanka.

Recovery of corresponding value of the properties related to a Money Laundering offence in the absence of properties derived/realized through Money Laundering.

At present offences punishable exceeding 7 years imprisonment under any other law has been considered as an offence for money laundering. The threshold of 7 years has now been reduced to 5 years covering more offences punishable under money laundering offence.

Foreign predicate offences are included as unlawful activities.

The need to amend the Finance Companies Act which was enacted over 20 years ago to suit the current situation has been felt by the financial sector as well as the regulator. It has been necessary to enhance the examination and supervisory powers in respect of the licensed finance companies and to enhance the legal provisions to effectively curb unauthorized deposit taking persons and institutions.

The new bill has closed a loophole in the definition of a ‘deposit’. In order to take effective and timely action in respect of both licensed finance companies and unauthorized deposit taking institutions, powers of examination and investigation of those institutions are enhanced.

Several provisions are introduced in the new Act to curb unauthorized deposit taking businesses. Among those are advertising and publications soliciting for deposits without authority and publication of advertisements soliciting deposits without authority are made offences and provisions are made to obtain a court order to compel a person to provide information and books relating to illegal deposit taking institutions.

New rules will require the use of words ‘finance, financial and financing’ by licensed non-bank deposit takers while unregistered institutions will be barred from the use of the words in their name without the prior written approval of the Monetary Board of the CBSL.

The use of a name, abbreviated name or acronyms of licensed finance companies by other entities will also be prohibited. This is in view of preventing fraudulent companies from misrepresenting and misleading the public.

These provisions would enable more effective litigation action and be a deterrent to those who contravene the law.


RECENT LEGISLATIONS IN PAKISTAN

PROTECTION AGAINST HARASSMENT OF WOMEN AT THE WORKPLACE ACT, 2010
Protection against harassment of women at the workplace Act, 2010 has been enacted with intent to ensure provision of a safe and a better working environment to working women in Pakistan. The Act prescribes minimum standards which are to be adopted at workplaces when engaging with women. The law provides minimum standards of protection which workplaces have to accord to women working therein.

The law defines harassment as “any unwelcome sexual advance, request for sexual favours or other verbal and written communication or physical conduct of a sexual nature or sexually demeaning attitudes, causing interference with the work performance or creating an intimidating, hostile or offensive work environment, or the attempt to punish the complainant for refusal to comply to such a request or is made condition for employment.”

All organizations, including federal and provincial government ministries, departments, corporations, educational institutions, private commercial organizations and registered civil society associations, are required to constitute inquiry committees of at least three members each-one of whom is to be a woman-to probe complaints and give their findings within thirty (30) days to the competent authority concerned that will award recommended penalties.

Minor penalties include: censure, withholding for specified periods of promotion or increment and stoppage at an efficiency bar in the time-scale, other than fitness to cross such bar, and recovery of compensation payable to a complainant from pay or any other source of the accused.

Major penalties are: demotion to a lower post or time-scale or to a lower stage in a time-scale, compulsory retirement, removal from service, dismissal from service, and fine, a part of which can be used as compensation for the complainant.

An inquiry committee may recommend to an Ombudsperson for appropriate action against a complainant whose allegations are found to be false and made with mala fide intentions while a party aggrieved by the decision of the competent authority may prefer appeal to the ombudsperson to be appointed by the federal or a provincial government.

Appeals against the decisions of an Ombudsperson at the federal level can be made to the president and at provincial level to the governor concerned.

THE TRANSPLANTATION OF HUMAN ORGANS AND TISSUES ACT, 2010
The transplantation of human organs and tissues Act, 2010 has been enacted to prevent unlawful human organs trading in the country. Now transplantation of human organs will be done through proper legislation as a regulatory framework has been designed for the first time to stop heinous practice of organs trading in Pakistan.

In terms of Section 6 (4) of the Act, no hospital/medical institution shall carry out transplantation of human organs
and tissues unless it is recognized as provided in Section 6 (3) of the Act.

Any specialist, doctor or middle man found guilty of unethical practices in the field of human organ transplantation will be dealt with in accordance with the Law which stipulates a punishment of 10 years imprisonment and / or a fine of PKR 1 Million. Name of guilty doctors will also be recommended for removal from the register of Pakistan Medical and Dental Council.

THE COMPETITION ACT, 2010
The competition Act, 2010 has been enacted to ensure free competition for commercial and economic activities and aims at protecting consumers from monopolization, cartelization and other harmful practices.

