

Highlights:

- **Has the Noose any place in Modern, Democratic India?**
- Page 2
- **Do Not Pre-Judge Me**
- Page 4
- **SAL and Competitive Legal Tendering** - Page 4
- **The Young Solicitors Group** - Page 4
- **417 Saved From Death in Uganda** - Page 5
- **Upcoming Events** - Page 7

A WORD FROM THE CHAIRMAN

These are interesting and slightly frightening times for lawyers, especially for Asian lawyers. The outrages of the July bombings have left us feeling more vulnerable – not only in relation to more possible attacks, but also in relation to the reaction of our fellow citizens towards us. As lawyers, we also brace ourselves for the Government's response – we know from experience that Governments can over-react in difficult situations. We must be vigilant to ensure that the response is proportionate and does nothing to alienate minority communities. It is difficult, but not impossible, to minimise the threat of terrorism without threatening the values of the multicultural democracy one is seeking to protect. Some of these complex issues will be addressed by Trevor Phillips (of the CRE) in his talk to the Society of Asian Lawyers in early November and by Shami Chakrabati (of Liberty) in her talk in the early part of 2006.

Asian lawyers also face attack in their professional lives. It is our view that price competitive tendering will unfairly (and unlawfully) target Asian lawyers and the communities they assist. We have mounted a vigorous campaign to stop the Legal Services Commis-

sion plans, which could result in a massive culling of Asian firms providing criminal advice and representation.



Further bad news came upon the discovery by the Lord Chancellor of a "black hole" of £130 million per year. There are further legal aid cuts in the pipeline and the Society of Asian Lawyers will make submissions to Lord Carter's Review on your behalf in due course.

On a happier note, I am pleased with the progress SAL has made over the last few months. Our media profile continues to grow. We meet regularly with the Law Society and Bar Council representatives and have a number of joint projects planned. There are many functions advertised in this Newsletter and our membership is growing. All this has been achieved by a new committee that has worked long and hard.

In these turbulent times, the Society of Asian Lawyers seeks your support. We look forward to seeing you at the next function.

DIVERSITY IN THE LEGAL PROFESSION KEVIN MARTIN, PRESIDENT OF THE LAW SOCIETY



My year as president had an unexpected beginning. I took office just days after the first London bombings and it became clear to us at the Law Society that this was an opportunity for solicitors to offer pro bono help to the victims and families of

victims in the aftermath. I am proud of the response of the profession with more than 20 firms and individual solicitors offering their services.

But since then I have been able to return to some of my planned priorities for the year. I am determined to improve the working of the

legal aid system. The number of people being helped is declining. The Government must act now to provide real access to justice for all by developing a coherent strategy on legal aid that recognises it is a front-line public service. This cannot be done without recognising the need for more resources for legal aid.

Another target for the Law Society is the Legal Services Commission's drive to push down criminal defence costs. This could have severe implications for vulnerable clients in complex legal cases. Price competitive tendering could well impact unfairly on minority ethnic solicitors and their clients. We will urge the LSC to address our concerns on quality, choice and access to justice and rethink their proposals.

Cont. on Pg. 4

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HAS THE NOOSE ANY PLACE IN MODERN, DEMOCRATIC INDIA?

PAUL NAEEM SNOWDON, AMNESTY INTERNATIONAL UK

Reporting on human rights violations in India has told us much about the horrific communal violence that took place in Gujarat in 2002 and the ongoing campaign for justice, the anti-Sikh riots in Delhi in 1984 and those who “disappeared” in the Punjab following Operation Blue Star, and the gross behaviour of multinational chemical company Dow at Bhopal. These are urgent issues which rightly command our attention.

India – A Champion of Executions?

That India, thriving democracy and example to much of Asia, retains the death penalty - the ultimate cruel, inhuman and degrading punishment – is not so widely reported. We rarely hear, for example, that far from a handful of executions, India has probably executed several thousand people since independence. And nor do we hear that India adds to its use of this vicious punishment by lobbying for its protection internationally – India consistently lobbies for the retention of the death penalty in international fora, for example by opposing the United Nations Commission on Human Rights’ annual resolution calling for a moratorium on all executions. This has had the effect of reducing pressure on the countries who account for the majority of executions: China, Iran and the USA.

