



SAARC LAW

South Asian Association for Regional
Co-operation in Law



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PRESS RELEASE

Dated 5th April, 2011

A significant event took place with the signing of a Memorandum of Understanding (MoU) between the Joint United Nations Programme on HIV/AIDS (UNAIDS) and the South Asian Association For Regional Co-operation In Law (SAARC LAW), on the 28th of March, 2011 at the Asia Pacific head quarters of UNAIDS, Bangkok. The MoU was signed by the Secretary General of SAARC LAW, Mr. Hemant K Batra, and the Director, Regional Support Team Asia-Pacific, Mr. Steven Kraus, in presence of an august audience. The other eminent persons present at the occasion included Ms. Nanda Krairiksh, Director, UNESCAP, Ms. Geeta Sethi & Ms. Nashida Sattar,

UNAIDS and Ms. Jane Wilson, Advisor GIPA, Gender & Human Rights.

UNAIDS has been on a mission to lead and inspire the world in achieving universal access to HIV prevention, treatment, care and support. This MoU is special as for the first time a body like SAARC LAW, an association of the legal communities of the SAARC countries comprising of judges, lawyers, academicians, law teachers, public officers and a host of other law-related persons, is partnering with UNAIDS to contribute, in its own unique way, to the noble mission pursued by the latter.



Some of the key objectives of the MoU are to spread awareness amongst the people regarding HIV, to support people at risk of or living with HIV and to promote the understanding of the need for sound legal frameworks to respond to the HIV pandemic both in the SAARC region as well as the rest of the world. The parties aim to jointly work and advocate for reform of unjust laws and practices prevalent throughout the world, including HIV-related restrictions on entry, stay and residence, which block effective responses to HIV and contribute to the vulnerability of communities to HIV, to work towards eliminating all forms of discrimination and stigmatization of persons living with or affected by HIV and to support the work of each other to relevant stakeholders, both in the SAARC region as well as internationally. They have agreed to collaborate in holding, either a country-specific, regional or international meeting or activity to enhance understandings of the relationship between HIV, human rights and the law, to publish a report, journal article or other like document on HIV, human rights and law and to help in providing public support to issues of fundamental importance in the field of HIV and human rights.

The bodies are hopeful that with their joint efforts they will be able to achieve their key objectives, in times to come, and benefit the society.

MESSAGE FROM THE PATRON-IN-CHIEF



Dear SAARCLAW Members and Readers,

It is a great pleasure to greet you as the new President of SAARCLAW and Patron-in-Chief of SAARCLAW Newsletter.

The SAARCLAW Newsletter is an effort to palpitate the hearts and mind of legal fraternity in our region. In his relentless effort to galvanize the energy, ignite the imagination and unite the efforts of the region, the Secretary General has initiated this Newsletter. Asia embraces one-fifth of world population with sterling history, indomitable human spirit and unquenchable thirst for knowledge. Consequently, Asia has contributed and will contribute to harnessing science and technology, philosophy and logic, culture and tradition, and knowledge in general. Time has come to awaken ourselves to the challenging times and continue to lead the world, particularly in the field of law and justice.

The SAARCLAW was born out of our united effort for a common purpose to encourage the legal fraternity to work harder and to share the knowledge and experience. This noble idea must inspire us to continue our efforts to present unrelenting opportunities and fulfillment of the solemn promise made by us through the Charter to the present and succeeding generations for commitment to law and justice.



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

MESSAGE FROM THE EDITOR-IN-CHIEF



Dear Readers,

I am delighted to present the First Issue of SAARCLAW Newsletter ('SLN') for 2011 with a completely new look and presentation. Launch of new SLN is made possible pursuant to an initiative taken by the new Executive Council of SAARCLAW (2011-13). We are launching the SLN in both 'e-newsletter' and Printed formats.

This issue offers to the Readers a range of interesting articles, news, upcoming events and interesting updates about the SAARC countries.