In terms of the act, the Competition Commission of Pakistan ("CCP") amongst other tasks has been entrusted with the responsibility of prohibiting commercial enterprises from unfairly using their dominant position in the market through unethical practices such as limiting production and price discrimination.

According to the Law, the CCP can impose a penalty of up to PKR 75 million, or ten percent (10%) of the annual turnover of the company (whichever is higher) once a party is convicted for abusing their dominant position in the market.

ARBITRATION (INTERNATIONAL INVESTMENT DISPUTES) ACT, 2010

ANTI-MONEY LAUNDERING ACT, 2010
Anti-money laundering Act, 2010 has been enacted to prevent money laundering, combating financing of terrorist activities and forfeiture of properties derived from or involved in money laundering or financing of terrorist activities.

NEPAL LOOKS SET TO OFFICIALLY RECOGNIZE THIRD GENDER
Almost four years after Nepal's Supreme Court recognized the rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) people, the South Asian country may get a new constitution that secures their rights.

The draft constitution of the Himalayan country as it makes a transition from monarchy to democracy proposes “citizenship rights for third gender individuals… bans discrimination based on sexual orientation and gender identity; calls for government affirmative action in support of LGBTI people; and proposes gender-neutral language on the rights to work, health, education, and marriage.”

Although the different political parties in the country are yet to reach a consensus on draft constitution, the recognition of LGBTI as equal citizen indicates their increasing recognition and acceptance in an otherwise conservative Nepalese society.

This was set in train by Nepal's Supreme Court's December 2007 unprecedented ruling that LGBTI people are natural people and deserve equal rights and opportunities. The apex court directed the government of Nepal to issue citizenship identification documents to persons identifying with a third gender according to their gender identity, repeal or amend laws that discriminate against LGBTI people and form a seven member committee to draft a same sex marriage law for approval by parliament.

The ruling made the government officially accept the third sex as part of Nepali population. For the first time the May 2011 census of the country allowed people identifying themselves with a third gender to state this freely for official record.

The landmark ruling came out of a case filed by the Blue Diamond Society and three other LGBTI rights advocacy organizations. Sunil Pant the founder of the Blue Diamond Society and Nepal's first openly gay Member of Parliament was one of the earliest of individuals to start a campaign to sensitize the people of Nepal about the life and rights of LGBTI.


NEPAL RASTRA BANK APPROVES FOREIGN CURRENCY BOND
Nepal Rastra Bank (NRB) Foreign Exchange Department has issued a directive that allows licensed hydro power companies to issue the foreign-currency debentures in Nepal provided they fulfill the criterion set out for this purpose.

The hydro power projects that generate income in foreign currency can raise needed funds for developing a project by issuing foreign-currency bonds through the subsidiary merchant banking arm of commercial banks and development banks.

According to Bhaskar Mani Gyanwali, a spokesperson of the NRB only the projects that have already undergone Power Purchase Agreement (PPA) with Nepal Electricity Authority (NEA) will be allowed to issue foreign-currency bonds to ensure that the projects can pay back the principle amount and interest in foreign currency.

The hydro power companies can only issue debenture worth 60 per cent cost of the project.


‘HONORABLE MENTION’ FOR BHUTAN’S FOREST POLICY
The forest policy of Bhutan received an “honorable Mention” during an international award ceremony at the United Nations Headquarters in New York in September 2011. Among others (Nepal and Switzerland), Bhutan was bestowed the Honorable Mention for the provisions on Environment and its forest related policies in its Constitution. Article 5 of the Constitution of the Kingdom of Bhutan provides that every Bhutanese citizen is a trustee of the natural resources and environment for the benefit of present and future generations.
Bhutan’s development is guided by the philosophy of Gross National Happiness and puts environmental conservation at the center of its developmental approach. This is enumerated in the role of the Royal Government which shall protect, conserve and improve the pristine environment and safeguard the biodiversity of the country, prevent pollution and ecological degradation, secure ecological balanced and sustainable development while promoting justifiable economic and social development and maintain a minimum of 60% of Bhutan’s total land under forest cover for all time.

An international jury composed of experts from academia, government, international bodies, civil society and indigenous groups from all five continents has assessed the nominations against the World Future Councils’ seven principles for Future Just Lawmaking.