Why It Is The Wrong Thing To Do

The death penalty is a violation of fundamental human rights as laid down in Articles 3 and 5 of the Universal Declaration of Human Rights: the right to life, and the right not to be tortured or subject to any cruel, inhuman or degrading punishment. This is the basis of Amnesty’s and many Indian civil society groups’ opposition to its use. The death penalty is commonly defended with the argument that it provides a strong deterrent to others who would commit serious crimes. Independent research has shown that in fact there is no difference in crime rates between those societies which use it and those which don’t. Far from protecting society against violent crime, it has a brutalising effect. As Bikram Jeet Batra wrote in *The Hindu* earlier this year, “...the death penalty is emblematic. It symbolises the power of the State to end the life of a person.”

In India, as in other countries, the application of the death penalty is discriminatory. It is the poor and illiterate who are most likely to be sentenced to death. Justice P N Bhagwati commented: “There can be no doubt that the death penalty in its actual operation is discriminatory for it strikes mostly against the poor and deprived sections of the community and the rich and affluent usually escape from its clutches.” Moreover, all judicial systems make mistakes and because of its irrevocable nature, the death penalty kills innocent individuals who are wrongly convicted. Mahatma Gandhi, whose convicted killer was executed in 1949, said of the death penalty, “I cannot in all conscience agree to anyone being sent to the gallows.”

A change of heart in India?

However, events over the last year look set to end the silence about the death penalty. In August 2004, the execution of Dhananjay Chatterjee, who was found guilty of raping and murdering a young woman, ended a de facto moratorium and

was the first publicly known execution in India in seven years. The facts of the case did much to re-ignite the debate: that Dhananjay Chatterjee sat on death row for almost 14 years, that he was executed on his birthday, that his executioner – 84 year-old Nata Mullick from a family of hangmen – unexpectedly broke down and has since vowed never to hang another person, and has forbidden his son and grandson from following the family tradition.

Shrouded in Secrecy

In particular this execution has exposed the secrecy that exists around the use of this supposedly just punishment. At the time of Chatterjee’s execution much of the Indian media reported that his was the 55th to take place since the country’s independence. But in March 2005 research from the Indian NGO People’s Union for Democratic Rights (PUDR) placed the figure at 1,422 executions for the period of 1953-1963 in 16 states alone. No one is completely certain how many people were sentenced to death or executed during the decades following independence. The states themselves have been secretive and inconsistent. For example in June 2004 the Deputy Inspector of Prisons for Delhi publicly refused to share its death row and execution statistics with the public, claiming it would violate the territory’s security.

Indian people’s discovery of the secrecy around executions has shaken public confidence in its use. Why can’t the Indian state say how many people it has actually killed? Is it 2,000 or 3,000 or even more? Did executions take place in the seven years preceding the hanging of Dhananjay Chatterjee? Can state and federal governments be believed when they claim not to have any information about the numbers of people on death row? If there is no clarity around the application of this penalty how can the authorities guarantee that it will not be used arbitrarily and without full rights to appeal? Does this kind of procedure really deliver justice for victims?

On Its Way Out

Based on international trends, it seems it is not a matter of whether the death penalty will be abolished in India, but when. For the past 10 years, on average, three countries have abolished the death penalty each year. Currently 120 countries, the majority of the world, have abolished the death penalty in law or practice. India, a major player on the world’s stage, needs to join this majority who have declared that this form of punishment is not acceptable in a modern criminal justice system.

India has so much of which it can be justly proud: a functioning democratic system of government that puts many in richer Western countries to shame, enviable economic growth and a truly incredible cultural contribution to the world. As India emerges as a major regional power and seeks to upgrade its relations with the EU, now is the time to remind the Indian government that the death penalty is outdated. It is time to put pressure on the Indian government to come clean about how many people are on death row, how many people have actually been executed and most importantly, to introduce a moratorium on executions until the necessary legislation abolishing the death penalty in India can be introduced. You can find out more and join Amnesty International’s campaign at: www.amnesty.org.uk/action/india

the views expressed are those of Amnesty International and not SAL

DO NOT PRE-JUDGE ME

An open letter to the person on the train who sat opposite me yesterday

Yesterday I sat on my commuter train and you were already sitting there in the seat opposite. Your eyes were closed. You must have been tired. Then you opened your eyes and you saw me. You got up and moved to the next carriage. Perhaps you wanted some privacy or perhaps you did not want to disturb me with a mobile phone call. Or perhaps you were afraid of me ...

