

## **BACKGROUND NOTE BY PLD:**

### **A) WHY PENAL PROVISION ON ACID ATTACK MUST BE GENDER NEUTRAL**

### **B) COMPENSATION FOR ACID ATTACK VICTIMS/ SURVIVORS**

Dated: August 13, 2012

#### **A) ON GENDER NEUTRAL LAW**

Although acid attacks are predominantly used by men against women. While its important that this amendment be introduced as part of the package of criminal law amendments relating to sexual assault, we feel the framing of the penal provision on acid attack must be gender neutral. Unlike rape and other sexual assaults, we feel the physical devastation caused by an acid attack is the same for any person and often, so grave that it destroys the face, impairs eating and other functions, takes away sight, and hearing permanently. Penal provisions to prosecute intentional infliction of such aggravated bodily harm cannot be prosecuted differentially on the basis of sex; and further, a woman perpetrator of the crime must be treated with as much severity as a man. Notably also, men/ boys accompanying female victims, may also suffer acid injuries and need similar redress. At the Delhi meeting we were unclear about whether women have ever been perpetrators; and while we were aware that Bangladesh and Pakistan have special laws, we were unaware of the law itself. This note throws light on areas we were not adequately informed about for us to take a considered stand.

#### **There is evidence of male victims and of female perpetrators:**

Pakistan, Bangladesh and Cambodia have seen a rising number of cases where not only have men been attacked, but also cases where women have been the attackers. Acid Survivors Trust International (ASTI), an international trust working in Pakistan, Cambodia, Bangladesh, Nepal and Uganda, with acid victim survivors (both men and women), carry stories of survivors, most of them women. Here are some exceptions – and they do support male victims as well. They have a story of a 19 month old baby boy attacked with acid by his aunt because of inheritance issues. Similarly, a 29 year old man was attacked by a jealous former colleague (<http://www.acidviolence.org/index.php/survivors/>). There are reports from Cambodia of older wives attacking younger wives/ girlfriends of their husbands with acid. While acid attack on women is the predominant form of such attack – this is not the only form. The acid survivor trust chapters in Pakistan and Bangladesh websites carry figures of male victims – it is a gendered crime, but male victims exist and are reportedly increasing.

The trust does is not selective on its support to victims. Following are a list of news articles and statistics indicating that male victims and female perpetrators exist, and in some reports suggest, this is on the rise.

- <http://www.dailymail.co.uk/news/article-2142246/Pakistan-Mystery-sudden-surge-acid-attacks-MEN-WOMEN.html>
- <http://www.acidsurvivors.org/statistics.html>
- <http://acidsurvivorspakistan.org/survivors-stories>
- <http://www.nytimes.com/2001/07/22/world/vengeance-destroys-faces-and-souls-in-cambodia.html>
- <http://dawn.com/2012/04/28/corroding-lives/>

In India too, there are reports of men being attacked with acid. The Times of India reported an incident where a real estate agent was attacked because to refused to broker a land deal ([http://articles.timesofindia.indiatimes.com/2012-07-30/mumbai/32940995\\_1\\_acid-attack-doodhnath-verma-basmati-devi](http://articles.timesofindia.indiatimes.com/2012-07-30/mumbai/32940995_1_acid-attack-doodhnath-verma-basmati-devi)). Indian express also reported a case where a man threw acid on a 15 year old boy who he suspected of having an affair with his daughter (<http://www.indianexpress.com/news/acid-attack-victim-15-dies-outside-addl-cps-office/970048/>). Some of the prime reasons for acid attack are revenge, property and land dispute, jealousy etc. These are reasons which cannot be said to be gender specific. Bangladesh website referred above, reports increase in attacks against women. Gender disaggregated data is available in the web-link from Bangladesh and Pakistan above.

