



SAARCLAW

South Asian Association for Regional
Co-operation in Law



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INTERNATIONAL JURISTS AWARD, 2011 FOR HONORABLE CHIEF JUSTICE OF BHUTAN

Thimphu, Bhutan 28th June 2011: The Honorable Chief Justice of Bhutan, the President of SAARCLAW has been awarded the International Jurists Award for 2011 by the International Council of Jurists in a special ceremony.

The award was to be presented by a friend and fellow Chief Justice, the Rt. Honorable Lord Phillips of the Supreme Court of UK in a ceremony on 22nd June in London. However, owing to prior commitments, Honorable Chief Justice could not be in London to receive the award. Therefore, the President of the International Council of Jurists, Dr. Adish C. Aggarwalla travelled to Bhutan directly from London after their annual Conference to present the award.

The President of the International Council of Jurists in his address said that "...with the unanimous consent and approval from the renowned jurists for the contribution and selfless effort made by the Chief Justice of Bhutan as respected and appreciated by the members of the International Jurist Council for his contribution in the field of judicial reforms, establishment of the democratic institutions under the dynamic leadership and the establishment of Supreme Court of Bhutan, with its first renowned Supreme Court Judgment. ..."



In a letter to the Chief Justice of Bhutan, the Rt. Honorable Lord Phillips, President, Supreme Court of the United Kingdom stated that "No one deserves such an award more than you. I have been singing the praises of the Constitution to all whom I meet. Your work is one of its kind in all the constitutional draftings and also in persuading the people and the General Assembly of Bhutan to accepting the constitution means that much of the credit for it goes to you personally."

In his acceptance speech the Hon. Chief Justice of Bhutan, Lyonpo Sonam Tobgye stated that "...recognition is one of the most powerful forms of motivation which encourages excellence and deters mediocrity. Therefore, it is my distinct pleasure and a great honour to express my deep gratitude and appreciation to the International Council of Jurists for bestowing upon me this Award. I am deeply touched. It gives me immense pride in joining the luminaries and the past recipients. Thank you for acknowledging my modest contribution to the cause of Justice and the evolution of Bhutanese political system under our enlightened Monarchs. This Award honours and propagates the vision of the Council 'to promote the administration of justice and law', to which I renew my commitment. I will endeavor to be worthy of the noble vision of the council. This honour is not only for me but also a timely gift to the Judiciary of Bhutan with the unfolding of parliamentary democracy and changes in judiciary, legislature and political system of our country. I am privileged to be a part of these profoundly meaningful changes initiated by our visionary Monarchs..."

The Chief Justice of Bhutan is a premier scholar of Bhutanese jurisprudence, palace etiquette, customs and tradition, a deeply religious and humble personality, a patient teacher and leader, a dedicated champion of justice who has worked tirelessly for the development of the Judiciary. The award conferred on the Honorable Chief Justice of Bhutan is also recognition of the rightful place of the Bhutanese legal system amongst the judiciaries of South Asia and the world at large.

The award ceremony was attended by Justices of Supreme Court and High Court, Judges from the Dzongkhags, staff, media persons and many well wishers. The Cabinet Ministers also offered their good wishes.

MESSAGE FROM THE PATRON-IN-CHIEF



Dear Readers,

Greetings! It is my pleasure to offer you the second issue of our newsletter and acknowledge the support of international bodies and organizations to partner with the SAARCLAW. I hope all the Country Chapters will seize this opportunity for meaningful collaboration on need based issues. The noble vision and common aspiration as enshrined in our Charter requires our consistent efforts to live in peace, freedom, social justice and economic prosperity.

Enjoy the newsletter.



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

MESSAGE FROM THE EDITOR-IN-CHIEF



Dear Readers,

After the success of the First Issue, I am happy to bring for your reading the Second Issue of SAARCLAW Newsletter ('SLN') with the latest information from all Saarc law member countries. This Issue offers to the Readers various interesting articles, news, upcoming events, achievements and interesting updates about the SAARC countries.