That would not surprise me. Some people say that the police should stop and search people who look “Asian” or “Muslim” at Underground stations. In fact I am not a Muslim, I am a Sikh but it does not matter – I still look suspicious to some. They say that only young men are like the suspects but I have heard of women being stopped.

I share your fears. I do not want to die a horrible death any more than you do. I have a family to look after – perhaps you do too. You know so little about me – I wish we could have chatted and perhaps we might have realised what we have in common. All I ask is that you do not pre-judge me. That is what “prejudice” means: to pre-judge someone simply because of what they look like.

What can I say? On the television everyone is talking about what it means to be “British” and the end of multiculturalism. You may not think I look British but I feel British – I am a British Asian or British Sikh if you like. If I go to India they know I am not one of them – they can see me coming a mile off. I like Indian food but so I think do you. And I also like Italian food, and Chinese, and bagels ... I don’t particularly like Bollywood but apparently enough people in the area where I live do like it because they show Hindi films at the local cinema. By the way, in case you were wondering, it is not in Southall – in fact most of our neighbours are white, although one is from Norway and another American. I don’t think people ask them: “What are you doing here? Are you British?” I do not go to the Gurdwara very often but I do believe in God and I am proud of my heritage – I respect my parents and the tradition they came from. I do not think God would want us to hate each other because of the way we look. And I certainly cannot accept that God wants us to kill innocent people.

But we have to care about innocent people everywhere – in Iraq and Chechnya as well as in New York and Madrid and London. I am not a pacifist but I do believe in the principle of non-violence. Only in the last resort could it ever be justified to use violence, when there is no other way open to defend

ourselves or to protect others. You may have heard of Mahatma Gandhi – he was not British. In fact he used the principle of non-violence to help push the British out of India. I think he was an inspiration to everyone – I think you might agree.

I am a lawyer by the way. What do you do? In my work I sometimes represent the Government – not just the present Government, I used to represent the last Conservative Government in court too. But I also sometimes defend the rights of individuals who are pretty unpopular. That’s my job. They may be asylum claimants or gay people. They may even be suspected of terrorism. I don’t think suspending the Human Rights Act is the answer to the terrorist threat. The Human Rights Act is not part of the problem. It is part of the answer. It represents what we stand for – democracy and the rule of law. Some people say that we should not let the terrorists win – we should carry on as normal. But they seem to be the first people to say that we should get rid of these laws that get in the way. In the way of what? Do we want people locked up in prison for years without ever being charged let alone convicted? If it happened somewhere else, I think you might write a letter for Amnesty International demanding their release. But it happened here – until the Law Lords said it was incompatible with human rights. These are not some foreign laws. British lawyers helped to draft the European Convention on Human Rights, which was “brought home” by the Human Rights Act. And it is based on British notions of fair play going back to Magna Carta. Yes, I do know about these things and I do care about them. Shakespeare, John Locke and Tom Paine. They have made me who I am. They were as British as I am.

I do not ask you to agree with me about everything. But I do ask you to give me a chance. Maybe I am not what you think I am. Remember we are all individual human beings, with our hopes and dreams, our faults as well as basically being good I think and trying to do the right thing. It’s what is inside us that really matters, not the colour of our skin or what we wear. I do not ask you to agree with about everything. But I do ask: please do not pre-judge me because of the way I look.

Rabinder Singh QC is a barrister at Matrix Chambers and a visiting professor of law at the LSE

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COMPETITIVE TENDERING - EFFECT ON ETHNIC MINORITY FIRMS

The Committee and Leadership of SAL are seriously concerned about the disproportionate effect the current competitive tendering proposals will have on ethnic minority firms and on the ability of any remaining firms, post tendering, to offer a quality service catering for the cultural needs of the Asian Community.

