



Acid attacks on women: Legal response

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Abstract

Acid attack is most horrible and brutal. Apart from matrimonial home the women are also victim of acid attack on refusal of proposal by male. Foreign NGO made analysis about the impact of acid attack on human body. In *Luxmi's case* the Apex Court directed to the Government to frame rules and implement the same strictly. National Commission for Women suggested the separate legislation for the offence of acid attack. Certain amendments have been made in Indian Penal Code 1860, Criminal Procedure Code, 1973 and Indian Evidence Act, 1872.

Keywords: acid attack, compensation

Introduction

Acid attacks result in burning and dissolution of the victims' skin, tissue and even bones. The physical appearance of the victim is tarnished forever. This leads to debilitation of her psyche and brings a secluded life for her. Our society is male dominating society and women are the victim of violence in several manners. Acid attacks are one of the most brutal and horrible. The worst aspect of acid attack is, it is always organized and preplanned. The other aspect of acid attack is the availability of it in very easy manner. In majority of cases, the reasons for the acid attack are found the rejection of proposals by the women or spurning their advances. Women are also victims of acid attacks in their matrimonial homes by their husbands or in laws for the reason bringing insufficient dowry, not following their traditions and producing female child only. Sometimes land disputes are also reason behind it. Trauma of acid attack is severe for women and they face their rejection by the society. Beauty is the ornament of women. Acid spoils their face and other body organs for ever. Acid when thrown on the body of the victim it burns skin, spoil their face and damage the entire internal body system. In Asian countries, acid attacks are very common. Bangladesh has the highest number of acid attacks, followed by India, Pakistan, Cambodia and Afganistan^[1]. Though acid attack is a crime which can be committed against any man or woman, and it has a specific gender dimension in India. Most of the reported acid attacks have been committed on women, particularly young women for spurning suitors, for rejecting proposals of marriage, for denying dowry etc.^[2]. Hydrochloric, Sulphuric and other acids all have a catastrophic effect on human flesh. These corrosive substances cause the skin tissue to melt. The bones of victims become exposed and sometimes acid dissolves the bones too^[3]. As a result of disfigurement and disability victims are permanently debilitated and are forced to give up their lives, their work, and their education^[4]. Thus, Acid Attacks is an extremely violent crime by which the perpetrator of the crime seeks to inflict severe physical and mental suffering on his

victim. This kind of violence is often motivated by deep-seated jealousy or feelings of revenge against a woman^[5]. In the present paper the efforts have been made to analyze the legislative framework, judicial trends, legal support, social aspects and latest Advisory issued by the MOHFW regarding the free treatment of acid attack victims dated 2nd May, 2013 and Poison Possessions and Sale Rules, 2013. In our country, legislations to deal with acid attacks are scattered. It is pertinent to mention here that not only women are the victim of acid attacks but men also.

Judicial Approach

In India, there was not any special legislation to deal with crime of acid attacks. Cases were registered under different sections of Indian Penal Code under sections of hurt, grievous hurt, attempt to murder and murder. In *Marepally Venkata Sree Nagesh v. State of Andhra Pradesh*^[6] the accused was suspicious about the character of his wife and inserted mercuric chloride into her vagina. The victim died due to renal failure. The accused was convicted under section 302 of Indian Penal Code.

In *Devanand v. The State*^[7] the accused threw acid on his wife because she refused to cohabit with him. The wife suffered permanent disfigurement and loss of one eye. The accused was convicted for attempt to murder under section 307 of Indian Penal Code. In *Ravinder Singh v. State of Haryana*^[8] the accused poured the acid on his wife as she refused to divorce him. The victim died due to the multiple injuries. The accused was charged under section 302 of the Indian Penal Code.

In *Ghlab Sahiblal Shaikh v. The State of Maharashtra*^[9] Acid was poured on a lady and her child. Both got the multiple injuries and in consequent to that lady died. The court charged the accused under section 302 of the Indian Penal Code.

In *Barati v. State of Uttar Pradesh*^[10] there was dispute between the accused and the victim regarding encroachment. The acid was thrown on the victim and he died due to severe burns injury. The accused was charged under section 302 of

Indian Penal Code and was awarded rigorous imprisonment for life.

In *State of Karnatka v. Joseph Rodrigues* ^[11] the accused threw acid on a girl. This deeply scarred her physical appearance. The accused was charged and convicted under section 307 of the Indian Penal Code. In this case, compensation was also given to the victim to meet the medical expenses including that of plastic surgeries. 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 victim's parents.