I would like to thank all those who have worked towards releasing of the Second Issue including the members of the Editorial Board, Patron, Advisory Board, Expert Observers, Vipin Kumar and Shruti Goyal 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
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Editor-in-Chief, SAARCLAW Newsletter
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SUPREME COURT OF INDIA AGAINST HONOUR KILLINGS

The Indian Apex Court reiterated that there is nothing 'honourable' in 'honour killings' and they are nothing but barbaric and brutal murders by bigoted, persons with feudal minds. Further, the honour killings come within the category of rarest of rare cases deserving death punishment. It is time to stamp out this barbaric, feudal practice which is a slur on our nation. This is necessary as a deterrent for such outrageous, uncivilised behaviour. All persons who are planning to perpetrate 'honour killings' should know that gallows await them.

MAINTENANCE IN CASES NOT FALLING UNDER RELATIONSHIP OF MARRIAGE

There is a difference between relationship of marriage and relationship 'in nature of marriage' covered under 'The Protection of Women from Domestic Violence Act, 2005'. While explaining the term relationship 'in nature of marriage' the Indian Supreme Court held that earlier there was no law providing for maintenance to a woman who was having a live-in relationship with a man without being married to him and was then deserted by him. But after the passing of this Act, the Parliament has taken notice of a new social phenomenon which has emerged in our country known as live-in relationship. However, not all live in relationships will amount to a relationship in the nature of marriage to get the benefit of the Act of 2005. For example, if a man has a 'keep' whom he maintains financially and uses mainly for sexual purpose and/or as a servant then it would not be a 'relationship in the nature of marriage'. To get such benefit the following conditions must be satisfied which have to be proved by evidence:

- The couple must hold themselves out to society as being akin to spouses.
- They must be of legal age to marry.
- They must be otherwise qualified to enter into a legal marriage, including being unmarried.
- They must have voluntarily cohabited and held themselves out to the world as being akin to spouses for a significant period of time. (see 'Common Law Marriage' in Wikipedia on Google).

- In addition the parties must have lived together in a 'shared household' as defined in Section 2(s) of the Act and merely spending weekends together or a one night stand would not make it a 'domestic relationship'.

WOMEN'S RIGHT TO ABORTION

In the landmark judgment of *Laxmi Devi Dhikr & Ors v. Government of Nepal & Ors*, the Apex Court of Nepal settled various issues relating to the right of women to enjoy reproductive health and right to abortion. The following observations came on a petition filed with a prayer to make an order of Mandamus in the name of the Ministry of Law, Justice and Parliamentary Affairs directing it to make a separate special law ensuring the safe and accessible right to abortion and until the said law is promulgated; directing the opposite parties to launch a special program for making the abortion service providers informative on the provisions of existing law and to set up a fund in the central level in order to making the service of abortion more accessible and affordable to the poor and backward women; directing them to maintain the privacy of the women who take service of abortion; directing the respondents/opponents to make the service regarding abortion more accessible and affordable, and the fee to be permitted to charge at maximum be fixed and to provide the service of abortion at free of cost to those who are unable to pay the charge for abortion, to launch the necessary program for enhancing the mass awareness on abortion.

- From the point of view of rights, reproductive health is the main issue of concern for women's human rights. Among the subjects of the women's human rights, right to freedom is most important under which the right to live with dignity and right to personal freedom falls. Right to health, right to reproductive health, right to family planning, right to marry voluntarily or right to have a family, right to give birth or not or the right to decide the number and age gap between children, right to abortion as prescribed by law, right to privacy, right to non-discrimination, right against torture, inhuman treatment or cruelty and punishment, right to freedom from sexual violence, right to share on

scientific development or right to participate in research etc are all rights falling within the ambit of women's human rights.