### **The legal provisions in other countries are gender neutral:**

Pakistan and Bangladesh have specific statues on acid crimes. In Bangladesh, the Acid Control Act of 2002 and the Acid Crime Control Act of 2002 are gender neutral, i.e. the attacker and the victim are ‘person’ and not him/her in specific. Similarly, Pakistan’s Acid Control and Acid Crime Prevention Act, 2010 provisions are gender neutral ([http://www.na.gov.pk/uploads/documents/1302318969\\_628.pdf](http://www.na.gov.pk/uploads/documents/1302318969_628.pdf)). This amendment also introduced s. 336 A in the Pakistan penal code (Macaulay’s gift, same as in India); in India it is 326A under the same classification of ‘hurt’ and ‘grievous hurt’. The preamble of the amendment bill recognises the need to prevent and protect women and children, but the provisions are gender neutral. It is used for male victims too, few though they may be. Further, the Act also states that the Court can direct the attacker, on an application by the victim, to pay monetary relief to meet the expenses incurred by the victim, which shall not be limited to loss of earning and medical expenses. An interesting difference between Pakistan provision and India’s proposed bill is that the Pakistan provision covers a injury caused by a wide range of substances that have the same effect: corrosive substance, acid, explosive or arsenic substance so as to not limit it to any one substance that is popular today, but may be replaced later by another potent substance that is similarly ‘*deleterious to the human body*’.

That is the operative portion that seems important here - whatever the substance be, if the impact is *deleterious to the human body*, it needs similar redress.

On another note, we would like to emphasise here that other weapons to destroy the faces of young women have been used and will be used even if acid sale is controlled. Not long back there were motorbike slashers in Delhi who made news for serial attacks.

<http://www.hindustantimes.com/India-news/NewDelhi/Slashers-attack-girl-in-Mongolpuri/Article1-680634.aspx>

## **B) COMPENSATION**

### **Concerns relating to penal provision and from limiting reform to penal provision only:**

The gap in law addressing acid attack victims relate to the recovery, support and reintegration of the victim into society. The medical, counselling and long term therapy costs are debilitating and beyond what a 10 lac fine offers. Can a punitive provision do that? We need to map comparative law/ policy on this, and suggest appropriate responses.

The main problem with penal prosecution of acid attack will be the ability to gather proof beyond reasonable doubt to secure conviction. Sexual assault investigation has possibility of dna tests to determine contact; in acid attack such evidence will not be there, so the challenges to secure conviction are harder. This is a real worry. Will a penal provision alone mean anything even in terms of securing conviction? We're not dismissing the value of a penal provision, but the pitfalls of evidence will need to be considered now, and with the help of colleagues in BD and Pakistan we can arrive at some suggestions. PLD is willing to take this up. We will also need to think of victim centred support as part of the law.

The present bill proposes a fine of a maximum of Rs. 10 lacs to be recovered from the accused upon conviction. We propose that the provision say a fine of a minimum of Rs. 2 lacs to a maximum of Rs. 10 lacs to be recovered under section 357 A CrPC. The reason why we think this is a better option for the nature of crime and injuries is a) conviction is very difficult in acid crimes as explained above; and b) the advantages of 357A listed below.

### **Why 357A is better for securing compensation to the victim. Difference between compensation under Section 357 A and Section 357 CrPC:**

1. Under Section 357 A, compensation is payable out of funds created by the State Government and under Section 357, it is payable out of fine recovered from convict.
2. Under Section 357 A, compensation is payable even if offender is not traced or identified but under Section 357, it is payable only upon conviction of offender.