I take this opportunity to thank the members of the Editorial Board, Ms. Swati Kundan and Mr. Vipin Kumar for their efforts in making this launch possible. I also thank the Patrons, Members of Advisory Board and Expert Observers for their continuous support towards this endeavor.

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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INDIAN SUPREME COURT LEGALISES PASSIVE EUTHANASIA

In the landmark judgment of Aruna Ramchandra Shanbaug vs Union of India (UOI) and Ors, the Apex Court of India legalised passive euthanasia subject to fulfilment of certain conditions. A distinction was made between active euthanasia (use of lethal substances or forces to kill a person e.g. a lethal injection given to a person with terminal cancer who is in terrible agony) and passive euthanasia (withholding of medical treatment for continuance of life, e.g. withholding of antibiotics where without giving it a patient is likely to die, or removing the heart lung machine, from a patient in coma) by the court while dismissing the petition filed by Ms. Pinki Virani of Mumbai. A plea was rejected for allowing the “mercy killing” of a 60-year-old nurse, Aruna Ramchandra Shanbaug, lying in a Mumbai hospital in a vegetative state for 37 years, ever since a sexual assault on her by a sweeper, a hospital staff, on November 27, 1973. However, the court laid down a legal procedure on passive euthanasia which would remain in force until a statutory law was enacted by the Indian Parliament on this subject. The procedure to be adopted in such cases shall be as follows:

- i A decision has to be taken to discontinue life support either by the parents or the spouse or other close relatives, or in the absence of any of them, such a decision can be taken even by a person or a body of persons acting as a next friend. It can also be taken by the doctors attending the patient. However, the decision should be taken bona fide in the best interest of the patient.
- ii If a decision is taken by the near relatives or doctors or next friend to withdraw life support, such a decision requires approval from the High Court concerned.
- iii The High Court shall speedily dispose of the petition after following internal procedure laid for this purpose.

Further, a recommendation was made to the government to withdraw Section 309 of the Indian Penal Code that provides for prosecution of those who attempt to commit suicide.

PROSTITUTES HAVE RIGHT TO LIVE WITH HUMAN DIGNITY

The Supreme Court of India in Budhadev Karmaskar vs. State of West Bengal observed that the prostitutes also have a right to live with dignity under Article 21 of the Constitution of India since they are also human beings and their problems also need to be addressed. A woman is compelled to indulge in prostitution not for pleasure but because of abject poverty. If such a woman is granted opportunity to avail some technical or vocational training, she would be able to earn her livelihood by such vocational training and skill instead of by selling her body. Further, while dismissing the appeal of the accused –appellant who was found guilty of murdering a sex worker by brutally pulling her hair and bashing her against the wall for several times, the court issued directions to the Central and the State Governments to prepare schemes for giving technical/vocational training to sex workers and sexually abused women in all cities in India. The first compliance report indicating therein the first steps taken by the Central and the State Governments in this regard is directed to be submitted on 04-05-2011.

INDIA-BANGLADESH JOINT COMMUNIQUE: HEADING TOWARDS GREATER CONNECTIVITY

During Sheikh – Hasina's visit to India last year, signing of Joint Communique between the two countries has been remarked by many experts as a path – breaking measure in SAARC to deepen economic integration; which SAARC desperately had been craving for. Although the communiqué has been criticized by some, yet experts are highly positive towards it. If agreement really is implemented a new era could dawn across the land borders of South Asia.

The aspiring features of this agreement include:

TRANSIT FACILITIES

One of the most noteworthy achievements which this agreement seeks to achieve is that India will get access to its landlocked seven northeastern states through Bangladesh with "unfettered movement of people and goods" as Dhaka seeks to transform itself into a "regional hub" by boosting road and railway connectivity in the country. Underlining that the country

had been isolated for too long, Foreign Minister Dipu Moni had quoted that “giving transit facilities to India would bring economic benefit for Bangladesh”. Bangladesh has decided to give transit facilities to traders of India, Nepal and Bhutan to Chittagong and Mongla ports through road and rail. In turn, India has agreed to grant similar transit facility to Bangladesh. This will allow India easier access to its far-flung north-eastern states. For Bangladesh, it offers access to the markets of Nepal and Bhutan. Bangladesh's confounding economy would also gain from the transit fees of approximately US \$1 billion annually. The connectivity will also ensure higher utilization of the Chittagong and Mongla ports capacity

