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Acid Attack Victims: Rights and Rehabilitation

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ABSTRACT

Acid attack is one of the major issue and is the most heinous crime in India. It is the gender based violence all over the world because most reported cases mainly focused on women especially young women. Major reason which accounted are rejection of marriage proposal, rejection of sexual desire of men, dowry demands and property issues in families etc. These kinds of crimes are occurred due to hate to the victims. It is not only disfigurement their face and body parts but also they struggle for their life with immense of pain and sufferings and needs a constant battle for the recovery. For the treatment of these burns lakhs per surgery were needed and most of the victims were poor ones who is unable to take thousand rupees. India has no specific legislation for the protection of acid attack victims and cases were registered under IPC.

With the Criminal Law Amendment 2013 is the new sections were inserted in penal provision for the protection of acid attack victims and the Supreme Court in Laxmi's case makes alarming changes in India. But the amendments in these legislation is inadequate to control the acid violence against women because there is no stringent punishments.

I. INTRODUCTION

Acid attack violence or acid attack is considered as the most heinous crime in India and horrible and brutal way of destroying life of a person. It can also be considered as a part of hate crime. In India there is an alarming situation to control acid attack because day by day the situation becoming worse and increases the number of victims. Here the acid mostly sulphuric acid or Hydrochloric acid, which in contact with human skin causes immense pain and completely burns the skin right up to the third layer, damaging the blood vessels, nerves and the tissues which is also known as third degree burns, and causes permanent disfigurement by melting facial features, which often results in cutting of nostrils or in worse cases causing permanent or partial blindness. In order to treat such burns, multiple plastic surgeries are required which is very expensive costing lakhs per surgery. Most of the cases are reported are committed on women, for spurning suitors, for their rejection of marriage proposal, or for rejection of sexual

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desire to them or for denying dowry by deep-seated jealous of feelings of revenge against women. As the result of disfigurement and disability victims are permanently debilitated and are forced to give up their lives, their work, and their education. The use of acid as a weapon began to rise in many developing nations, specifically those in South Asia². The first recorded acid attacks in South Asia occurred in Bangladesh in 1967,³ India in the year 1982⁴.

The Supreme Court in 2013 with the landmark judgment of *Laxmi v. Union of India* makes an alarming changes and directions to frame the rules and strict compliance in India. Through this in 2006 Laxmi filed a Public Interest Litigation in Supreme Court for amendment in Criminal Justice system against acid attacks to provide adequate compensation to the victims.

It is the brutal form of violence that undermines the basic rights guaranteed to an individual under several human rights instruments. The Constitution of India provides: “The State shall endeavour to

- (a) Promote international peace and security...
- (b) To foster respect for international law and treaty obligations in the dealings of organized peoples with one another...”⁵

The Supreme Court has relied on Article 51 when affirming India’s obligations under international human rights conventions and treaties. The Supreme Court held in *Vishaka vs. State of Rajasthan*⁶, “It is now an accepted rule of judicial construction that regard must be had to international conventions and norms construing domestic law when there is no inconsistency between them and there is a void in the domestic law.” Accordingly, India’s international human rights convention obligations create binding legal norms unless Parliament has created directly conflicting law.

Historically, acid attacks were also widespread in France, the United Kingdom and other parts of Europe from the 18th century onwards. Today, in addition to acid attacks in Cambodia, Bangladesh and India, they are also reported widely in other parts of South East and South

² Faga A, D. Scevolab, M.G. Mezzetic, S. Scevolab”et al”. Sulphuric acidburned women in Bangladesh : A Social and medical problem, Vol 26(8) :701 – 709, <https://www.ncbi.nlm.nih.gov/pubmed/11024602>.

³ Sital Kalantry & Jocelyn Getgen Kestenbaum, *Combating Acid Violence in Bangladesh, India, and Cambodia*, Avon Global for Women and Justice at Cornell Law School, the committee on International Human Rights of the New York city Bar Association, the Cornell Law School International Human Rights Clinic, and the virtue Foundation.

⁴ Mamta Patel, *A Desire to Disfigure: Acid attack in India*, 7 No.2, INTERNATIONAL JOURNAL OF CRIMINOLOGY & SOCIOLOGICAL THEORY.2014, <https://ijcst.journals.yorku.ca/index.php/ijcst/article/view/39702>.

⁵ Article 51 of The Indian Constitution, 1950.

⁶ *Vishaka and others v. State of Rajasthan and others* (1997) 6 SCC 241, AIR 1997; Also in *Apparel Export Promotion Council vs. Chopra* (1999) 625 SC 634, AIR 1999 (India)

Asia; the Middle East; Central and Northern Africa; and, to a lesser extent acid attacks also occur in North America and Europe. These attacks seldom kill but result in serious disfigurement and suffering which confine women to their homes, thereby leading to economic hardship, social isolation and depression.