3. Under Section 357 A, compensation is payable in addition to compensation awarded under Section 357 and under Section 357, there is no such provision.
4. Section 357 A is a mandatory provision for compensation whereas Section 357 is discretionary.
5. Under Section 357 A, order for compensation is made by District Legal Service Authority or State Legal Service Authority and under Section 357 by the Court.
6. Section 357 Aempowers District Legal Service Authority or State Legal Service Authority to make Order for interim relief and under Section 357, there is no such provision.
7. Under Section 357 A, no criteria is specified for dependents of victim entitled to compensation under Section 357 only dependents or heirs of victim who are entitled under Fatal Accidents Act can claim compensation

## 2<sup>ND</sup> NOTE BY PLD: LESSONS FROM BANGLADESH LAW

August 18, 2012

Dear friends,

This note puts together information on the BD law and most importantly, lessons from 10 years of working of the BD law. I have quoted two leading persons on the subject in BD: Monira, the Director of the Acid Survivors Foundation and Nina Goswami, the Director of litigation ASK who handles acid survivors cases, with whom I've been communicating. Their feedback is inserted in quotes under the relevant concerns below. It's comprehensive and therefore I hope, worth plodding through the length of this long mail!

I begin with gender neutrality and gender specificity as this got the maximum attention in the debates on Criminal Law Amendment Bill, 2012. All of us recognise that women are the predominant victims regardless of the positions we're taking. However, when we began debating approaches to the law in Delhi there wasn't clarity on whether men were attacked at all, and the references beyond women alluded to possibility of hate attacks on trans, hijra and gender non conforming in the context of growing visibility. There was also an impression that Pakistan and Bangladesh laws were gender specific, and therefore a model for India to follow given the common cultural attitudes to women and sexuality. Here are the concerns, including and beyond gender neutrality/ specificity, which need to be considered for a meaningful law.

**Male Victims:** Examples of male victims from India, BD, Pakistan and Cambodia exist – although not documented in India. Women are mainly targeted, but we need to place the reality of the affected men on the table too. I refer to statistics from BD since their work on this is pioneering and the oldest -in 2010, 28% of the total victims were men; in 2011, 31% of

the total victims were men. They are attacked for a variety of reasons, including revenge, property disputes and very often, because they were accompanying the woman targeted. As GeetaRamaseshan asked in her mail, what would we do about brothers/ male friends/ fathers/ sons, who may suffer acid burns only because they were accompanying the woman when she was attacked? This, as it turns out, is not mere speculation. BD law is gender neutral for the victims.

Colleagues from BD endorse the value of the gender neutral law based on their experience of using the law. This is what they say: "Our experience is that with gender neutral acid attack act it is more easier to protect both male and female and to bring punishment for both gender. Another experience is that, the people around the targeted person may also be injured by one acid attack incident, e.g in property related family disputes, though both the husband and the wife was targeted, the children who were sleeping beside them were injured as well. It is often seen that an acid attack in which a school-going girl was targeted, the father who was taking the girl to school was also injured. With this Act (ie. this refers to gender neutral law) one case can be brought to the concerned police station and trial can go on in the same court for both male and female. To implement this Act the majority of the barriers come while implementing the act. These are the common problems in our region which u know."

**Perpetrators:** gender neutral or specific? Again, GeetaRamaseshan's mail reminds us that a large number of women in custody for 498A and 304B etc are women; and that we need to recall Gujarat to avoid essentialising women as victims. The attached note has examples of women perpetrators, and it seems to be particularly common in Cambodia, where older wives attack their husband's girl friends/ younger wives. Would that be unthinkable in India? In my field visit to Arunachal, I came across a case of an older wife burning and defacing the younger one by pouring a huge pot of boiling water on the younger one while she slept.

**Laws of Pakistan and BD** – does the gender neutrality of the provision defining the offence take away the recognition of acid attack being a gender specific crime? To set the record straight, the provision defining the offence in Pakistan and BD is gender neutral qua victim and qua the perpetrator. However, its not de-linked from the gendered reality of the crime. The objectives of the legislation and the amendment seeks to protect women and children from violence. India's 2012 bill does the same. I would hesitate to conclude that these laws, or indeed India's 2012 provision as fundamentally gender neutral, or not grounded in the reality of the pattern of violence it seeks to address. Vrinda's sneak peak into the papers at the ministry revealed that the background pages preceding the 2012 amendment, was a narrative of Supreme Court directions calling for legislative reforms on various types of sexual violence. My guess is that this background note also refers to Supreme Court's directions to the Home Ministry in a PIL filed by AparnaBhat on acid attacks. I would actually be surprised if it were not included! When the objectives of the amendment and the background papers set the out the gendered context in which this reform is introduced, this would shape the jurisprudence that emerges, something that the courts are known to do.