INTER-GRID POWER CONNECTIVITY

Another noteworthy feature of the agreement is that both countries agreed to expedite inter-grid connectivity and showcased their willingness to cooperate in the development and sale of electricity, including generation from renewable sources. At present Bangladesh is experiencing huge energy shortages which could be between 25 per cent and 50 per cent. Bangladesh's current power production stands at around merely 4000 MW against an estimated daily demand for 5500 MW. The country has for long being keen on sourcing hydel power from Nepal and Bhutan but could not do so as any such transaction would need to be routed through India. But now India has agreed to supply to Bangladesh 250 MWelectricity from its grid.

LARGEST ONE-TIME BILATERAL FINANCIAL ASSISTANCE BY INDIA

India has offered a US \$ 1 billion line of credit to Bangladesh which is the largest ever one-time bilateral financial assistance by India to any country. The credit line will be used for the construction of railway bridges and lines, supply of locomotive coaches and buses. This decision is of much significance in Indo-Bangladesh relations. It has been welcomed by a large section of the people of Bangladesh, including business leaders and intellectuals.

RAIL/ ROAD CONNECTIVITY

India has even agreed to finance the construction of the proposed Akhaura-Agartala railway link. Authorities of both countries would identify the alignment for connectivity. Both countries also agreed that Rohanpur-

Singabad broad gauge railway link would be available for transit to Nepal. Bangladesh has informed of its intention to convert Radhikapur-Birol railway line into broad gauge and requested for railway transit link to Bhutan as well.

Thus in such turbulent South Asian region where its only regional grouping even after completing its silver jubilee is being tagged as a “talk shop of no consequence” and “white elephant”, the initiatives on the part of both countries by signing this agreement surely is a landmark step towards making SAARC truly an action oriented. Now another next step in the pipeline which seriously needs to be monitored is whether India and Bangladesh will manage to follow through on promises to open up their economies for transit and trade as set out in this memorandum as tough challenges remain which include bureaucratic inertia in India and ultra-nationalist politics in Dhaka. One instance of it has already been seen that India has modified the terms of loan being granted to Bangladesh.

18TH CONSTITUTIONAL AMENDMENT OF THE ISLAMIC REPUBLIC OF PAKISTAN: AN OVERVIEW

As passed by the National Assembly of Pakistan the 18th Amendment in the constitution of Pakistan is the centre of a lot of legal debate in the country as well as the region. Following are the major points of the amendment:

- Amendment to Article 6 seeks to pre-empt military coups in future
- Article 58(2b) to be repealed, substituted with 'Dissolution of National Assembly'
- President may dissolve NA in case no-confidence vote passed against PM
- Total strength of cabinet should not exceed 11% of total membership of parliament
- Governor should be a resident and registered voter of his/her province, he/she would be appointed by president on prime minister's advice
- Provinces required by law to establish local government systems, devolve political,

- administrative and financial responsibility and authority to elected representatives
- PM to be chairperson of CCI, members to include CMs, 3 members from federal government
- Amendment to Article 157 says federal government must consult provincial government before installing hydroelectric power stations in any province
- PM to forward three names for office of CEC, in consultation with opposition leader in National Assembly, to a parliamentary committee for confirmation
- Committee proposes insertion of Article 175(a) to deal with appointment of judges to Supreme Court, high courts, Federal Shariat Court Committee proposes substitution of Article 243, says federal government 'shall have control and command of armed forces, supreme command of armed forces shall [rest with] ... president'
- President to appoint Joint Chiefs of Staff Committee chairman, chief of army staff, chief of naval staff, chief of air staff
- NWFP will be renamed 'Khyber-Pakhtoonkhawah'
- State will provide free, compulsory education to children aged between 5 and 16 years
- Amendments to Clause 1 seek substitution of 'Baluchistan' with 'Balochistan', 'Sind' with 'Sindh'
- Insertion of clause sought to bar persons acquiring citizenship of foreign country from contesting elections to parliament
- All elections under constitution, other than those of PM and CM, to be by secret ballot

