

Legal Framework for Acid Attack: Issues and Concerns in India

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Abstract

Under the law, a woman means a female human being of any age. Our ordinary conception of a woman is a full grown female. In an old case decided by Bombay High court in 1912, it was held that the six year old girl is a woman and later on in 1967, the Supreme Court in State of Punjab vs. Major Singh held that essence of a woman's modesty is her sex. Nevertheless from her birth, she possessed the modesty which is the attribute of her sex. In Madhu Kishwar vs. State of Bihar the Supreme Court of India opined that half of the Indian populations are women. Women have always been discriminated against and have suffered and are suffering discrimination silence. Self-sacrifice and Self-denial are their nobility and fortitude and yet they have been subjected to all inequities, indignities, and discrimination. Although women cover almost half of the population of the country yet they are the most disadvantaged group in our democratic set-up. They are not very much politically, socially and economically sound. A Latin maxim *justitia non-novits patrem nec matrem, solam veritatem spectat justitia* (justice knows neither father nor mother, but regards truth alone). In the present scenario the offences of sexual harassment and acid attacks on women's are the most common and a heinous offence against them and it is treated as a social stigma too for them. So by this way the women's who are the victims of such offences faced the two sided trauma i.e. physical as well as social too. So there is the need of proper implementation of laws and their rehabilitation and protection.

This paper not only explains the legal provisions but also explains the various physical, sociological and psychological consequences which are generally faced by the victims of acid attack which makes their life worst. Efforts have been made to highlight the role of apex judiciary of India to deliver the real justice of acid attack victims. In the end of the paper the author had tried to give certain suggestions that might prove helpful in curtailing the perils of such attack.

Keywords: Conception; Acid Attack; Modesty; Discrimination; Heinous Offence; Victim; etc.

Introduction

An acid attack involves the throwing of acid on a victim, usually on her face. In addition to

causing psychological trauma, acid attacks result in severe pain, permanent disfigurement, subsequent infections, and often blindness in one or both eyes. Perpetrators commit acid attacks for a number of

reasons, including revenge for refusal of a marriage proposal or other romantic or sexual advances; land disputes; perceived dishonor; and jealousy. While acid attacks are most prevalent in Bangladesh, Cambodia, India and Pakistan, they have also been reported in Afghanistan and in parts of Africa and Europe. Experts attribute the prevalence of the practice in part to the easy availability of acids. Moreover, the easy availability of acid in an inexpensive manner makes the perpetrators to use this as an ideal weapon against the women. This offence being bailable in certain situations, the punishment does not act as a sufficient threat on the offenders in most cases.

On examination of the various laws prevalent in different countries, we found that, while the U.K Act provides for the setting up of a scheme, the Canadian statute sets up a Criminal Injuries Compensation Board to dispense compensation to victims of violence. Something worth noticing is that, even under developed countries like Bangladesh have strict punishments like death sentence against the brutal crime.

Legislation should provide for expert medical testimony in preparation of and during a criminal trial free of charge. Such expert medical testimony should be allowed in lieu of victim testimony but should not be a pre-requisite to pursuing a legal case against a perpetrator. Supreme Court Order on Acid Attacks in the Criminal Writ Petition 129 of 2006, *Laxmi vs Union of India* [1] on 6.2.2013, a direction was given to the Home Secretary, Ministry of Home Affairs associating the Secretary, Ministry of Chemical & Fertilizers to convene a meeting of the Chief Secretaries and concerned Secretaries of the State Governments and the Administrators of the Union Territories, inter alia, to discuss the following aspects:

- i. *Enactment of appropriate provision for effective regulation of sale of acid in the States/Union Territories.*
- ii. *Measures for the proper treatment, after care and rehabilitation of the victims of acid attack and needs of acid attack victims.*
- iii. *Compensation payable to acid victims by the State or creation of some separate fund for payment of compensation to the acid attack victims*

In 2008, The Law Commission of India came out with a report on *"The inclusion of acid attacks as specific offenses in the Indian Penal Code and a law for compensation for victims of crime"*.