II. ACID VIOLENCE IN OTHER COUNTRIES: A SITUATIONAL ANALYSIS

Acid attacks have been documented in various different parts of the world including Australia, Bangladesh, Cambodia, China, El Salvador, Ethiopia, Italy, Laos, Malaysia, Nepal, Pakistan, Sri Lanka, Thailand, Uganda, UK, USA, and Vietnam. However, the number of incidences in Bangladesh, India, Pakistan, Cambodia and Uganda are much higher and are on the rise. Certain social and cultural issues responsible for these attacks have been “refusals of a relationship or marriage proposal, failures of a girl to bring a dowry to her husband, marital disputes, family disputes, political rivalries, land disputes and the accidental presence of the victims at the scene.”⁷ Most of the reasons are specifically related to gender and are common reasons in countries like Bangladesh, India, Pakistan, Cambodia, and Uganda; where other crimes against women like dowry related crimes, domestic violence and honor crimes exist. In fact, in India, it has been said that “acid attacks on women are a systemic form of gendered sexual violence. Unlike acid attacks on men, these attacks are used as a weapon to silence and control women by destroying what is constructed as the primary constituent of her identity, i.e., her body. It is important then for any campaign against acid attacks to mobilize public opinion towards recognizing acid attacks as a form of gendered sexual violence and more importantly to recognize the patriarchal notions underlying these attacks”.⁸

Furthermore, depicting country specific trends is useful while drawing up an appropriate legislation to address the problem. For instance, as many of cases of acid violence in Cambodia occur in the household, the crime has been proposed to be addressed in their Domestic Violence Act. A similar approach was taken in Bangladesh in 1995 when the government initially thought acid attacks to be a gender specific crime and passed the Cruelty to Women and Children Act. In 2000 the Prevention of Oppression against Women and Children Act again dealt with acid attacks on women and children. However the rise in trends of acid violence against men that ensued in the late 1900s made it necessary for the Bangladeshi government to pass a law that dealt with the crime against both women and men in specific terms. Hence, in 2002 two new laws, the Acid Offences Prevention Act 2002 and Acid Control Act were enacted

⁷ Internet Edition Holiday, The acid violence against women, Shadnaz Khan, May 27, 2005

⁸ ICCPR, 1966, Article 28(2)

in 2002 to address the growing problem.

III. LEGISLATIVE FRAMEWORK ON ACID ATTACK VICTIMS IN INDIA

The Justice Verma Committee constituted by the Central Government in 2013 in the aftermath of the Nirbhaya case to suggest reforms in the criminal justice system dealt with the issue of acid attacks and observed:

“We understand that a most heinous form of attack on women, which is common place in several Asian and African countries is the throwing of acid on women for a multitude of reasons, including alleged adultery, turning down advances from men, and also as a form of domestic violence. Acids and other corrosive substances are thrown on women or administered to them, thereby causing death or physical and psychological damage with unfathomable consequences.

In the absence of any specific provisions to deal with incidents of acid attacks, such cases were generally dealt with under Section 326 of the IPC and other provisions. By virtue of Criminal law (Amendment Act), 2013, Sections 326A and 326B were inserted in the Indian Penal Code providing for punishment to anyone who causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid on or by administering acid to that person, or by using any other means with the intention of causing or with the knowledge that he is likely to cause such injury or hurt or who throws or attempts to throw acid on any person or attempts to administer acid to any person.

Therefore, the new amendment is a welcoming step towards reining in this crime. For the purpose of rehabilitation, victims may also be given compensation as under Section 357A of the Criminal Procedure Code, 1973. Another laudable step which has been brought by the Criminal Amendment Act, 2013 was the inclusion of Section 357C to the Code of Criminal Procedure. It states that all hospitals, public or private, whether run by the Central Government, the State Government, local bodies, shall immediately provide first-aid or medical treatment, free of cost to the victims of any offence covered under Sections 326A, 326B, 326C, 326D or 326E of the Indian Penal Code, and shall also inform the police immediately.

IV. IMPLEMENTATION OF LEGISLATION (ROLE OF LEGAL SERVICES AUTHORITY/NGO'S, ADMINISTRATIVES)

(A) Role Of Ngo's

NGO's can create a platform to encourage survivors to talk and write about their stories and

create awareness to the civil society. From the traditional methods, NGO's can make the downtrodden victims of acid attack into the light of the society. This can create awareness about this burning issue towards the society and their struggles and challenges faced by the survivors in within the justice system. There are now several NGOs, included in the heading benefit arrangement to acid assault survivors in Asia and Africa. Be that as it may, there are various others who give mediation and administrations to acid assault survivors. Many non-governmental organizations (NGOs) have been formed in the areas with the highest occurrence of acid attacks to combat such attacks. Bangladesh has its Acid Survivors Foundation, which offers acid victims legal, medical, counseling, and monetary assistance in rebuilding their lives.⁹ Similar institutions exist in Uganda, which has its own Acid Survivors Foundation,¹⁰ and in Cambodia which uses the help of Cambodian Acid Survivors Charity.¹¹ NGOs provide rehabilitation services for survivors while acting as advocates for social reform, hoping to increase support and awareness for acid assault.