For further details please visit:

<http://pakteahouse.net/2010/04/04/highlights-of-the-18th-constitutional-amendment/>

http://www.comparativeconstitutionsproject.org/files/Pakistan_2010.pdf

SRI LANKA: ON WAY TO LEGAL REFORMS

Sri Lanka is all set for legal reforms. It was announced recently by the Sri Lankan Minister of international Monetary Co-operation that the country was planning to have new laws to regulate and promote foreign investments so that the country's economy could be strengthened. For this purpose some changes can be expected in the already existing laws and legislations of the country. In addition to corporate laws the country's Criminal laws are also being thought over for certain reviews and improvements. For example, the protection of witnesses and whistle blowers in Sri Lanka is becoming a concern. Hence it is felt that the laws for the protection of the witnesses and victims should be in place to improve criminal justice system.

MALDIVES: SUPREME COURT'S RULING ON ACCOUNTABILITY OF THE POLICE AND MILITARY FORCES

In an important decision of the Apex court of Maldives the country's police and national defense forces are made accountable to the Parliament's National Security Committee which is popularly known as the "241 Committee". The decision came on the basis of request made by Majlis, the Parliament of Maldives, when some of high police officials did not pay any heed to the 'legislative request' of Majlis to answer some security related questions in person. The case was put up under the Article 95 of the Constitution of the country.

For further details please visit: http://www.loc.gov/laww/eb/servlet/lloc_news?disp3_l_205402576_text

FIRST CONSTITUTIONAL VERDICT OF BHUTAN

Bhutan – the world's youngest democracy witnessed its first constitutional verdict which was pronounced by the Supreme Court of Bhutan. This judgment came on an appeal filed by the Government of Bhutan against the decision of high court in favour of its political opposition party. On November 18, 2010 the high court had ruled that the government's imposition of taxation measures was unconstitutional and against the provisions of Public Finance Act. This tax revision was done without introducing the revised tax schedule as money bill in the parliament which violated Article 13(2) of the constitution. Article 13(2) states that money bills and finance bills can originate in the National Assembly alone. Regarding the issue of locus standi of the opposition leader Tshering Tobgay for filing

the case himself, the high court held that the other member of the opposition Damcho Dorji (only other opposition MP) also wanted to represent in the court case, hence it was clear that the case was not filed by the opposition leader alone, but by the opposition party itself. The Supreme Court while upholding the decision of high court gave valuable discussion on following points:

- i Interpretation of Jabmi Act
- ii Separation of powers between the legislature and judiciary
- iii Jurisdictional issue of high court to adjudicate constitutional matters
- iv Constitutional validity of taxation laws
- v Delegated legislation

This judgment would go a long way in establishing and strengthening the constitutional and legal jurisprudence in Bhutan.

ELECTIONS OF SAARCLAW EXECUTIVE COUNCIL FOR THE TERM 2011-13

Elections for SAARCLAW Executive Council for the term 2011 – 2013 were held on 7th January 2011 at New Delhi.

Hon'ble Mr. Justice Lyonpo Sonam Tobgye, Chief Justice, Supreme Court of Bhutan was unanimously elected as the President and Mr. Hemant K. Batra, Managing Partner, Kaden Boriss Legal LLP (India Office) was elected as the Secretary General. Mr. Abdul Baset Majumder from Bangladesh, Mr. Justice Tshering Wangchuk from Bhutan, Mr. Justice Umesh C. Banerjee (Retd.) from India, Justice Kalyan Shrestha from Nepal, Prof. Habib-ur-Rahman from Pakistan and Mr. Rohan Sahabandu from Sri Lanka were elected as Vice Presidents (one from each SAARCLAW member country). Muhammad Mohsen Rashid was elected as the Treasurer.