326 A (i) Hurt by Acid Attack

Whoever 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 administering acid to that person, with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punishable with imprisonment of either description which shall not be less than 10 years but which may extend to life and with fine which may extend to Rs. 10 lakh. Provided that any fine levied under this section shall be given to the person on whom acid has been thrown or administered.

Recommendation of Law Commission in 226th Report

The Law Commission of India in its 226th Report headed by Justice AR. Laxmanan had given the following suggestions regarding the nature of offence, compensation, and amendment in provisions relating to acid attacks which are as follows:

1. The Law Commission recommends that the Minimum Imprisonment of 5 years extendable up to 10 years and fine, cognizable, non-bailable and triable by Session Court and non-compoundable.
2. The Law Commission further propose, for the reasons stated above, that in cases of acid attack a presumption be incorporated in the Indian Evidence Act as Section 114B. The proposed Section-114B of the Indian Evidence Act shall read as under:

Section 114 B: Presumption as to Acid Attack

If a person has thrown acid on, or administered acid to, another person the court shall presume that such an act has been done with the intention of causing, or with the knowledge that such an act is likely to cause such hurt or injury as is mentioned in Section 326 A of the Indian Penal Code.

The Law Commission proposes that a law known as *"Criminal Injuries Compensation Act"* be enacted as a separate Law by the government. This law should provide both interim and final monetary compensation to victims of certain acts of violence like Rape, Sexual Assault, Acid Attacks etc. and should provide for their medical and other expenses relating to rehabilitation, Loss of earnings etc. Any compensation already received by the victim can be taken into account while computing compensation under this Act.

The Law Commission recommends that the distribution and sale of acid be strictly regulated and the sale of Acid across shop counters be banned.

Verma Committee Report

Justice J.S.Verma committee discussed several crimes which are prevailing in India. The most importantly, J.S Verma committee focuses on acid attack which is committed against women.

There are some of the recommendations made by Justice Verma committee with regard to acid attack:

- Insertion of section 326 A in IPC, it deals with voluntarily causing of grievous hurt through use of acid etc.
- Insertion of section 326B in IPC, it deals with voluntarily throwing or attempting to throw acid etc.

Criminal Law (Amendment) ACT 2013

The Criminal Law (Amendment) Bill gets the presidential assent on 2 April 2013 and deemed to come into force from 3 February 2013. It was originally an Ordinance promulgated by the President of India, on 3 February 2013, in light of the protests in the 2012 Delhi gang rape case. Indian Penal Code was amended on 2013 was passed by the Lok Sabha on 19 March 2013, and by the Rajya Sabha on 21 March 2013, which provides for amendment of Indian Penal Code, Indian Evidence Act, and Code of Criminal Procedure, 1973 on laws related to sexual offences and other offences. The Bill received Presidential assent and becomes **The Criminal Law (Amendment) Act, 2013**. The amendment resulted in insertion of sections 326A and 326B for specifically dealing with acid violence. The new Sections 326A and 326B read as follows:

326A. Voluntarily Causing Grievous Hurt by use of Acid, etc:

Whoever 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, shall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine:

Provided that such fine shall be just and reasonable to meet the medical expenses of the treatment of the victim:

It is provided further that any fine imposed under this section shall be paid to the victim.

326B. Voluntarily Throwing or Attempting to Throw Acid:

Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person or attempts to use any other means with the intention of causing permanent or partial damage or deformity or burns or maiming or disfigurement or disability or grievous hurt to that person shall be punished with imprisonment of either description for a term which shall not be less than five years but which may extend to seven years and shall also be liable to fine.

Explanation 1: For the purposes of section 326A and this section acid includes any substance which has acidic or corrosive character or burning nature that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.

Explanation 2: For the purposes of section state and section permanent or partial damage or deforming shall not be required to be irreversible.

