

**ANATOMY OF ACID ATTACKS IN INDIA:
RECOMMENDATIONS FOR DETERRENCE**

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ABSTRACT

Acid Attacks are a vicious form of aggression against women. The severity of hurt by acid is of enormous proportions which leaves the victim with visible scars and severe emotional challenges. Crime of such heinous nature needs to be addressed by the state for protecting the basic human rights of the victim. Criminal Law Amendment of 2013 addressed the issue of Acid Attacks by making it a separate offence in IPC. However, the menace of acid attacks continues even after the said amendment. This paper argues that the existing legal provisions lack sufficient deterrent value to address the evil of acid attacks and suggests the amendments to root out the evil of acid attacks in India.

I. Introduction

A CRIME IS a wrong against the society at large. Each crime committed against an individual depicts the state's failure to respect, protect and fulfill the human rights of its subjects. Crimes against women, especially, highlight the incompetence of the state in fulfillment of the fundamental rights guaranteed by Part III of the Constitution. Acid attacks are one set of crimes committed against women which shake the conscience of the society at large while completely stripping off the victim of her basic human right to life.

Acid attacks involve intentional acts of violence in which

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perpetrators throw, spray, or pour acid onto the victims' faces and bodies, often intending to permanently disfigure and cause extreme physical and mental suffering to victims. The trauma of not being able to recognize oneself in the mirror, the agony of lost beauty exacerbates the extreme physical pain which the victim is experiencing. Since, in most of the cases, the attack leaves the victims handicapped,¹ even after recovery from physical pain, the victims become dependent for everyday activities which act as an additional trauma to both the family members as well as the victim. Acid attacks perpetuate gender inequality and discrimination.²

Acid violence survivors face marginalization from society after the attack. Additionally, acid violence tends to create fear amongst women in society, as some women may feel that they might get attacked, if they failed to conform to traditional subordinate gender roles.³ In order to emancipate and empower women in the society, it is this fear which the law is supposed to address. Deterrence by means of strict laws dealing with crimes against women is one way of addressing the issue. However, prior to 2013, there was no specific provision in law punishing acid attacks as an offence *per se*.⁴ The amendment in 2013 inserted various sections to the Indian Penal Code,⁵ the Criminal Procedure Code⁶ and the Indian Evidence Act⁷ in order to tackle the menace of acid attacks. However, not much change has been witnessed in the incidents of

¹ Either visually impaired, hearing loss or any other kind of physical handicap.

² Report by Avon Global Center 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 and Virtue Foundation, "Combating Acid Violence in Bangladesh, India and Cambodia," Page 10 available at <http://www.asfi.in/images/Combating-Acid-Violence-Report.pdf> (visited on September 11, 2017).

³ *Ibid.*

⁴ The perpetrators were tried under section 326 of the Indian Penal Code which penalizes voluntarily causing grievous hurt.

⁵ *Hereinafter* IPC.

⁶ *Hereinafter* Cr.P.C.

⁷ *Hereinafter* Evidence Act.

acid attacks. The paper also analyses the data made available by the National Crime Records Bureau,⁸ the legislative amendment, the judicial response to acid attacks and endeavors to suggest changes in the legal machinery in order to curb the menace of acid attacks.

II. Legislative Steps

The issue of dealing with acid attacks has been taken on priority basis by the Government of India and several steps have been taken in order to prevent the incidents as well as to provide for treatment and compensation to the victims of such attacks. The Criminal Law (Amendment) Act 2013 inserted Sections 326A⁹ and 326B¹⁰ to the IPC and sections 357B¹¹ and 357C¹² of Cr.P.C in order to curb the menace of acid attacks in India in an effective manner. The Amendment made the offence of throwing acid or an attempt thereof, as cognizable and non bailable in nature, triable by the Court

⁸ Hereinafter NCRB.

⁹ Section 326-A reads- "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; *Provided further* that any fine imposed under this section shall be paid to the victim."

¹⁰ Section 326 -B IPC reads- "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."

¹¹ Section 357-B Cr.P.C reads- "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."

¹² Section 357-C Cr.P.C reads- "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."

of Session. The amendment mandated the hospitals to provide first aid to the victims and the state was mandated to provide compensation to the victim in addition to the fine paid to the victim.