The new Members of the Executive Council of SAARCLAW include: Mr. Justice Lyonpo Sonam Tobgye, Mr. Justice Tshering Wangchuk, Mr. Justice Norbu Tshering, Ms. Pelden Wangmo, Mr. Justice Ugyen Tshering, Ms. Pema Choden, Mr. M. Amir-Ul Islam, Mr. M. Hafizullah, Ms. Tania Amir, Mr. Abdul Baset Majumder, Muhammad Mohsen Rashid, Mr. Justice Kalyan Shrestha, Prof. (Dr.) Amber Prasad Pant, Mr. Purna Man Shakya, Mr. Laxmi Prasad Upreti, Ms. Sapana

Malla Pradhan, Mr. Mehmood Y Mandviwalla, Prof. Habib-ur-Rahman, Mr. Justice Rasheed A. Rizvi (Retd.), Mr. Justice Fakhruddin Ebrahim (Retd.), Mr. Ali Zafar, Ms. Sheeza Ahmed, Ms. Dhara Wijayatilake, Mr. Nihal Jayamanne P.C., Mr. Rohan Sahabandhu, Mr. Manohara de Silva P.C., Mr. Champaka Ladduwahetty, Mr. Justice Umesh C. Banerjee (retd.), Mr. K.K. Venugopal, Dr. Abhishek Manu Singhvi, Mr. Hemant K Batra, Ms. Jayshree Anand and Mr. Rakesh Munjal.

The newly constituted Executive Council took over the charge and responsibilities with immediate effect and discussed the road map for the next two years of their term.

LAUNCH OF THE NEW SAARCLAW WEBSITE

SAARCLAW on 18th February 2011 launched its new website with improved features and vibrant look. The website was inaugurated by Hon'ble Mr. Justice Lyonpo Sonam Tobgye, Chief Justice of Bhutan and President of SAARCLAW in presence of Mr. Hemant K. Batra, Secretary General, SAARCLAW and Ms. Pelden Wangmo, Secretary General, SAARCLAW - Bhutan Chapter.



Apart from providing latest updates and information pertaining to SAARCLAW countries, the website enables the users to connect to the members of SAARCLAW Executive Council. Few other popular links available on the website are SAARCLAW Reports and Declarations, Expert Talk, Events and Publications. The website also has 'Contact Us' and 'Queries' features through which the users can send their query(ies) to the Secretariat and are attempted to be addressed immediately. The website is professionally managed and updated on regular basis to provide the users with latest information.

The website has received overwhelming response from the legal fraternity and those interested in knowing SAARCLAW's activities.

SAARCLAW SETS UP A RESEARCH AND PUBLICATION CENTRE IN GURGAON (NCR)

SAARCLAW has persistently worked towards the achievement of its objectives and a recent major step in this direction has been the establishment of SAARCLAW Research and Publication Centre ('SRPC') in the premises of the law firm Kaden Boriss Legal LLP in the corporate/millennium city of Gurgaon, National Capital Region (Delhi).

The SRPC shall bring out credible publications / newsletters regarding the activities/events/news relating to SAARC countries on a regular basis. Its editorial board consists of legal luminaries such as Hon'ble Chief Justice Lyonpo Sonam Tobgye, President, SAARCLAW, as its Patron-in-Chief and Mr. Hemant K. Batra, Secretary General, SAARCLAW as its Editor-in-Chief. The Associate Editor is Ms. Shveta Dhaliwal who is also an Assistant Professor in the Dept. of Political Science, Rajiv Gandhi National University of Law, Punjab and the Director, South Asia Service Region for CTRLD, U.S.A. and Ms. Manila M Sarkaria, Chief Coordinator, SAARCLAW, as the Associate Executive Editor.

The first edition of the newsletter is proposed to be circulated in the month of April, in both electronic as well as printed form.

H. E. FATHIMATH DHIYANA SAEED ASSUMES CHARGE AS THE SECRETARY-GENERAL OF SAARC



Consequent upon appointment by the SAARC Council of Ministers, H. E. Ms. Fathimath Dhiyana Saeed of the Maldives assumed office as the Secretary-General of SAARC from 1st March 2011. She succeeds Dr. Sheel Kant Sharma of India.