The following is a preview of few of the NGOs and organizations that either work only with acid assault survivors on restorative, budgetary, lawful, and social bolster, or who work with women, young women and men who are casualties of viciousness or torment (hence acid assault survivors are too included in their programs and mediations). **Acid Survivors Trust International (ASTI), Campaign And Struggle Against Acid Attacks On Women (CSAAAW), Acid Survivors Foundation (ASF), Meer Foundation¹², Human Rights Watch (HRW)¹³, Chhanv Foundation¹⁴** are some of the NGO's functioning in India.

(B) Role of police

The investigation agency i.e. the police should play a proactive and pivotal role to curb criminals and crime. Information to the police of any incident was of great importance. This is the first and foremost step to be taken when any crime or any nuisance happen in our society.

⁹ Combating Acid Violence in Bangladesh, India, and Cambodia by the Avon Global for Women and Justice at Cornell Law School, the Committee on International Human Rights of the New York City Bar Association, the Cornell Law School International Human Rights Clinic, and the Virtue Foundation, <https://www.ohchr.org/Documents/HRBodies/CEDAW/HarmfulPractices/AvonGlobalCenterforWomenandJustice.pdf>

¹⁰ Acid Violence in Uganda A Situational Analysis, https://www.acidviolence.org/assets/uganda_asfu_situational_analysis_report_final_nov2011_1.pdf, 07/05/2021, 6:30pm.

¹¹ Breaking the silence : addressing acid attacks in Cambodia, Cambodian Acid Survivors Charity (CASC), https://cchrcambodia.org/admin/media/report/report/english/2010-05-21-%20Breaking%20the%20Silence%20Addressing%20Acid%20Attacks%20in%20Cambodia_%20EN.pdf, 03/05/2021, 11:10am.

¹² Meer foundation, <https://www.meerfoundation.org/about> 07/02/2020, 07/05/2021, 6:51pm

¹³ Human Rights Watch, <https://www.hrw.org/publications>, 7/05/2021, 12:07 pm.

¹⁴ Chhanv Foundation, <https://www.chhanv.org/>, 7/5/2021, 8:50am.

Survivors or witnesses of any such incident must report to the nearest station without fail. Particularly survivors must never be put down by any unfavourable experience or preconceptions regarding the approach of the police they have. Always approach a senior officer if not heard at the first go.

In India proactive role of police occurs in only pen and paper. The action that the police take is inadequate and insufficient, especially when it comes to tackle or stop the violence against women. For example, one of the most common responses of police with respect to violence against women is that it is victim-precipitated.¹⁵ They keep asking all sorts of irrelevant questions like about the dress code, why roaming in the darkness etc, thereby increasing the trauma of the victim. They are insensitive in their behavior to deal with the victims of rape and other sorts of violence, inspite of Supreme Courts strict guidelines on the issue. Acid victims also feel reluctant to report acid attacks because they fear the harassment and the ridicule from the police officers. Officers may frame acid violence investigations in terms of a women's sexual history and questions of morality.¹⁶ Several acid attack victims reported that their attackers bribed the police in order to influence the investigation. In order to deal with the insensitivity of the police officers in cases of violence against women, Criminal Amendment Act, 2013 introduced a proviso in Section 154 with deals with the recording of the First Information Report. According to this provision, in cases of violence against women, statement of the victim should be recorded before a women police officer. But there are very less of women police officers in the Department. Women police officers should also be trained to deal with the matter sensitively. Moral training should also be emphasized. They should be taught the value of their job, to not only fight against crime, but also to help the fellow citizens.

(C) Role of doctors

Importance of first aid and the responsibility of hospitals, witnesses and caregivers in this regard. Hospitals for instance cannot deny first aid. However, it was important to acknowledge that more often than not approaching hospitals can be a very difficult task in the country and therefore caregivers i.e. people who first come in contact with someone who is attacked have an essential role to play as well. Firstly, caregivers should make sure to protect themselves from the acid; remove the clothing of the person so that acid- soaked clothes do not cause more damage and make sure that the acid does not come in contact with other parts of the body.

The best first aid is to splash a lot of water on the burnt areas. Running water being the best

¹⁵ Parvathi Menon, Sanjay Vashishtha, Vitriolage and India- The Modern Weapon of Revenge, [http://www.ijhssi.org/papers/v2\(10\)/Version-2/A0210020109.pdf](http://www.ijhssi.org/papers/v2(10)/Version-2/A0210020109.pdf) 7/05/2021, 6:24am.

¹⁶ Campaign and Struggle against Acid attack on Women (CSAAAW), Burnt not defeated 21-22

first aid in this situation. An important thing to remember however is that, less water can dilute the acid and make it flow farther over the body and cause more burns. If possible, it is important to get the survivor under a shower or running tap to wash off the acid as soon as possible. Splashing buckets of water to direct the acid flow away from the affected parts, is also another efficient first aid mechanism. For dilution one should not use a high-pressure water source as it might worsen the gravity of the burns. Although it is the best to avoid dirty water, if there is no other method of first aid or access to any liquid, one can use such water. Other methods of first aid, especially for burns covering less skin can be using toothpaste, ointments and milk.