This is because according to the Law Society, a disproportionate number of sole practitioner criminal firms are controlled by Asian Lawyers. Many are likely to disappear as a result of proposals concerned with offering a service, above all other factors at the lowest possible cost. This involves economies of scale and small firms will be less able to compete. All firms, large or small, will face a substantial fall in revenue.

There will also, inevitably, be a knock on effect on ethnic minority members of the junior bar as a number of firms currently instructing them are likely to be driven out of business.

The society has drafted its own response to the LSC proposals entitled. "Denying access to Justice".

The Society has also asked Sundeep Bhatia, a sole practitioner of Brent Law Practice, a North West London Criminal Practice, who has been campaigning in this area for over a year, to represent the interests of the Society's members on a Steering Group Chaired by the LSC to consider the impact of the competitive tendering proposals on ethnic minorities. The impact review will go on until the end of October.

Lord Carter of Coles will also be consulting the Society in relation to the review he is currently undertaking concerning the future of Legal Aid.

The views of the Society's membership are crucial and Sundeep Bhatia would invite any input. He can be contacted on brentlaw@hotmail.com

Please do not ignore this issue. The proposals of the LSC threaten our communities, our firms, our livelihoods and the influence of ethnic minority Solicitors in the Criminal Justice System

*Sundeep Bhatia
Brent Law Practice
SAL Committee Member*

DIVERSITY IN THE LEGAL PROFESSION

Cont. from Pg. 1

I will be raising the issue of equality and diversity, which I believe the Law Society is one of the leaders in promoting. We have two seats set aside on the Council for ethnic minority lawyers and we have put together a CD Rom, which has been sent to senior partners to outline the benefits of diversity and promote the anti-discrimination rule change passed at the AGM last year. We are trying to highlight that the benefits are not just the obvious ones, but also make good business sense. Widening the pool of lawyers at your disposal widens the variety of talent and can help law firms when they are

bidding for work.

I am encouraged to see the high numbers of Asian students who are choosing to study law and we need to ensure that their career paths on qualification are not hindered in any way.

I am looking forward to promoting our legal profession on the international stage and also hosting the Commonwealth Law Conference and Solicitors 2005 in September. Hundreds of prominent lawyers and judges from all areas of practice in the 53-country Commonwealth will meet in London. I am sure this will prove to be one of the highlights of my year in office.

THE YOUNG SOLICITORS GROUP

On the 2nd July of 2005, the SAL was co-opted to the Young Solicitors Group (YSG), with myself as the SAL representative on the YSG committee.

YSG was originally founded in 1960 by a grouping of young solicitors in the London area. Since then, YSG has evolved into a national organisation representing over 50% of the solicitors' profession in England & Wales and recognised by the Law Society. YSG is structured as a company limited by guarantee, representing approximately 49,250 Members and Associate Members of the Law Society who have not attained 36 years of age or are, regardless of age, within 5 years of admission.

Membership of YSG is free and automatic upon registration with the Law Society.

YSG is modelled on the Law Society - it has a National Committee made up of representatives from the local YSG groups and other representative groups of the Law Society, and an Executive Committee responsible for the day to day running of the group. Each local YSG group (that represents more than 25 young solicitors) is entitled to a place on the National Committee. All the organisations that are affiliated to YSG, have representations at the committee level. They also have representatives from the Black Solicitors Network, Trainee Solicitors Group, Association of Women Solicitors, Solicitors in Local Government and the Young Bar on the National Committee.

Cont. on Pg. 5

417 SAVED FROM THE DEATH PENALTY IN UGANDA - A CONSTITUTIONAL CHALLENGE

On 4th September 2003, 417 prisoners constituting all of death row in Uganda filed a constitutional petition, challenging the constitutionality of the death penalty. It was the first action of its kind in Africa and the first time in any one country that all prisoners on death row have joined together to bring a collective petition.

Uganda, a former British Protectorate and a common-law Commonwealth Republic became independent in 1962. The death penalty in Uganda is a legacy of colonialism and is the sentence for some thirteen offences ranging from the offence of murder to smuggling with a deadly weapon. Seven of the thirteen possible offences carry the mandatory (automatic) death sentence. Roughly, civilian executions have taken place every three years. Twenty-eight death row inmates were executed in 1999.