The award is designed to alert policy makers and the public to the importance of best practice in lawmaking and highlight outstanding examples of regulatory vision. The Award draws attention to existing sustainable policies and demonstrates that when political will is asserted, positive change can happen. Celebrating visionary policies raises public awareness, encourages rapid learning and speeds up policy action towards just, sustainable and peaceful society.

NEW RAILWAY LINK BETWEEN INDIA AND BANGLADESH

An agreement between Indian Prime Minister Mamata Banerjee and his Bangladesh counterpart Sheikh Hasina for a rail link between Agartala and Akhaurah was signed during the latter’s visit to India in January last year.

The Indian government, according to a Tripura state government official, has sanctioned the railway link to Bangladesh. The 15-km railway track linking Agartala, the capital of Tripura with Bangladesh’s south eastern city of Akhaurah would involve an estimated project cost of Rs.267 crore and is expected to be completed by 2014. The Indian Railway Construction Company (IRCON) would lay the new railway tracks on both sides of the border.

Agartala, the newest station of the Indian Railways that came up on the country’s rail map in October 2008 has helped easing surface communication in the mountainous north eastern states.

For the land locked north eastern states surrounded by mountainous terrain the land route through and ports of Bangladesh are convenient for ferrying goods and heavy machinery both from abroad and others parts of the country. In fact, India has for long been seeking land, port and rail access to the northeast through Bangladesh.

With the establishment of the new railway link, northeast India would be connected to the Chittagong international sea port through railway. Akhaurah as an important railway junction not only connects the Chittagong port but also the resource-rich Sylhet and Dhaka.

Such surface connectivity will also cement better ties and make way for frequent interaction between the people of two countries.

Source: [http://twocircles.net/2011sep21/india_approves_new_railway_link_bangladesh.html](http://twocircles.net/2011sep21/india_approves_new_railway_link_bangladesh.html)

SAARCLAW EXECUTIVE COUNCIL (EXCO) MEETS IN DELHI ON 17TH SEPTEMBER 2011

Under the presidentship of Hon’ble Justice Lyonpo Sonam Tobgye, Chief Justice of Bhutan, EXCO Meeting was convened on 17th September 2011 at The Leela Palace, Chanakyapuri, Diplomatic Enclave, New Delhi, India. The Meeting was well attended by the SAARCLAW Members and various vital issues were discussed and decided. The EXCO Meeting was followed by a dinner hosted by Justice Tobgye where foreign diplomats and various legal luminaries were invited apart from the EXCO Members. The evening turned out to be a great networking platform for the guests and all appreciated the warmth with which the President hosted the dinner.

17TH SAARC SUMMIT TO BE HELD IN MALDIVES

The 17th SAARC Summit will be held in Addu Atoll of the island nation Maldives on November 2011. The Summit will focus on the theme of “Building Bridges” among the countries in the South Asian region, according to the Ministry of Foreign Affairs of Maldives. The meeting will be attended by leaders from the eight South Asian nations: Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka.

The Ministry of Foreign Affairs further informed that the notion of bridging differences would be represented as the overarching theme of the summit rather than any set diplomatic aim. The Maldivian government, as part of a SAARC initiative, has been working with fellow member States to try and improve communication and collaboration throughout the region.

The aim of SAARC, which has a history of over three decades, is to concentrate on areas where member countries can benefit from mutual co-operation so as to solve common problems and reduce possible conflicts.

Source: [www.xinhuanet.com](http://www.xinhuanet.com)

INTERESTING FACTS ON SAARC COUNTRIES

Bhutan is the first country in the world with specific constitutional obligations on its people to protect the environment. Among its requirements, at least 60 percent of the nation must remain under forest cover at all times.

Source: [http://twocircles.net/2011sep21/india_approves_new_railway_link_bangladesh.html](http://twocircles.net/2011sep21/india_approves_new_railway_link_bangladesh.html)
PHOTO GALLERY

PHOTOGRAPHS OF INTERNATIONAL CONFERENCE ON ‘PROMOTING INTRA-REGIONAL TRADE IN SOUTH ASIA: ROLE OF SAARC’ ORGANISED BY MK NAMBYAR SAARCLAW CENTRE ON 26th & 27th MARCH 2011 AT NALSAR, HYDERABAD.

PHOTOGRAPHS OF SAARCLAW EXECUTIVE COUNCIL MEETING AND DINNER ON 17th SEPTEMBER 2011 AT THE LEELA PALACE, NEW DELHI, INDIA.
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