In *Shyed Shafique Ahmed v. State of Maharashtra* ^[12] husband attacked with acid on his wife. There was disfigurement of the face of his wife and another person and loss of vision. The accused was charged under section 326 and 324 of the Indian Penal Code and was awarded Rs. 5000/- fine and 3 years imprisonment. In *State (Delhi Administration) v. Mewa Singh* ^[13] the accused threw acid on the victims face. The accused was convicted for causing hurt under section 323 along with 15 days imprisonment was awarded.

In majority of the cases no compensation was awarded to the victims of the crime of acid attacks. And moreover, these crimes were dealt with the general provisions of the Indian Penal Code. In very few cases the compensation was awarded of very petty amount. This was very unpleasant part of the judicial approach. It's true that in absence of specific legislation to deal with acid attacks, judiciary was not in a position to award rigorous punishment. Compensatory part of the acid attacks was totally ignored or given very meager amount in a very grievous case.

Land Mark Judgment

The Supreme Court in *Laxmi v. Union of India and Others* ^[14] has given the directions to frame the rules and strict compliance of it. The guidelines were as under:

1. All the States and Union Territories which have not yet framed rules will do well to make rules to regulate sale of acid and other corrosive substances in line with the Model Rules framed by the Central Government. The States, which have framed rules but these rules are not as stringent as the Model Rules framed by the Central Government will make necessary amendments in their rules to bring them in line with the Model Rules. The Chief Secretaries of the respective States and Administrators of the Union Territories shall ensure compliance of the above expeditiously and in no case later than three months from the receipt of the draft Model Rules from the Central Government.
2. The Centre and States/ Union Territories shall work towards making the offences under the Poison Act, 1919 cognizable and non bailable.
3. In the States/ Union Territories, where rules to regulate sale of acid and other corrosive substances are not operational, until such rules are framed and made operational, the Chief Secretaries of the concerned States /Administrators of the Union Territories shall ensure the compliance of the following directions with immediate effect
 - a) Over the Counter, sale of acid is completely prohibited unless the seller maintains a log/register recording the sale of acid which will contain the

details of the persons(s) to whom acid(s) is/are sold and the quantity sold. The log/register shall contain the address of the person to whom it is sold.

- b) All sellers shall sell acid only after the buyer has shown:
 - I. A photo ID issued by the Government which also has the address of the person
 - II. Specifies the reason/purpose for procuring acid.
 - c) All stocks of acid must be declared by the seller with the concerned Sub Divisional Magistrate (SDM) within 15 days.
 - d) No acid shall be sold to any person who is below 18 years of age.
 - e) In case of undeclared stock of acid, it will be open to the concerned SDM to confiscated the stock and suitably impose fine on such seller upto Rs. 50000/-
 - f) The concerned SDM may impose fine up to Rs. 50,000/- on any person who commits breach of any of the above directions.
4. The Educational Institutions, research laboratories, hospitals, Government Departments and the Departments of Public Sector Undertakings, who are required to keep and store acid, shall follow the following guidelines:
 - a) A register of usage of acid shall be maintained and the same shall be filed with the concerned SDM.
 - b) A person shall be made accountable for possession and safe keeping of acid in their premises.
 - c) The Acid Shall be stored under the supervision of this person and there shall be compulsory checking of the students/personnel leaving the laboratories/place of storage where acid is used.
 5. The Concerned SDM shall be vested with the responsibility of taking appropriate action for the breach/default/violation of the above directions.
 6. Acid attacks victims shall be paid compensation of at least Rs. 3 Lakhs by the Concerned State Government/ Union Territory as the after care and rehabilitation cost. Of this amount, a sum of Rs. 1 lakh shall be paid to such victim within 15 days of occurrence of such incident (for being brought to the notice of the State Government/Union Territory) to facilitate immediate medical attention and expenses in this regard. The balance of Rs. 2 Lakhs shall be paid as expeditiously as may be possible and positively within two months thereafter. The Chief Secretaries of the States and the Administrators of the Union Territories shall ensure compliance of the above direction.

With several surgeries behind her, Laxmi now works with a nonprofit organization called 'Stop Acid Attacks'. It took seven years in New Delhi Courts to get justice for the 2005 attack. The attacker, whom she refused to marry, was sentenced to 10 years in prison. In 2014, she is honoured by US first lady Michelle Obama with '*International Women of Courage Award*'.

No specific legislations were enacted to deal with the cases of acid attacks. Now, in 2013 ^[15] new sections have been inserted specifically related to acid attacks. Law Commission submitted its 226 report to Hon'ble Supreme Court of India for its consideration in the pending proceedings of *Laxmi's*

Case ^[16]. This report was specifically on “*The inclusion of Acid Attacks as Specific Offences in the Indian Penal Code and a law for Compensation for Victims of Crime*”.