As lawyers who represent prisoners on death row in the Caribbean, we were invited by John Katende and Sim Katende, two lawyers (father and son) whose expertise is commercial law, to assist them in bringing the petition on behalf of all the death row prisoners. Our first trip to Kampala was in May 2004, to meet with the lawyers and the Petitioners.

On the morning of our arrival, we travelled with the Ugandan lawyers to the prison. Death row in Uganda is located in a heavily fortified prison on the very top of a hill just west of Kampala. The high walls are imposing – intentionally so. We went there to meet those who live in that part of the prison that prison officers and prisoners alike call the ‘condemned section’. What happened in the next few hours will stay with us for the rest of our lives.

We were greeted by a small group of death row prisoners, all in white shorts and white shirts, all wearing flip-flops. They introduced themselves and led us through to a small yard in the middle of the condemned section. As we stepped through a small archway into the yard, we stopped in our tracks. Before us were all of the male prisoners on death row. Literally hundreds of men standing, sitting or squatting in a space no more than 10 yards by 25 yards.

Our escort, an ex-minister now on death row, introduced us and told us that he wanted us to know how things are organised in the condemned section. He then asked various indi-

viduals to stand up, including those chosen to represent each of the religious denomination in death row, the ‘head master’ of the school that the inmates had organised and the ‘prime minister’ of the condemned section. Each took a bow and said a few words. Then groups of individuals were asked to stand up. First those who were 18 years old or younger. Then those who had been in the condemned section for 20 years or more, including the ‘elder’, an old man who had lived on death row for 25 years. Those who had not had representation at their trial were not asked to stand. There were too many of them. Then, most extraordinary of all, the prison officers themselves were introduced by the inmates. The superintendent stood up, bowed and then explained how he supported the case being brought on behalf of all the prisoners under his command. He had just four other officers with him, none of whom had handcuffs or truncheons. When at work, they lived with the prisoners, supported their initiatives and had all signed affidavits opposing the death penalty and describing the anguish that they themselves would feel if called upon to execute those they had got to know so well.

For three hours we sat in the hot sun, talking to the inmates about their case. Most thought that they had been brought into the condemned section for one reason and one reason alone: to be hanged. Unsurprisingly, the mood had been grim for many years. But their case had given them hope. They sang, they talked and they laughed. Having worked on similar cases elsewhere in the world, we thought we were fairly hardened, but no-one could have left that prison unmoved.

The case itself was brought in the Constitutional Court in Kampala. The argument was presented by John Katende. Although the pleading were voluminous, there were essentially four points. First that the death penalty is inhuman and thus contravenes the Constitution of Uganda. Second that even if the death penalty itself is not unconstitutional the automatic or mandatory nature of the sentence of death is arbitrary and disproportionate. Third that death by hanging is cruel (many of those executed fail to die immediately and are actually throttled to death). The fourth and final argument was that those who had been on death row for long periods

Cont. on Pg. 7

THE YOUNG SOLICITORS GROUP

Cont. from Pg. 4

National committee who meet every 6 weeks. The current executive is very diverse as they represent almost every part of the profession and also has an Asian member.

The National Committee is the main policy setting body of the Young Solicitors Group, determining which policies to adopt. There are sub groups at the National Committee meetings who discuss policy, events, publicity and Membership

The YSG provides pastoral care for all members and are keen to ensure that the training reflects the entire membership. This pastoral care scheme can be extremely useful to young Asian law graduates, who have great difficulty in entering the pro-

fession. I am trying to arrange a joint event with the YSG, specifically targeted at Asian graduates.

To sum, up, I believe that the joining the YSG would bring significant benefits to those members of SAL, who are qualified solicitors, trainees and those wishing to enter the profession. Secondly, as the YSG have representations on the Council of the Law Society, it gives SAL members a say in policy issues, where historically they have been sidelined.

*Mustafa Khan
SAL Committee Member*



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417 SAVED FROM THE DEATH PENALTY IN UGANDA - A CONSTITUTIONAL CHALLENGE

Cont. from Pg. 5

should be reprieved and have their sentences commuted to life imprisonment.