(D) Role of legal services authority

Role of legal services authorities in acid attack case is well explained in *Laxmi v. Union of India* judgment and subsequent notifications the State Legal Services Authority are responsible for the compensation of victims. Compensation to the victims is not like contribution by the legal services authority but it is the duty towards the society. But there is delay in releasing fund for compensation by the Government due to the issues related to allocation of state budgets which cause hang-ups in the release of compensation. To minimise all these hang-ups for releasing compensation there need for policy change. All the State Legal Services Authority will engage with the people and organise awareness programmes for the welfare of the victims of acid attack. Lok Adalats for the acid attack victims by including social workers or paralegal volunteers.

The Preamble of the Legal Services Authorities Act, 1987 emphasises that the legal services authorities are concerned with the weaker sections of the society and imposes a duty on them to ensure that opportunities for securing justice are not denied to any citizen by reason or economic or other disabilities. Under Section 4(b) of the Legal Services Authorities Act, 1987, the “Central Authority” ie. The National Legal Services Authority has been obliged to “frame the most effective and economical schemes for the purpose of making legal services available under the provisions” of the Act. Section 4(1) enjoins the “Central Authority” to take appropriate measures for spreading legal literacy and legal awareness amongst the people and, in particular, to educate weaker sections of the society about the rights, benefits and privileges guaranteed by social welfare legislations and other enactments as well as administrative programmes and measures. Also Section 7 (c) it is the function of State Legal Services Authority to undertake preventive and strategic legal aid programmes. Section 12 specifically states that all women are entitled to legal services as also a person with disability as defined in clause (i) of Section 2 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

New scheme for victims of acid attack through NALSA (Legal Services to Victims of Acid Attacks) Scheme, 2016 is to strengthen legal aid at national, state, district and at taluk levels in availing the benefits of the various legal provisions and schemes for compensation. The Act also protects the victims to get access to medical facilities and rehabilitative services. It also enhance capacities at all levels of panel lawyers, para-legal volunteers, volunteers in legal services clinics, government officers tasked with the implementation of the various schemes, service providers, police personnel, non-governmental organizations by organizing training, orientation and sensitization programmes. Another objective is to undertake research and documentation to study the various schemes, laws etc. to find out the gaps, the needs and to make suggestions to the appropriate authorities. Act also ensures the victims of acid attacks are appropriately rehabilitated in the society and live a life of dignity.

Through this scheme all victims of acid attacks and where the acid attack results in death, the heirs of the victims of acid attacks shall be provided legal aid on a priority basis in order to enable them to get the benefit of the Victim Compensation Scheme. Both SLSAs and DLSAs shall ensure that the victims of acid attacks do not have to face any kind of delay in procedural wrangles and the interim compensation is awarded at the earliest. Legal representation shall be provided to the victims during the recording of their statement under Section 164 Cr.P.C. District Legal Services Authorities shall also depute sufficient number of PLVs for the implementation of this scheme.

(E) Role of media and journalists

The media is very powerful instrument. It plays a vital role for the development of a society and it also help to curb all the violations in the society. When it focuses on societal wrongs, no matter how briefly, it brings about a change. It amplifies issues and emboldens the public to speak out against crimes. Another role that the media and journalists could play is through reporting of events, conferences and book releases related to acid attack. And media and journalists could play is through reporting of events, conferences and book releases related to acid attack. This will ensure that such issues are read about and as a result spoken about too.

Acid Survivors Foundation has been working with the media to prioritize anti-acid violence campaigns. It tries to reach a wider audience at the grassroots level through different types of mass media interventions. In 2013, the Government took initiatives to disseminate promotional materials developed by ASF on private and public TV channel free of cost. As a result in 2015 many public and private TV and radio channels broadcasted messages on legal consequences of acid violence and the importance of using water on burn injuries caused by acid. ASF also

arranged four talk shows in 2015 on Skin Bank and Pressure Garment, Psychosocial Support, Legal Support, and Stigma and Disfigurement. The talk shows helped to raise important issues for policy and decision makers.¹⁷

(F) Role of academics

The reason behind violence against women whether in the form of acid attacks or otherwise, it is about understanding patriarchy and the various forms it takes in our society. With regards to academic institutions, there is a need for institutions to open up to hosting discussions, debates and as well as including gender and sexuality in their curriculums. Universities must use their many mechanisms such as campaigning, research and advocacy to address such issues. Further, universities have a major role to play when it comes to research, where they can ensure unbiased data which can be the backbone of advocacy as well as litigation.

Another area where academics and trainings have a role to play is that of conducting trainings and capacity building. There is a need for crisis training across stakeholders, i.e. in collaboration with the commissions, police, health care providers and NGOs. This should cover, basic criminal justice training, training on health care provisions, compensation and the court procedures. Counselling is another important focus area that every University should invest its resources in. Not only as an academic issue but also provide training for counsellors and psychologists and advocating for counselling services as a necessity under state healthcare schemes.