- The issue of pregnancy should be left to the mother and it is the duty of the society to provide an effective legal system and other remedies for the protection of desired pregnancy by the woman.
- Decision to give birth or not fall within the comprehensive ambit of reproductive health and right to reproduction.
- A woman's right to reproductive health and reproduction is closely connected to various fundamental and human rights of women.
- So far the question as to whether or not abortions should be provided free of cost to the individuals by the State, right to health being the fundamental right of a person therefore it should be treated as the right to life, and our Constitution has recognized the right to social justice too. In addition, the directive principles of state policy as set by the Constitution has accepted as the obligation of the State to ensure special protection of women, therefore, women's right to abortion or other problem associated with the abortion may not be segregated by the State assuming that it is the private problem of an individual.
- It is urgent to make a separate law to regulate the matters relating to abortion giving due consideration to the sensitiveness of the amended legislation.

NEPAL'S SUPREME COURT LAYS DOWN PROCEDURAL RULES FOR SPECIAL CASES

In a writ petition filed by Forum for Women, Law and Development, the Apex Court of Nepal laid down the "Procedural Guidelines for Protecting the Privacy of the Parties in the Proceedings of Special Types of Cases" till the legislature enacts a law in this respect. The basic intent behind these rules is to prepare a definite legal framework for the special cases regarding protection of the persons infected with HIV/AIDS in the event of such infection, the women in the event of violence committed against them and the children in the event of getting

involved in conflict with the law. The substance of the provisions contained in these rules is as follows:

- Personal introductory information involving such matters has to be protected subject to certain limitations contained in Rule 4.
- Procedure for maintaining the secrecy like keeping the documents in sealed envelopes, creating separate rosters for such cases etc.
- Issuing of an identity card mentioning the symbol, name, number or indication mark of the person whose identity has been kept secret.
- Summons and notices to be issued on the symbol, name, number or indication mark provided in the identity cards.
- Any violation is subject to the proceedings under contempt of court.
- A duty has been imposed on all the officers and employees of the court failing which they would also be liable to face proceedings under contempt of court.

These guidelines came on a prayer made in the writ petition no. 3561/2063 (2006) for making appropriate provisions for maintaining privacy of the procedural formalities on the basis of gender sensitivity, taking into consideration the gender sensitivity of women and also the discriminations and allegations suffered by them, in cases relating to women in respect of the proceedings ranging from filing of the case to pleadings, submissions and delivery and publication of the judgment; for making appropriate provisions for maintaining privacy in cases relating to children right from the initial procedure of the cases in order to ensure juvenile justice to them, taking into consideration social stigma likely to be faced by the children in the future; for making necessary legal provisions for maintaining privacy in cases relating to the persons infected by HIV/AIDS right from the beginning of the process of registration of the case in view of the fact that the persons infected by HIV/AIDS are being victims of social discrimination and stigma and they are also being deprived of reasonable opportunities; and for making legal provisions for maintaining privacy in the case in the event of a party to

the case moving a petition at the time of registration of the case or while it is in progress requesting the court for issuing an order for maintaining such privacy by showing special reasons and facts which justify such a demand; and also for making breach of such privacy by any person concerned with maintaining privacy in such cases punishable and also for providing reparation to the persons affected by that.

SRI LANKA-INDIA FERRY LINK RE-ESTABLISHED

The ferry service between India and Sri Lanka resumed operations in June after a gap of three decades. India's Union Shipping Minister G.K. Vasan flagged off the service of the vessel Scotia Prince at Chidambaranar Port in Tuticorin. The distance between Port of Tuticorin and Colombo is 280 nautical miles.



The ship, Scotia Prince, is a US made vessel and can accommodate 1040 passengers but on its first voyage after a long gap there were only 201 passengers, out of which, 80 were goodwill ambassadors. The ferry is expected to cover the distance between the two countries in 14 hours as the distance between Port of Tuticorin and Colombo is 280 nautical miles. The service initially will be operated twice-a-week between Colombo and Tuticorin and vice versa.