Victim Compensation

Under Section 357A¹³ of the Code of Criminal Procedure, 1973, every State is mandated to establish a Victim Compensation Fund. These funds are used to compensate the victims of crime. The compensation is given in accordance with the Schemes every state has adopted. Under these schemes amount of compensation has been fixed to compensate the victims of crime. The Ministry of Home Affairs oversees the notification and implementation of Victim Compensation Scheme (VCS) in the States/UTs.¹⁴ A Central Victim Compensation Fund (CVCF) with an initial corpus of 200 crore has been sanctioned.¹⁵ A provision to sanction upto 5 lakh to victims of acid attack has also been made from this Fund.¹⁶ Under Central Victim Compensation Fund special financial assistance of —Rs 5.0 lakh to acid attack victims has been provided.

Preventive Measures

Ministry of Home Affairs issued an advisory dated 30th August, 2013 on measures to be taken to prevent acid attacks on people and for treatment and rehabilitation of survivors.¹⁷ In the said advisory, the State govt. /UT's wherein the rules to regulate sale of

¹³ 357A -Victim compensation scheme Clause (1) Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation. 357A inserted by Act 5 of 2009, s. 28 (w.e.f. 31-12-2009).

¹⁴ Annual Report , Ministry of Home Affairs, Government of India, 2015-16. Para 5.26

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷Advisory available at

http://mha.nic.in/sites/upload_files/mha/files/AdvisoryAfterSupremeCourtOrderInLaxmCase_Short.pdf. (visited on September 21, 2017).

acid/corrosive substances were not operational, actions to regulate the existing sales through wide publicity in the media including local language were directed to be taken immediately. The directions included-

- (i) Banning over the counter sale of acid/corrosives unless the seller maintains a logbook/register recording the sale of acid with the details of the buyer and the quantity of the acid being sold.
- (ii) Sale only to persons above 18 years of age on production of valid Photo ID proof.
- (iii) Recording the reason/purpose for procuring acid in the logbook by the seller.
- (iv) Declaration of all stocks of acid by the seller with the concerned Sub-Divisional Magistrate (SDM) within 15 days. In case of undeclared stock of acid, the concerned SDM can confiscate the stock and suitably impose a fine up to Rs. 50,000/- on such seller.
- (v) Imposition of a fine up to Rs.50,000/- on any person who commits breach of any of the above directions by the concerned SDM.
- (vi) Educational institutions, research laboratories, hospitals, Government Departments and the departments of Public Sector Undertakings, who are required to keep and store acid/corrosive, shall also maintain a register of usage of acid and the same shall be filed with the concerned SDM.
- (vii) Identifying a person to be made accountable for the possession and safe keeping of acid in their premises. The acid shall be stored under the supervision of such person whose responsibility shall be to compulsory check students/ personnel leaving the laboratories/place of storage, where acid is used.

The Ministry further issued another advisory dated 20.04.2015 to all State Government and Union territories pressing the need of fast tracking of the criminal justice process in order to deter the

perpetrators of such heinous crimes.¹⁸ In the said advisory, the concerned States/UT were requested to take proactive measures to expedite investigation and trial of the acid attack cases to bring them under a definite time frame.

III. Judicial Approach to Acid attacks

The Honorable Supreme Court of India in *Laxmi v. Union of India*¹⁹ laid down guidelines for sale of acid along with directions to the concerned State Government/Union Territory that the acid attack victims shall be paid compensation of at least Rs Three lakhs as the after care and rehabilitation cost. Of this amount, a sum of Rs. 1 lakh was directed to be paid to such victim within 15 days of occurrence of such incident (or being brought to the notice of the State Government/ Union Territory) to facilitate immediate medical attention and expenses in this regard. The balance sum of 2 lakhs was directed to be paid as expeditiously as possible and positively within two months thereafter. The Chief Secretaries of the States and the Administrators of the Union Territories were directed to ensure compliance of the above direction.

In *Parivartan Kendra v. Union of India*²⁰, the Supreme Court further clarified that *Laxmi's* case nowhere restricts the Court from giving more compensation to the victims of acid attack, especially when the victim has suffered serious injuries on her body which is required to be taken into consideration by this court and this court can grant even more compensation to the victim than Rs. 3,00,000/-. The court expressed distress on noticing that even after the Supreme Court having passed an order dated 06.02.2013 directing the Union of India and States to implement compensation payable to acid

¹⁸Advisory available at

http://mha.nic.in/sites/upload_files/mha/files/AdvisoryAcidAttackWomen_220415.pdf.
(visited on September 21, 2017).

¹⁹ (2014) 4 SCC 427.