(G) Role of national commission for women

The National Commission for Women has suggested a separate legislation to deal with the offence of acid attack and as part of the proposed legislation has suggested that the Central Government should establish a National Acid Attack Victims Assistance Board which will provide assistance to the acid attack victims by way of ensuring medical treatment and other services such as psychological counseling. The board has also been given the task to recommend to the Government strategies to regulate and control *inter alia* the production and sale of acids. It has been suggested that the board administers a fund to be called The National Acid Attack Victims Assistance Fund to which the Central and State Government can give grants apart from others. It has also been provided that the board can give interim financial relief upto Rs. 1 lakh within a period of 30 days directly to the hospital. All Central Government

¹⁷ Acid Survivors Foundation , Annual report 2015, http://acidsurvivors.org/images/frontImages/Annual_Report_-_2015.pdf , 7/05/2021, 12:47pm.

hospitals and establishments have been directed to treat acid attack victims free of cost.¹⁸

The Commission first began a state level meeting with the acid survivors was organised. It was after this meeting that was the Commission able to understand the pain, struggle and the journey of an acid attack survivor. When a survivor comes to the Commission, the focus is on whether they have received compensation or not. If the survivor asks that she wants to be treated in a private hospital the Delhi Commission for tries to make this happen through their partners and networks. In one case handled by the Commission where two survivors who were being treated in a private hospital that demanded money from the family which was already struggling financially, the Commission was able to speak to the Medical Superintendent, build pressure, and manage to transfer the girls to another doctor who would help with the treatment free of cost as per the law.

One of the other areas that the Commission focuses on is the sale of acid and in this regard, it was highlighted that after the Supreme Court's guidelines acid is still being sold. The Commission did an experiment where officials of the Commission were sent out to different parts of Delhi to purchase acid in order to analyse its availability. At the end, of the survey it was found that around 30 places sold acid and at one such place the shopkeeper was giving away the whole crate of acid for a menial rate. The survey results led the Commission to conduct a face- to-face meeting with the respective District Magistrates and District Commissioner of Police regarding this. The meeting resulted in the officers agreeing for a series of surprise raids to be done in different zones of Delhi in order to ensure that acid is not readily made available.

V. JUDICIAL APPROACH ON ACID ATTACKS IN INDIA

As India does not have a separate law governing the crime of acid attack, cases have been registered under different sections of the Indian Penal Code (IPC) particularly the sections relating to hurt, grievous hurt, grievous hurt by corrosive substances and attempt to murder and murder. The after effects of an acid attack even if the victim survives are distinct and scar the victim; who is usually a woman throughout her life both physically and mentally. In some of the positive cases the accused have been charged with murder, as the intention of the attacker has been construed as an intention to kill the victim. Even in these positive cases however the amount of fine which has been levied has often been an insufficient amount. The victim has also often not been given this fine by the court.

¹⁸ Ashok Kumar Makkar, Acid attacks on women: Legal response, <http://www.lawjournals.org/download/231/3-6-85-202.pdf> ,3/4/2021 4:33pm.

In 1998 Maharashtra case¹⁹ acid was thrown on a woman, while she was holding her two and a half year old baby, by her brother-in-law for refusing to give money to maintain her husband's second wife. She sustained acid burns on the left side of her face, left hand and left breast and both she and her infant daughter lost their eyesight. The woman finally died due to burn injuries. In this case, the brother-in-law was sentenced by the Court under Section 302 of IPC, to undergo imprisonment for life and pay a fine of Rs. 1000 and also sentenced to rigorous imprisonment for a month. Under Section 326 of the IPC he was awarded 5 years of imprisonment apart from a fine of Rs. 2000/- and 3 months of rigorous imprisonment. Though the accused was found guilty the learned Judge failed to appreciate that he should levy an adequate amount as fine and give this fine to the victim's child, who suffered from the attack in multiple ways.

In a 2002 case²⁰, the accused was suspicious about the character of his wife and inserted mercuric chloride into her vagina, she died due to renal failure. The accused was charged and convicted under Section 302 and 307 IPC.

The Hon'ble Supreme Court in 1975²¹, acid was poured on a woman by her husband for refusing to grant him divorce and the victim suffered with multiple acid burns on her face and other parts of her body, leading to her death. The accused was charged and convicted under Section 302 of the IPC. However, life imprisonment was not imposed even though the victim had died.

In a case before the Madras High Court²², a person suspected his wife had developed an illicit relationship with one of his acquaintances. In that fit of anger he threw acid on her resulting in severe burns and death of the victim. The husband was convicted under Sec 302 IPC and 313 IPC (causing miscarriage of a woman without her consent) with life imprisonment and a fine of Rs. 2000. The fine was thus again a meager amount.

In *Devanand v. The State*²³ a man threw acid on his estranged wife because she refused to cohabit with him. The wife suffered permanent disfigurement and loss of one eye. The accused was convicted under Section 307 and was imprisoned for 7 years.²⁴

In another cases²⁵ involving acid attack the accused threw acid on a girl, Hasina for refusing

¹⁹ Gulab Sahiblal Shaikh Vs. The State of Maharashtra, (1998 Bom CR(Cri))

²⁰ Marepally Venkata Sree Nagesh Vs. State of A.p (2002 CriLJ3625)

²¹ Revinder Singh Vs. State of Harayana(AIR 1975 SC 856)

²² Balu Vs. State Represented Inspector of police decided on 26/10/2006

²³ (1987 (1) Crimes 314)