Some of these arguments have been run with varying degrees of success in other Commonwealth states, particularly in the Caribbean. In the Eastern Caribbean very few death sentences have been imposed since the mandatory death penalty was declared unconstitutional in March 2002. On the other hand, in Trinidad and Tobago, execution warrants have been read to several prisoners since the controversial decision of the Privy Council (a board of nine Law Lords instead of the usual five) last year in the case of *Mathews v State* (2005) 1 AC 433 reopened the path to the gallows - victims of a viscous 'savings clause' that has preserved the mandatory death sentence forever.

In a landmark judgment delivered on 13th June 2005, the majority of the Constitutional Court declared the death sentences passed on all the Petitioners unconstitutional. Although the Court did not strike the death penalty down altogether, it found that the mandatory nature of its imposition was unconstitutional because did not provide the individuals concerned with an opportunity to mitigate their sentences. The Court has provided the Government with a two year period to give effect to the judgement after which all death sentences will be set aside. The Constitutional Court also ruled that any of the prisoners who have been on death row more than three years are now entitled to have their death sentences commuted to

life imprisonment. That, in itself, represents three-quarters of the death row population.

The government have filed a Notice of Appeal challenging the decision of the Constitutional Court to the highest court in the land, the Supreme Court. We are assisting in the preparation of written submissions for the hearing which could take place as early as 2006. The project is also assisting lawyers in bringing similar litigation on behalf of prisoners on death row in Nigeria. It is hoped that the landmark decision of the Ugandan Constitutional Court will have far reaching implications for other African countries.

Keir Starmer QC, Saul Lehrfreund and Parvais Jabbar.

Keir Starmer QC practices from Doughty Street Chambers. Saul Lehrfreund MBE and Parvais Jabbar, run the Death Penalty Project at Simons Muirhead & Burton, solicitors. They travelled to Uganda to assist Katende, Ssempebwe & Co. in preparing the legal argument, to meet the prisoners on death row and to attend the hearing before the Constitutional Court. This assistance was partly funded by the Global Opportunities Fund of the Foreign and Commonwealth Office.

The Death Penalty Project provides free legal representation to prisoners under sentence of death in Commonwealth Caribbean and Anglophone Africa. Any donations to assist the work would be gratefully received. Cheques should be made payable to Simons Muirhead & Burton and sent to the Death Penalty Project, Simons Muirhead & Burton, 50 Broadwick Street, London, W1F 7AG, DX: 144060 Soho Square 5.

UPCOMING EVENTS

- 28 SEPTEMBER 2005 - PARMINDER VIR OBE - speaking at the Bombay Palace Restaurant on the role of Asians in the media. Parminder Vir is one of the most senior Asians within broadcasting and until recently was an executive at Carlton Television. She was recently awarded an OBE for her work in the media. She is also the founder of DAWN (Dynamic Asian Women's Network) - see enclosed flyer
- 17 NOVEMBER 2005 - TREVOR PHILLIPS, CHAIRMAN OF THE COMMISSION FOR RACIAL EQUALITY - speaking at the Law Society on Asians and civil liberties post 7 July. This event is being hosted jointly with the Law Society
- 8 NOVEMBER 2005 - CAREER DEVELOPMENT SEMINAR - KULDIP SINGH QC & ALI ZAIDI, PARTNER, EDWIN COE - will be jointly presenting a career development seminar on how to effectively market and network to obtain new client and new work - see enclosed flyer
- 26 NOVEMBER 2005 - SAL ANNUAL BALL at the Millennium Hotel, Mayfair (see back page)
- 23-25, 28 & 29 November 2005 - MEDIATOR SKILLS TRAINING for ETHNIC MINORITIES - CEDR
- February 2006 - SHAMI CHAKRABATI, CHAIRPERSON, LIBERTY (details to follow)

THE MOST PRESTIGIOUS EVENT OF THE YEAR
THE SOCIETY OF ASIAN LAWYERS
11TH ANNUAL BALL

HOSTING THE FIRST EVER
ASIAN LAWYER AWARDS

ON 26TH NOVEMBER 2005
AT THE MILLENNIUM HOTEL
44 GROVESNOR SQUARE
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£10 Discount for all Bookings before 1st November 2005

Dress Code: Black Tie / Traditional Indian

For further information on this event and all future events go to
www.societyofasianlawyers.com

For bookings & reservations please contact:

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