Impact of Acid Attacks

The following information on physical consequences has been described by NGO ^[17] and was incorporated by the Law Commission of India in its report:

Skull

May be partly destroyed or deformed. Hair is often lost.

Forehead

Skin may shrink, as though stretched tightly, and be scarred.

Ears

Shriveled up and deformed. Deafness may occur immediately or later.

Cartilage in the ear is usually partly or totally destroyed, exposing the victim to future infection and hearing loss.

Eyes

Direct acid contact or acid vapors can damage eyes, causing blindness.

Even if the eyes survive the acid attack, they remain vulnerable to other threats which can cause blindness during the victim's recovery. Eyelids may have been burned off, or may be deformed by scarring, leaving the eyes to dry up and go blind. This is very difficult to prevent.

Nose

Shrunken and deformed. Nostrils may close completely because the cartilage is destroyed.

Cheeks

Scarred and deformed.

Mouth

Shrunken and narrowed, and may lose its shape. Lips may be partly or totally destroyed. Lips may be permanently flared, exposing the teeth. Movement of the lips, mouth and face may be impaired. Eating can be difficult.

Chin

Scarred and deformed. The scars may run downward, welding the chin to the neck or chest.

Neck

Often badly damaged. It may have a thick cord of scarred flesh running down from the chin to the upper chest, or a wide, heavily-scarred area on one side of the neck.

Victim may be unable to extend the neck, or the head may constantly lean to one side.

Chest

Often badly scarred. The chest may have narrow lines of scars or wide patches of scars from acid splashes or drips. In girls and young women, the development of their breasts may be stopped, or their breasts may be destroyed completely.

Shoulder

May be badly scarred, especially around the underarm, which may limit the victim's arm movement. In some cases, one or both of the victim's upper arms may be stuck like glue to the sides of their body.

Apart from physical impact, an acid attack causes physical, psychological and social scarring. The victim faces the economic trauma also. The trauma of an acid attack leads to the development of fear, depression and other psychological trauma. Victim is bound to confine himself at home. Life becomes miserable, always remembered his past and worry for future. If the victim becomes blind, it becomes impossible for her to get jobs, join profession, earn livelihood. They are deprived from the matrimonial life. Sometimes, if the attack is severe then she might be dependent on others for day to day necessities. She is not able to get the respect from the society. So, physical, psychological, social and economic effects are absolute and not curable.

National and International organizations' view

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. ^[18] All Central Government hospitals and establishments have been directed to treat acid attack victims free of cost.

The United Nations General Assembly passed the declaration on the Elimination of Violence against Women in 1993. Article 4(f) of this declaration recommends member states to develop preventive approaches for violence against women by legal measures ^[19].

If we see from the human rights point of view, member States of United States can be held accountable on their failure to comply with certain obligations which uphold human rights. “These obligations arise from the duty of the States to take steps to respect, protect, promote and fulfill human rights” ^[20]

Constitutional Validity

The Constitution of India ^[21] through Article 15 (3) talks about special legal provisions for women and children. It is an exception to the general rule provided under Article 15, which talks about the prohibition of discrimination against citizens. Clause (3) ^[22] of this Article states that

“...Nothing in this article shall prevent a State from making any special provision for women and Children”

In *Anjali Roy v. State of West Bengal*, it was held that the word ‘for’ in clause (3) signifies that special provisions can be made in favour of women, and not against them ^[23] The Apex court in

Government of Andhra Pradesh v. P.B. Vijaya Kumar^[24]

“...the insertion of Clause (3) of Article 15 in relation to women is a recognition of the fact that for centuries, women of this country have been socially and economically handicapped. As a result, they are unable to participate in the socio-economic activities of the nation on a footing of equality. It isto empower them in a manner that would bring about effective equality between man and women that clause (3) is placed in Article 15...to strengthen and improve the status of women.”

The Law Commission highlights that acid attacks are an increasing phenomenon in India. However, since no special section in the Indian Penal Code deals with acid attacks, the incidents are not even recorded separately. Section 326 of the Indian Penal Code, which deals with causing grievous hurt by throwing of a corrosive substance etc. is insufficient/inadequate to deal with the issue^[25]:

1. The definition of grievous hurt is not broad enough to cover the various kinds of injuries which are inflicted during acid attacks.
2. The section does not cover the act of administering acid.
3. The section gives a wide discretion to the courts as far as punishment is concerned. The cases on acid attacks in India show that normally inadequate punishment is awarded in these cases.
4. The section in the Indian Penal Code does not punish the intentional act of throwing of acid if no injuries occur.
5. The section also does not specifically state who the fine should be awarded to.