²⁴ Veerla Stayanarayna Vs State of A.P 2002(Supp)1 SC 489

²⁵ State of Karnataka by Jalahalli Police Station vs. Joseph Rodrigues S/o V.Z. Rodrigues on 22/8/2006.

his job offer. It resulted into deeply scarred her physical appearance, changed the colour and appearance of her face and left her blind. The accused was convicted under Section 307 of IPC and sentenced to imprisonment for life. A compensation of Rs. 2,00,000/- in addition to the Trial Court fine of Rs.3,00,000 was to be paid by the accused to victims parents. This was a landmark case as it was the first time that a compensation which was quite a large sum was given to the victim to meet the medical expenses including that of plastic surgeries. However, no compensation was awarded for the after effects of the attack such as loss of income etc. This was the landmark case for the first time that a large sum of compensation was given to the acid attack victims to meet medical expenses including surgeries.

In the case *Awadhesh Roy v. State of Jharkhand*²⁶ before the Jharkhand High Court the victim was standing with her friend at a Bus Stop in Dhanbad. The Appellant came and poured acid over her head and face. The appellant had a photograph of the victim and was blackmailing her but she refused to accede to his demands. The victim suffered burn injuries over the left side of her eye, neck and chest and had to be hospitalized. A case was registered under Sections 324, 326, 307 IPC. The police investigated the case and finally submitted a charge sheet against the appellant under the aforesaid sections. The learned 2nd Additional Sessions Judge, Dhanbad held the appellant guilty under Section 324 IPC and convicted and sentenced him to undergo RI for three years. The appellant's conviction was upheld by the Hon'ble High Court. No compensation whatsoever was awarded to the victim. In this case the court seems to have been guided by the nature of injuries which in its opinion did not amount to grievous hurt.²⁷

In *Ramesh Dey and Ors v. State of West Bengal*,²⁸ Calcutta High Court the accused had made a previous abortive attempt to throw acid on the victim and succeeded on a second attempt. The motive for the crime was revenge as the victim had rebuffed the overtures of the main accused Ramesh. The accused along with two others went to the victims house and threw a bottle of acid on the victim outside her house where she, her mother, her aunt and her little son were sitting. The victim, her mother, her aunt and her son sustained injury. The victim Padma died due to extensive acid burns on the neck, chest, right alna, breasts, legs, knees and scalp. Her aunt received 25% burns and her aunt's son received 11% burns. The additional sessions Judge awarded imprisonment for life and a fine for Rs. 5000 under Section 302 and 34 of the IPC. The appellants were also convicted under S. 324/34 IPC and sentenced to R.I. for one year and to pay a fine of Rs. 1,000/- each in default to suffer S.I. for two months. Both sentences

²⁶ *Awadhesh Roy v. State of Jharkhand* (12/6/2006).

²⁷ *A.P.A.U and Miss Anuradha, student v. The Registrar A.P.A.U,N. Sreeniwasa Reddy, Student and Ors.* (1997(1) ALT 547)

²⁸ 2007(3) CHN 775

were to run concurrently. The High Court on appeal however, set aside the conviction and sentence against the other two accused by stating that there was no evidence to show they had a common intention and their presence with the accused on the scene of the crime was not enough.

Over years and years various kinds of acid attacks have been registered under hurt, grievous hurt, murder of Indian Penal Code, 1860. But acid attack is very distinct and complex crime because its nature and effect is different from other crimes. So that provisions in Indian Penal Code is not adequate for the relief and punishment of the acid attack victims in India. Police officers use their discretion to decide what sections are used in registration in case of acid attacks and their discretion is at times influenced by gender bias and corruption or is a wrong statement.

Early period no compensation was granted to the victims, later compensation was awarded which the sum is minimal and it is inadequate to meet even medical expenses. Normally courts levy fines without even giving compensation to the victims. Victims also suffer due to the slow judicial process, inadequate compensation and obviously from the after affect of the acid attack itself. Thus, there is an urgent need to legislate distinct sections in the I.P.C to deal with acid attacks and to setup a Criminal Injuries Compensation Board in India to deal with such cases in an effective and efficient manner, to help the victims of acid attack to get compensation for medical expenses and rehabilitation apart from making Section 357 CrPC mandatory in certain respects.

In the Delhi Domestic Working Women's Forum case²⁹ the Supreme Court of India had pronounced upon the need by the government to setup a Criminal Injuries Compensation Board for rape victims within 6 months. The Supreme Court had suggested that this board should give compensation whether or not a conviction takes place. The Supreme Court explained the justification for this proposal as under-

“It is necessary, having regard to the Directive Principles contained under Article 38(I) of the Constitution of India to setup Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example are too traumatised to continue in employment. Compensation for victims should be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction takes place. The board will take into account pain, suffering and shocks as well as loss of earnings due to pregnancy and the expenses of the child but if this occurred as a result of the rape.

²⁹ Delhi Domestic Working Women's Forum v. Union of India (1995) I SCC 14.

In the present situation, the third respondent will have to evolve such scheme as to wipe out the fears of such unfortunate victims.”