**Conviction:**Our worries should go beyond gender neutral and gender specific - two major problems with this crime relate to conviction (unlike in sexual assault, there is no bodily contact with victim, the attack happens in a flash, it can happen from behind, it is known to happen while victim is sleeping) – so its hard for the victim to fully discharge the burden of proof. Keeping this in mind, Rebecca Mammen had suggested shifting the burden of proof insofar as acid attacks on women are concerned.

Interestingly, the NCW's bill also recommends an amendment, through section 114A of the Evidence Act: 'Presumption as to Acid Attack' that reads - "when the question is whether a person has committed the act of throwing acid on the woman the court shall presume ....." The NCW provision on acid attack is weaker than the 2012 bill. Notably also, the objectives of the NCW bill are grounded in the attacks against women but the provision defining the attack is gender-neutral. When this provision is read with 114A, it transfers the burden of proof upon the accused only where a woman victim is involved.

To respond to the concern about reversal of burden of proof – I agree that this is a principle that this should not be tinkered with. It's one of the pillars of fair trial. However, where the direct connection between this burden and the difficulty of conviction can be established, with some empirical evidence or studies as to the barriers, I think it's appropriate to make such a demand in the quest of justice. I don't believe that the govt legitimises similar provisions in national security laws because of the examples set by the women's movement, even if they allude to the changes made for custodial rape, dowry deaths as a justification. The circumstances of such crimes do not allow a fair chance for justice delivery without such reversal. I cannot for a moment believe that if the reversal of burden of proof in custodial rape and dowry death were revoked, similar provisions in national security laws would also be revoked.

**Compensation/ Interim Compensation:**The present proposal states that a fine of Rs. 10 lacs can be imposed on the accused (upon conviction). An important component of justice, particularly for acid attack victims is compensation. We cannot leave the victim to such a tenuous and belated source of compensation, tied up with conviction. There are real obstacles: the accused may not have the money, what if the accused absconds, is not convicted and so on. This compensation should be linked to sec. 357A of the CrPC (refer to note on acid attack attached) for the victim. Interim compensation is available under this provision and the state bears it; recovering it from the accused if at all. The compensation to the victim must be released with proof of injuries, rather than from any association with the accused – the state can recover it from the accused or the scheme. Our campaign must engage with the scheme actively to ensuring that its funded and functional.

**Sentencing:** Another obstruction to conviction pointed out by colleagues in BD is the death sentence, part of the prescribed punishment (not a problem with 2012 bill), because this they feel deters the courts from convicting at all. This may not be relevant for India in this precise context, but its useful to bear this in mind when asking for strong laws/ higher sentences

generally. Learning from this, it might be better to ask for a minimum rather than set a maximum sentence.

To quote the BD experience "In the 'acid crime control act of 2002 ' most of the sections mention about capital punishments. The judgments do not want to pronounce death sentence of the perpetrator, on humanitarian grounds. From our experience, we see that in most judgments, the perpetrator is even acquitted than been given capital punishments. Therefore usually favorable judgments cannot be brought in favor of the victims. If the provision of capital punishment can be replaced with lifetime imprisonment, then this problem can be overcome since the judgments will not hesitate giving the punishment.

Often there are also problems if those sections where capital punishment or life imprisonment exists simultaneously. There is a high possibility of acquittal in this case. If the maximum punishment is life imprisonment or any time-specified imprisonment (e.g. 14 years of imprisonment), the High Court feels more comfortable to confirm this punishment."

Hope this contributes towards more informed discussions on what we want from the acid attack law.

In solidarity,

Madhu