Compensation for Acid Attack

For the Compensation of acid attack victims, Section 357B has been newly inserted in Cr PC which reads as follows:

“The compensation payable by the State Government under section 357A shall be in addition to the payment of fine to the victim under section 326A or section 376D of the Indian Penal Code.”

Free Medical Treatment

Section 357C has been newly inserted whereby all hospitals, public or private are required to provide first aid or medical treatment free of cost. The section reads as follows:

“All hospitals, public or private, whether run by the Central Government, the State Government, local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section 326A, 376, 376A, 376B, 376C, 376D or section 376E of the Indian Penal Code and shall immediately inform the police of such incident.”

Landmark Judgment of Social Justice Bench of the Supreme Court for Free Medical Aid

In a significant step, the Supreme Court directed all the government and private hospitals in the country to provide first-aid and medical treatment free of cost to the victims of acid attacks. Giving this direction, the Social Justice bench comprising JJs. Madan B. Lokur and Uday made it clear that no hospital or clinic should refuse treatment citing lack of specialized facilities for the victims.

The Social Justice bench of the Supreme Court empowered the states and Union Territories to take action against hospitals and clinics for refusal to treat victims of acid attacks and other crimes in contravention of the provisions of Section 357-C of the Cr.P.C. The bench passed this order on a writ petition filed by an acid attack victim, Laxmi, in 2006. Pursuant to the directions of the top court, the Union home secretary and health secretary convened a meeting of their counterparts in States and UTs in March to consider steps for effective implementation of the provisions of Section 357-C of Cr.P.C. and to explore the possibility of creation of model rules for disbursement of compensation to acid attack victims. The meeting was informed that many States and UTs had already issued directions to private hospitals to provide free medical treatment, including corrective surgery to acid attack victims. Taking note of this, the bench directed the remaining States and UTs to pass appropriate orders immediately.

When it was pointed out that some private hospitals were interpreting the provisions of Section 357-C of Cr.P.C to state that their responsibility was limited only to the extent of stabilization of the acid attack victim and not full treatment, the bench made it mandatory for all private hospitals to provide complete treatment, including medicines, bed and food for such victims.

On the question of payment of minimum compensation of Rs 3 lakhs to the acid attack victim, the court was informed that most of the states had framed the acid attack victim compensation scheme for paying the relief immediately. Such of those States and UTs which had not framed the scheme were directed to formulate the scheme immediately. The bench made it clear that Rs 3 lakhs was only the minimum and the maximum amount would depend on the nature of the injury sustained by the victim and treatment provided to him or her.

Considering the extent of suffering of the victim, the bench directed the State home secretary and health secretary of all States and UTs to hold meetings with private hospitals in their respective

States and impress upon them to provide full treatment to the victims of acid attack as provided under Section 357-C Cr.P.C.

To provide a mechanism for claiming monetary compensation, the bench asked the State Legal Services Authorities (SLSAs) and District Legal Services Authorities (DLSAs), comprising the district judge, the district magistrate, the superintendent of police, the chief medical officer etc. of the state or his nominee to examine each claim of the acid attack victim and also file appropriate criminal cases against the offenders.

The bench was informed that most of the States and UTs had issued notifications banning sale of acid across the counter. The bench said such of those States and UTs, which had not banned across-the-counter sale of acid, must do so within three months.

Consequences of Acid Attack

The Acid attack victim faces life-long consequences after the acid attack, life style itself changes fully in one day, and even their family members also started ignoring the acid attack victims. Because of their horrible physical appearances the society also looks at the acid attack victims with very unwanted way. The victims of acid attack themselves feel worthless and embarrassed to come out from their houses due to their drastic changes in their appearance and their remaining life becomes ruined after such incidences. After that attack they become unable to work due to their deformities and they do not get job and it becomes very difficult for them to live in the society. Damage caused by acid attacks was irreparable and it affects the victim woman both physically and psychologically.