Another boat, which is to start operating soon, is to be run by Sri Lanka's state-owned Ceylon Shipping Corporation. The old ferry service stopped 30 years ago linked the Indian temple town of Rameshwaram to Mannar, a part of northern Sri Lanka. There are plans to open this route as well to bring the people of two States closer. In addition to trade and tourism the South Asian people will benefit from the spirit of being a South Asian.

15th CONSTITUTIONAL AMENDMENT BILL IN BANGLADESH

The Parliament of Bangladesh is discussing the 15th constitutional amendment bill which is expected to trigger a series of changes in the country. It is important to mention here that a special parliamentary body for constitutional amendment was formed on July 21 last year to recommend the constitutional amendments. Its major thrust is on repealing of the provision for holding national elections under a non-partisan caretaker government. The bill was placed in the House on 29 July 2011 and was sent to the parliamentary body the same day to scrutinise. The report is sought within two weeks time. The Bill will be easily passed as the Awami League-led government holds more than the required two-thirds majority in the 345-seat parliament. Under the current system, an elected government at the end of its tenure hands over power to a non-partisan caretaker administration to supervise the polls. Introduced in the constitution in 1996, the caretaker system has overseen the holding of three parliamentary polls, including the last one in 2008 that was swept by the AL-led grand alliance. All the three parliamentary elections were considered by and large free and fair by local and international observers. The repeal was necessary after the Supreme Court struck down the 13th amendment to the constitution as illegal. Another key change proposed in the bill deals with the timing of the elections. According to the bill, elections will be held under the elected government within 90 days before parliament is dissolved. Parliament will stay, but it can't hold any session during the 90-day election period. Lawmakers-elect would not assume office until the five-year tenure of the outgoing parliament expires, according to the constitutional amendment bill. The bill, however, has proposed no restrictions on the powers of the outgoing government during the 90-day election period. The scrutinising committee for the bill, also proposed making it mandatory for the court to hear the Election Commission first before issuing any order in relation to a voting for which schedule has already been announced. Since Islam has been retained as the state religion, allowing followers of other faiths — Hinduism, Buddhism and Christianity — equal rights to pursue their religions. The bill seeks to keep the phrase "Bismillahir Rahamanir Rahim" above the preamble of the constitution and allows religion-based politics.

For more details please visit:

<http://www.southasianrights.org/?p=3136>

PAKISTAN PASSES 19TH CONSTITUTIONAL AMENDMENT BILL

The National Assembly of Pakistan passed their 19th Amendment Bill in late June 2011. The Bill, containing seven clauses, mainly deals with the appointment of judges, addition of four-member senior judges of the judicial commission and addition of the Islamabad High Court in the list of higher judiciary. When the Bill was presented in the National Assembly for consideration, the Supreme Court of Pakistan had issued an order dated 21 October 2010, challenging certain amendments, and made a reference to the Parliament for reconsideration of the provisions of Articles 175A in light of the observations made in the said order. The Bill gives effect to certain amendments in the Constitution. For example the amendment has affected Article 81 of the Constitution of Pakistan by increasing the scope of this amendment and including the High Court of Islamabad in the Bill. A similar addition has been done in Article 175. But it is Section A of this Article which has seen many amendments. In addition to this, the Bill has made changes in Articles 182, 213 and 246 of the country's constitution.

For more details, please refer to
<http://pakistanconstitution-law.org/19th-amendment-2011/>

and
<http://www.pakistantoday.com.pk/2010/12/19th-constitutional-amendment-passed/>

4TH SAARC BUSINESS LEADERS CONCLAVE TO BE HELD IN NEPAL

The 4th SAARC Business Leaders Conclave (SBLC) has been scheduled on 20th to 22nd September 2011 in Kathmandu, Nepal. The theme of the event is "Peace and prosperity through regional connectivity". The Hon'ble Prime Minister of Nepal, Mr. Jhala Nath Khanal, is expected to inaugurate the event.

The event will be held in collaboration with the Federation of Nepalese Chambers of Commerce and Industry (FNCCI), in partnership with Friedrich Naumann Stiftung: Fur die Freiheit and all National Federations/Chambers of Commerce and Industry of South Asian Region.