In *Bodhisattwa Gautam’s* case,³⁰ The Supreme Court again reiterated the above decision and further laid down that courts had arrived to award interim compensation which should also be provided for in the scheme. An examination of acid attack cases again underlines the urgent need for a scheme of compensation for the victims. Acid attack victims often have to, as stated earlier, undergo multiple surgeries costing Lakhs of Rupees. They are also in urgent need of rehabilitation as they often need financial help to exist. They may not be able to seek employment.

The criminal amendment has ushered significant change in the judicial approach towards acid attacks and victims. The court is now well aware of the aftermath of these attacks and the intensive medical care the victim has to go through. In more and more cases courts have expressed dissatisfaction at the quantum of punishment and the compensation being too low. *Laxmi’s* judgment, even though a landmark decision in terms of bringing about relief for the victims, wasn’t properly implemented, and another PIL by the NGO Parivartan Kendra and others was filed in the Supreme Court.³¹

In 226th Law Commission report it states that National Commission for Women has suggested a separate legislation to deal with the offence of acid attack and also suggested that the Central Government should establish a National Acid Attack Victims Assistance Board which will provide assistance to the acid attack victims by way of ensuring medical treatment and other services in the way of psychological counseling. The board also given the task to recommend to the Government strategies to regulate and control inter – alia the production and sale of acids and the board administers a fund to be called The National Acid Attack Victims Assistance Fund to which Central and State government can give grants apart from others.

VI. CONCLUSION AND SUGGESTIONS

Acid attack is one of the brutal form of violence which is mainly focused to women and girls in India. Day by day this violence become stronger and stronger across the world. From the reports it can conclude that majority of the victims are women, only small amount of victims occurred among men and boys. This violence occurred in public places and people not secured anywhere in this world, bystanders are also the sufferers of this crime. According to Acid Survivors Foundation the root cause of acid attack or the motive behind the crime is simply the

³⁰ *Bodhisattwa Gautam Vs. Shubhra Chakraborty* AIR 1996 SCC 922.

³¹ *Parivartan Kendra v. Union of India*, (2016) 3 SCC 571.

rejection of love from boys is about 36% , 5% of land/professional disputes, family disputes and dowry and also no motive or for sadistic pleasure, 13% of marital discord, only 1% includes unintentional reasons. Victims are among the age of 26 – 35 are most of them.

With the Supreme Court's intervention in *Laxmi v. Union of India* has been the most instrumental in bringing positive change that the court taking notice of plight of acid attack victims as well as the easy availability of acid in the markets, also laid down the guidelines for the regulation of acid in India. It is the first case which the court raised compensation for victims and the minimum amount was also set up. Early period there is no specific legislation in India which deals with acid attack violence and with the intervention of 226th Law Commission Report in 2008 and the Justice Verma Committee Report in 2013, in amendments to the Criminal Law in India in awarding a strict punishment to the perpetrators of this crime. By this 2013 Criminal Law Amendment the insertion of Section 326 A and Section 326 B into the Penal Code which deal with, inter alia, criminalizing the act and attempt of causing any injury with acid.

Prior to this Amendment, any of such act is punishable under Section 320 grievous hurt including causing emasculation, privation and disfigurement, Section 322 and 325 which is punishment for voluntarily causing grievous hurt and Section 326 causing grievous hurt by dangerous weapons or means of Indian Penal Code, 1860 and in certain extreme cases, Section 307 and 302 also used.

In 2012 after the Delhi rape case, a three member committee led by Justice J.S Verma, former Chief Justice of the Supreme Court, Justice Leila Seth & Justice Gopal Subramaniam was constituted to recommend amendments to various criminal laws. The Committee was of opinion that the offences relating to acid attacks should not be clubbed under the provision of 'grievous hurt' which is punishable with 7 years of imprisonment under the penal code and further recommended that the Central and State Governments create a corpus to compensate victims of crimes against women. Later in July 2008 and later published under the title "The Inclusion of Acid Attacks as Specific Offences in the Indian Penal Code and a law for victims of Crime". It recommended that the sale of acid be banned except for commercial and scientific purposes.

The Government has taken positive measures to combat acid attacks by introducing specific provisions in the Indian Penal Code and has revamped its Compensation schemes in order to ensure rehabilitation of the victims. In 2016, the Right of Persons with Disabilities Act, was enacted which includes acid attack victims under the list of persons with disabilities for

securing a reservation in employment, education and other opportunities. However, there is a long way to go to eliminate this menace completely from the society. Certain steps similar to the following can be added to the existing set of laws and schemes to control and prevent instances of acid attacks.

The National Commission for Women prepared and submitted a draft bill titled “Prevention of offences (by Acids) Act 2008” (“NCW Bill”) to the Union Ministry for Women and Child Development. The NCW Bill criminalizes acid attacks as a separate, serious, non-bailable and non-compoundable offence; addresses medical, psychological, social, rehabilitative and legal support for victims of acid attacks; lays down a procedure for providing assistance to the victims; establishes the roles and functions of the implementing authorities and regulates the sale of acid and other corrosives. The NCW Bill proposes the establishment of a National Acid Attack Victim’s Assistance Board, a Monitoring Agency to implement the provisions of the proposed act and a National Acid Attack Victim’s Assistance Fund in which compensation is earmarked for the victim’s medical treatment, special needs and rehabilitation and children in the event of the victim’s death. These reliefs are not dependent on the conviction, or identification, of the perpetrator. Whilst some of the proposed provisions of the NCW Bill have been included in the Amendment, several of the substantive suggestions have not been considered. It remains to be seen whether the NCW Bill is passed by Parliament at a later date.