Physical Consequences

Acid usually destroys two layers of the skin, i.e. the fat and muscle underneath and sometimes not only eats through to the bone but it may even dissolve the bone. The intensity of injury depends on the strength of the acid and the duration of contact with the skin. Burning continues until the acid is thoroughly washed off with water. When it is thrown on a person's face, acid rapidly burns the eyes, ears, nose and mouth of the victim. Eyelids and lips may burn off completely. The nose may melt, closing the nostrils, and ears shrivel up. Acid can quickly destroy the eyes, blinding the victim.

Social Consequences

Victims face a lifetime of discrimination from

society and they generally lead their life in isolation. They are scared of that people will stare or laugh at them and may hesitate to leave their homes fearing an adverse reaction from the society. Victims who are not married are not likely to get married and those victims who have got serious disabilities because of an attack, like blindness will not find jobs and earn a living. Discrimination from other people or disabilities such as blindness makes it very difficult for victims to earn for themselves and they become dependent on others for food and money. The consequences of an acid attack paralyzes the victim in almost every possible way. An attack of this nature not only leaves the victim grotesquely disfigured but also traumatized for the rest of her life. It becomes extremely difficult to cope with life after an acid attack. The victim loses her identity and becomes socially isolated. Medical treatment is expensive and time consuming. Therefore, the victim may be forced to give up education, job or other activities in life.

Psychological Consequences

The psychological Consequences of acid attack victims are most problematic as compared to physical and social consequences. This mental trauma is not only for the victim but for friends, family and society too. This type of attacks creates fear in the mind of society and masses. Psychological trauma is caused by the terror which the victim suffer during the attack, disfigurement and the disabilities that they have to live with for the rest of their lives. The victims used to face the psychological consequences such as depression, insomnia, facing the outside of the world, difficulty in concentrating and remembering the things. Therefore it can be said that the acid attack victims worse than death.

Conclusion and Suggestions

In conclusion it can be said that all human beings are equal in the society. If one person of the society shows him powerful on the ground of sex to another person, it is discriminatory in the eyes of law. This discrimination is called gender inequality. Gender inequality violates the cardinal principles of rule of law, which means that, "everyone, whether individually or collectively is unquestionably under the supremacy of law, whoever the person may be, however high he or she may be. Acid attack is possibly one of the most heinous crimes which a human being can commit. It takes an elaborate degree of sadism and depravity to indulge in something as cruel and inhuman. The criminal justice system must be stricter

in its handling of acid attack cases. Women's are significant contributors to the growing economy and for the growth truly inclusive; we have to ensure their protection, wellbeing, development, empowerment and participation. For attaining the above mentioned objects the following measures can be taken into account:

- To set up fast track Women's Courts in each district to deal with acid attacks and sexual crimes against women.
- Appointment of women investigation officers and prosecutors to make the police probe and trial more gender sensitive.
- Investigation would be supervised by deputy superintendent of police.
- Women inspectors or sub-inspectors would assist the enquiry.
- The State or Union government should bear the all medical expenses of acid attack victims and victims of sexual violence and assist them in their rehabilitation.
- Efforts should be taken to install CCTV cameras in all public buildings to easily identify those who indulge in such heinous crime against women.
- Policemen in plain clothes should also be deployed at sensitive installation like malls and women colleges to monitor and prevent such type of attacks.
- Psychiatry treatment has to be introduced for the victim, accused and the victim's family members. Acid attack victims after long struggle loss hope and end up their life by committing suicide. They consider their face as a prison. They need Psychiatry treatment. For the reformation of the convict Psychiatry treatment is needed in any prison. General public awareness regarding the problems of acid attack victims stands necessary.
- Last but not the least it can be said that there is no paucity of law blocks, the only thing that is required is the implementation of these laws for the protection of women's right, so that this half covered class of the society may feel as true human being and get justice and be able to give their over all of the capacity to build this nation

Notes and References

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Footnotes

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