SAARC POLICE: BEING PLANNED

South Asia is being challenged by almost all kinds of crimes, which has created a serious problem of security in the region. To counter this situation a regional 'police', tentatively named as SAARCPOL is being thought of by the South Asian countries. This regional police will work in coordination of all the eight members of the SAARC.

In 2011, a meeting of police chiefs from India, Pakistan, Bangladesh, Nepal, Bhutan, Afghanistan and the Maldives was held in Colombo. In this meeting the problems for which this force is required were discussed in order to draft the scope and functions of this force. Sri Lanka, the host of this meeting, having had a long battle with terrorism and crime at the hands of LTTE, emphasised the need for such a police force especially when the region is under the shadow of national crimes, secessionist violent movements, and terrorism to name a few.

Keeping in view the bilateral issues of the SAARC Countries it was suggested that some best practices must be adopted by each country which will be helpful in avoiding any misunderstandings. It was suggested that the proposed SAARCPOL may be designed to focus on areas like the extradition of criminals, control on counterfeit notes racket and drug-trafficking in the region etc. etc.

The SAARCPOL was the original proposal of Sri Lanka and was later as per the suggestions of the member countries. In addition to their inputs the SAARC countries have also come up with their offers to contribute in this endeavour of SAARCPOL. For example, Sri Lanka has offered to give the SAARCPOL officers training in counter terrorism tactics, while Bangladesh has offered to run a programme on tackling organised trans-border crimes. Pakistan has also suggested to set-up a SAARC institute of criminology to promote research based understanding of organised crimes. It seems that the region's recent history of crimes, has made friends out of neighbours.

RECENT ACTIVITIES AT SAARCLAW

After a remarkable beginning, the new Executive Council is geared up to achieve more by implementing the road map prepared under the guidance of Hon'ble Justice Sonam Tobgye, President, SAARCLAW.

For the above, Justice Tobgye personally met and wrote to different international development organisations to support and collaborate with SAARCLAW; as a result of which, said international development organisations, primarily UN bodies, have agreed to directly contact the respective Presidents of SAARCLAW Country Chapters for collaborating in relation to country specific issues and activities.

On the 17th and 18th of May, 2011 at Kathmandu, Nepal, SAARC Secretariat with support from United Nations Development Programme in partnership with UNAIDS (Joint United Nations Programme on HIV/AIDS) and Women, Asia Network of Positive people (WAPN+) organised Consultation on the issue of creating Universal Access for Women and Girls Living with HIV in the SAARC Region. On behalf of SAARCLAW, this event was attended by Ms. Sapana Pradhan Malla and Ms. Pelden Wangmo, Members, Executive Council, as Observers/Experts.

Further, Mr. Hemant K Batra, Secretary General, SAARCLAW was invited as a Regional Observer by the UNAIDS (Joint United Nations Programme on HIV/AIDS) for the hearing of their Global Commission on issues connected with HIV/AIDS held in Bangkok.

After several rounds of talks, UNAIDS, IDLO and TSF have pledged to assist SAARCLAW in organizing an International Roundtable on social issues, which is likely to be held in Colombo in November this year. The responsibilities of organising and coordinating for the said event are being devolved on Ms. Sapana Pradhan Malla, Ms. Pelden Wangmo and others.

CONSULTATION ON UNIVERSAL ACCESS FOR WOMEN AND GIRLS LIVING WITH HIV IN THE SAARC REGION - ENHANCING THE ROLE OF POSITIVE PEOPLE'S/WOMEN'S NETWORKS

Kathmandu, Nepal, 17-18 May 2011

A Consultation on the issue of creating Universal Access for Women and Girls Living with HIV in the SAARC Region was organized by the SAARC Secretariat with support from United Nations Development Programme in partnership with UNAIDS (Joint United Nations Programme on HIV/AIDS) and Women, Asia Network of Positive people (WAPN+) at Kathmandu, Nepal on the

17th and 18th of May, 2011. On behalf of SAARCLAW, Ms. Pelden Wangmo, Member, Executive Council, SAARCLAW attended the event as an Observer/Expert.