As regard to the presumption, if a person has thrown or administered the acid on another person a presumption should be raised against the person, who has thrown or administered the acid that he has done so deliberately^[26].

As regard to the distribution and sale of acid should be banned except for commercial and scientific purposes. Acid should be made a scheduled banned chemical which should not be available over the counter. The particulars of purchases of acid should be recorded^[27].

In pursuance of the following recommendations the following amendments are made in the Indian Penal Code 1860, Criminal Procedure Code, 1973 and Indian Evidence Act, 1872 by Criminal Law (Amendment) Act, 2013 (No. 13 of 2013):

Indian Penal Code, 1860

Section 100: When the right of private defence of the body extends to causing death: Seventhly- ‘An act of throwing or administering acid or an attempt to throw or administer acid which may reasonably cause the apprehension that grievous hurt will otherwise be the consequences of such act’.

After Section 326A: Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of 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: Provided further that any fine imposed under this section shall be paid to the victim.

Section 326B: 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 be fined.

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 326A and this section permanent or partial damage or deformity shall not be required to be irreversible.

Criminal Procedure Code, 1973

Section 154: In sub section (1), the following proviso inserted ‘Provided that if the information is given by the woman against whom an offence under section 326A, section 326B, Section 354A, Section 354B, Section 354C, Section 354D, Section 376, Section 376A, Section 376B, Section 376C, Section 376D, Section 376E or Section 509 of the Indian Penal Code is alleged to have been committed or attempted, then such information shall be recorded, by a woman police officer or any woman officer’.

Indian Evidence Act, 1872

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 326A of the Indian Penal Code,*

Conclusion

Earlier, absence of specific laws and unrestricted sale in open market were main reasons for the acid attacks. After *Luxmi’s case*^[28] certain amendments have been made in Indian Penal Code, 1860, Criminal Procedure Code, 1973 and the Evidence Act, 1872. Administrative directions have also been given to the administrations in regard to the sale of acid to make it restricted and hospitals to care the victims of acid attacks. Now, the question is that changes in law will change the scenario and prevent the acid attacks. Recently, in Ludhiana’s beauty parlor one bride was attacked by the unknown accused which was hired by the close relative of bride due to jealousy. The news in media relating to acid attacks is still in air.

Framing of laws are not the solution for the prevention of acid attacks. Media has to play vital role and to make aware about the consequences of it. Moreover, the implementations of the laws have to be very strict. Our legislature is very fast to frame the laws but implementation is very poor. NGOs must be involved in the awareness among the people; awareness camp may be organized specially for girls' institutions. Control of sale of acid must be regulated in true spirit as per the guidelines. Society must change the attitude towards the victims of acid attacks. Media can play the major role by telecasting the reality shows and awareness programmes.

Reference

1. Acid Attacks: Bangladesh's Hidden Victims, The Independent Asia, 2011, 15.
2. 226th Report, Law Commission of India July, 2009 on The inclusion of Acid Attacks as Specific Offences in the Indian Penal Code and a law for compensation for Victims of Crime.
3. Id at p. 8
4. Ibid
5. Ibid
6. Cr.L.J 3625, 2002.
7. 1987 (1) Crimes 314, 2002 Supp, 1 SC 489
8. AIR 1975 SC 856
9. 1998 Bomb CR Crim
10. AIR 1974 SC 839
11. Decided by Kerala High Court on 22.8.2006
12. 2002 Cr.L.J. 1403
13. 5, DLT 506, 1969.
14. Writ Petition CrI. No 129 of 2006
15. The Criminal Law Amendment Act, 2013; 13 of 2013.
16. Supre n. 15
17. Medecins Du Monde and doctors at Calmette hospital in Phnom Penh
18. 226th Report; Law Commission of India.
19. Declaration on the Elimination of Violence Against Women, G.A. Res. 48/104, U.N. Doc. A/RES/48/104, 2, 1994
20. United Nation Division for the Advancement of Women, Joint International Law Program, Ending Violence Against Women: From Words to Action 15(2006)
21. The Constitution of India, 1950
22. The Constitution of India, 1950, Article 15(3)
23. AIR 1952 cal 825
24. AIR 1995 SC 1648
25. 226th Report; Law Commission of India
26. Ibid
27. Ibid
28. Supra no. 15