(A) Suggestions

- Acid attacks are very underreported and survivors are not acknowledged as much as they should be. The social stigma that surrounds acid attacks speaks volumes about us collectively as a society. Acid attacks predominantly occur because we, as a society, judge our women based on their appearances and less on their capabilities. This mindset of society empowers the attacker to think that he/she is right in believing that if he ruins a woman’s face, then her standing in society is forever ruined. The attacker thinks in this manner because it is truly what happens. After an attack, the survivor is isolated, often rejected by family and friends who subscribe to the ‘blame the victim’ ideology that ‘she must have done something to deserve this’. The fact that survivors are abandoned, not given jobs in order to earn livelihoods are all further proof that there isn’t enough awareness about the cause. Awareness is what is needed in order to educate and sensitise people towards the cause so that society can be more accepting of the survivors. Only through awareness will people empathise with the survivors.

- It is mandatory to conduct awareness programmes from school level to youth(college level) through seminars, workshops, debates etc.
- According to the Supreme Court of India, the sale of acid was regulated in 2013 and required the buyer to provide identification and purpose of use before purchasing. Like any other law that is passed in our country, this too, never saw any proper implementation and acid till date, is freely sold in the market. It is important for all of us as citizens to hold our governments responsible, to demand that our laws be implemented and continue to strive to create a safe community. If you see a vendor selling acid, report it, Follow up on your report and ensure that the vendor is brought to justice. If this vendor sells acid to an attacker and someone is attacked with it, you are equally to blame for turning a blind eye to it. We cannot only rely on NGO's to see this change come about, we all need to do our part and be responsible citizens.
- According to the law an acid attack survivor is entitled to government compensation. The compensation amount often varies from state to state but the bare minimum is a total of 3 lakh rupees in previous year now it extend to 7 to 8 lakhs . The survivor is also entitled to get treatment in hospitals free of cost both in private and Government also allowed to apply for disability quotas. The Government also help survivors to get government jobs. But the theory is so great but hardly the implementation of these aspects is quite hard because the cases were dragged on for years and years after the complainants deaths, basic human rights are treated lightly, where laws are created just to pacify the public, one cannot expect such life saving laws to be easily implemented without a fight.
- It can say that if society could be more accepting, then, half of the problems will be solved. Instead of shunning people with disfigurement, we need to make them feel accepted. Our beauty standards and what we deem beautiful in general needs to be redefined and this won't just help acid attack survivors. From an early age the adage 'do not judge a book by its cover' should be drummed into the psyche of children. Older generations need to be taught to abandon their archaic mindsets in order to create a more accepting and open minded society.
- Apart from the working on acid attack victims we want to be more focused into the areas like helping the survivors by giving self-confidence. "It only the face is ruined not their dreams".

- Setting up of rehabilitation centre across India will also helpful for the survivor to reach more.
- Education opportunities to the survivors be given for their betterment and for continuing their education after an acid attack. In a few cases children of survivors who are women and head of the households and children of survivors with disabilities have received this support. Also special schools, atleast one in each States granted by the Government, and adequate job placement and opportunities according to their qualification be given.
- The economic and financial burden following an acid attack increases the vulnerability of the survivor and their family members. Most survivors belong to a lower economic status and are unable to bear loss of an income earner. Many survivors feel compelled to return because they have no other income source. Therefore it is vitally important to set up a sustainable livelihood for survivors who are vulnerable.
- Cases pertaining to acid attacks must be tried in fast track courts and disposed of within a set timeline and no adjournments and delays must be allowed in such cases. The pendency of the trial should not hamper the compensation to be received by them. Victims of acid attacks must be granted free legal aid to engage a lawyer of their choice. A presumption clause must be added to the Indian Evidence Act, 1872 which will allow courts to presume that any person who throws or administers acid, did so with the intention and knowledge that such an attack will likely cause hurt as mentioned in S.326A IPC. Such an addition will shift the burden of proof to the accused instead of the victim, as it is natural that the victim of such a gruesome attack would not implicate the wrong person and exonerate the real accused person.
- Like ADR technique an alternative method of dissolving acid attack cases is needed. Advocates take initiative to help by giving free legal assistance.
- Self defence and self training programmes conducted for the survivors and every women/girl.
- Awareness programmes through the social media platform like facebook, twitter, youtube is also an effective measure to know about acid attack survivors. This will help to get a wide range of acceptance to the survivors and we can encourage and facilitate local people living somewhere near the location of acid attack survivors to provide help in whichever possible way needed.

Emphasis should be laid on helping the victim transition back into the society. This can be done by providing regular counseling to the victims, and formulating specific schemes of employment for them. A panel can be created within the National Commission of Women or National Human Rights Commission consisting of victims among other members who can evaluate the needs of existing victims and suggest further measures to curb this menace.