A former Attorney General of the Republic of Maldives and a former parliamentarian, H. E. Ms. Saeed is the

tenth Secretary-General of SAARC and is the first woman to occupy this prestigious position. She was serving as Maldivian Government's Envoy for South Asia just prior to assuming her new assignment in Kathmandu. She holds a Master's Degree in Law from the Graduate School of Law and Politics, Osaka University, Japan.

The Secretaries-General of SAARC are appointed by the Council of Ministers upon nomination by a Member State on the basis of the principle of rotation in alphabetical order for a period of three years. Upon nomination by the Government of Maldives, the Thirty-third Session of the SAARC Council of Ministers held in Thimphu on 8-9 February 2011 had appointed H. E. Ms. Saeed to lead SAARC.

Talking to the media on arrival in Kathmandu, H. E. Ms. Saeed stated that she hopes to expand and empower the SAARC Secretariat to place further emphasis on implementation during her tenure.

Launched in December 1985, SAARC comprises of Afghanistan, Bangladesh, Bhutan, India, the Maldives, Nepal, Pakistan and Sri Lanka as its members.

ASIAN / SOUTH ASIAN CONFERENCES

HOMELAND SECURITY INDIA

30 to 31 May 2011 - New Delhi, India

Website: <http://www.homelandsecurity-india.com>

Homeland Security Summit India will address the internal security threat that is affecting India at present and will provide invaluable insight on ways to overcome this threat.

FUTUREPOLICE FORUM ASIA 2011

21 June 2011 - Hong Kong, Hong Kong

Website : <http://www.futuregov.asia/events/future-police-forum-asia-2011/>

Contact name : Simon Bunjamin

At FuturePolice Forum Asia 2011 the region's senior police administrators, policymakers and the technology industry come together to discuss the future of law enforcement.

Organized by: FutureGov

THE BODY IN THE CINEMAS OF SOUTH ASIA

30 June 2011 to 2 July 2011 - Vilnius, Lithuania

Website : <http://bodyinsouthasiancinema.wordpress.com/>

Contact name : Valentina Vitali, Deimantas Valanciunas

We are particularly interested in papers focusing on 'the body' in popular South Asian cinemas and in discussions of what 'exploitation cinema' is or might be in those industrial contexts. See also <http://www.oc.vu.lt/en/conferences.html>

Organized by: Centre of Oriental Studies, Vilnius University

22ND EUROPEAN CONFERENCE ON SOUTH ASIAN STUDIES

25 to 28 July 2012 - Lisbon, Portugal

Website : <http://ecmsas2012.iscte.pt/index.php>

Contact name : Rosa Perez

The ECMSAS conferences are held biannually under the auspices of the European Association of South Asian Studies (EASAS), a professional, non-profit organization of scholars engaged in research and teaching concerning South Asia.

Organized by: ISCTE - Lisbon University Institute

DIASPORA AND DEVELOPMENT: PROSPECTS AND IMPLICATIONS FOR NATION STATES

14 to 15 October 2011 - New Delhi, Delhi, India

Website : <http://www.ignou.ac.in/upload/Announcement/diasporaconferenceignou.pdf>

Contact name : Dr. Sadananda Sahoo

Conference Announcement / Call for papers

Diaspora and Development: Prospects and Implications for Nation States 14 to 15 October 2011 , New Delhi, India

The Conference will critically examine the development scenario and have comparative understanding of development across the different nations vis-a-vis diaspora. Policy makers, educationist, corporates & development thinkers are welcome

2ND INTERNATIONAL CONGRESS OF BENGAL STUDIES

17 to 19 December 2011 - Dhaka, Bangladesh

Website : <http://www.banglabidya.org/cfp/cfp.html>

Contact Name : Prof. Rafique Ullah Khan

Last date for submission of abstract/paper proposal extended

Organized by: University of Dhaka & Bangla Academy, Dhaka

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