The Statement from the Consultation on Universal Access for Women and Girls Living with HIV in the SAARC Region noted the following:

- 1 Many women and girls living with HIV in South Asia have been infected by their intimate sexual partners;
- 2 Women and girls living with HIV face stigma, discrimination and rights violations that impede their access to HIV services and community participation;
- 3 Violence against women is a pressing concern in the region and is associated with HIV as a cause and consequence of HIV;
- 4 Vertical transmission remains a significant problem; prevention of vertical transmission is a low-cost and high-impact intervention;
- 5 Access to treatment, care and support for women and girls living with HIV is greatly constrained by the location of their residence, lack of sufficient income, and lack of information;
- 6 Civil society organizations, especially those focusing on women's issues, play a crucial role in the AIDS response, yet the involvement of these groups in planning and implementing HIV programmes still remains insufficient;
- 7 Greater dialogue and collaboration between governments, networks of women living with HIV and civil society organizations working on issues relating to women, sexual reproductive health and human rights is essential to an effective AIDS response;
- 8 The future of the HIV epidemic in the region depends to a large extent on the ability of at-risk and vulnerable women and their transactional and steady partners to protect themselves from HIV.
- 9 To achieve the above, a more enabling legal and policy environment is needed;
 - Integrated services for women, adolescents girls and children living with and affected by HIV should be promoted;

- b** Migrants play a vital role in the economic well-being of the region; the vulnerability of migrant women and female spouses of migrant men to HIV requires greater attention;
- c** Networks of women and girls living with HIV require greater financial, technical, legal and social support;
- d** More research and evidence on the impact of HIV on women and girls in South Asia is needed to achieve

The consultation agreed on the following key guiding principles:

- Strengthen access to HIV services for all women and girls, including non-citizens, specifically antiretroviral therapy (ART), prevention of mother-to-child transmission (PMTCT), Early Infant Diagnosis (EID) and support to care givers;
- Support parliamentarians, the judiciary, prosecutors, police and lawyers to promote the rights of women and, girls living with HIV;
- Scale up access to justice and legal services for women and girls living with and affected by HIV;
- Enhance the capacity of CSOs and national authorities by:
 - identifying avenues and disseminating information about opportunities for financial and technical support;
 - creating a mechanism for mutual learning;
- Strengthen the engagement of men and boys as partners for gender equality in national and regional HIV efforts.

The consultation recommended further action should be taken in the following areas:

- 1** Strengthen the institutional mechanism to spearhead action within SAARC on HIV, women, girls, gender, sexual reproductive health and legal and economic empowerment that would include:
 - a** strengthening the SAARC regional strategy to raise awareness and knowledge on HIV, women and girls;
 - b** facilitating dialogue among Member States and CSOs;
 - c** promoting cross border collaboration through studies on cross border issues and the development of standard operating procedures on access to services for women adolescent girls and children living with HIV;

- d** collaborating with the SAARC Gender Information Base to increase data, knowledge sharing and mutual learning on HIV.

- 2** Enhance the capacity of CSOs working on women, girls, gender equality and HIV and national authorities by identifying avenues and disseminating information about opportunities for financial and technical support.
- 3** Advocate for strengthening national legal and policy frameworks to effectively respond to the needs of women, girls, and HIV in collaboration with SAARC Law and other appropriate entities through consultative meetings on laws related to women, girls, and HIV. Advocate for scaling up access to justice and legal services for women and girls living with and affected by HIV by raising awareness about rights and remedies.
- 4** Facilitate cross country learning on gender- and HIV-sensitive social protection and economic livelihood models to support the expansion of good practices among CSOs, governments and donors.
- 5** Facilitate stronger monitoring and evaluation systems and increase the availability of strategic information on women, girls and HIV (disaggregated by gender, age, geographic etc.)

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