²⁰ (2016) 3 SCC 571.

attack victims by creation of a separate fund, only 17 States have been notified of the Victim Compensation Schemes (VSC).²¹ Out of which 7 states and 4 Union territories have not initiated the VSC. Even in those States where the Scheme has been implemented a meagre compensation ranging between Rs.25,000/- to Rs. 2 lakhs is provided for medical care.²² And many States have not provided any compensation for rehabilitation at all.²³

The Court observed - "We cannot be oblivious of the fact that the victim of acid attack requires permanent treatment for the damaged skin. The mere amount of Rs. 3 lakhs will not be of any help to such a victim. We are conscious of the fact that enhancement of the compensation amount will be an additional burden on the State. But prevention of such a crime is the responsibility of the State and the liability to pay the enhanced compensation will be of the State. The enhancement of the Compensation is expected to act in two ways:- 1. It will help the victim in rehabilitation; 2. It will also make the State to implement the guidelines properly as the State will try to comply with it in its true spirit so that the crime of acid attack can be prevented in future."²⁴

As of today, all the States and Union Territories have notified the Victim Compensation Scheme.²⁵ However, since there is no centrally maintained record of disbursement of funds by States/UT's, it is difficult to assess, how far the schemes have been helpful in assisting the acid attack victims.

²¹ *Ibid.*

²² *Ibid.*

²³ *Ibid.*

²⁴ Para 19 of the judgment.

²⁵ Report dated August 10, 2016 by Live Law, "All the States/Union Territories have notified victim compensation scheme" available at <http://www.livelaw.in/statesunion-territories-notified-victim-compensation-scheme/>. (visited on September 25, 2017).

IV. Acid Attacks: The Dark Reality of growing numbers

Even after all the advisories, judicial directions and the legislative steps taken in order to curb the menace of acid attack, the numbers of incidents have not declined. The data of National Crime Records Bureau²⁶ for cases reported, arrested, charge-sheeted and convicted, both for offence of throwing as well as attempt of acid attack do not point to any change in the situation.

As per the Data provided by NCRB,²⁷ in 2014, for offence of acid attack under Section 326A there were a total of 137 cases reported in respect of which 154 arrests were made. Of all the cases reported, only 135 were charge-sheeted of which finally there were just 08 cases of conviction. Of the 135 persons' charge-sheeted, only 12 persons were convicted. For attempt under Section 326B, total incidents reported were 40 in respect of which 39 arrests were made. Only 23 cases were charge-sheeted of which only 3 lead to convictions. Total 28 persons were charge-sheeted of which only 3 were convicted. In 2014, total number of victims was 146 in cases registered for acid attack and 41 for attempt.

In the year 2015, there were a total of 123 reported cases of acid attacks in respect of which 192 arrests were made. Of all the cases reported, only 102 were charge-sheeted of which finally there were just 07 cases of conviction. Of the 141 persons charge-sheeted, only 12 persons were convicted. For attempt, total incidents reported were 30 in respect of which 37 arrests were made. Only 18 cases were charge-sheeted of which none led to conviction. Total 24 persons were charge-sheeted of which only no one was convicted. In 2015, total number of victims was 147 for acid attack in cases registered and 30 for attempt.

It can very well be made out from the above figures that the ratio of cases reported to a final conviction is extremely low. The

²⁶ Hereinafter NCRB.

²⁷ Provisional Data made available to the authors from National Crime Records Bureau.

figures do not change in 2016 and for a total of 167 reported cases, 194 arrests were made. Of all the cases reported only 135 were charge-sheeted of which there were only 09 cases of conviction. Of the 166 persons charge-sheeted, only 11 persons were convicted. For attempt, total incidents reported rose to 46 in respect of which 39 arrests were made. Only 31 cases were charge-sheeted of which only 1 lead to conviction. Total 42 persons were charge-sheeted of which only 1 was convicted. In 2016, total number of victims dramatically rose to 182 for acid attack in cases registered and 50 for attempt.

The data prominently highlights two things-first, that the conviction ratio is abysmal in acid attack cases; second, that the number of acid attack incidents are steadily growing instead of declining. The whole purpose of the criminal law amendment was to increase the deterrent value against the perpetrators of the crimes which according to the data seems to not have been achieved.

V. Conclusion and Suggestions

It is pertinent to note here that in the absence of expeditious investigation and trial of the acid attack cases, it is only the quantum of punishment which can be of deterrence. Now, the punishment provided in Section 326A is for imprisonment of either description for a term not less than ten years but extendable upto life and with fine. For attempt, under Section 326 B, the minimum punishment is five years upto a maximum of seven years and with fine. This quantum of punishment is not sufficient to add the requisite deterrent value to the offence. There is a pressing need to amend the law further in order to enhance the punishment to minimum of fourteen years which may extend upto life imprisonment which shall mean the remainder of that person's natural life in cases of acid attack under Section 326A.

It is also to be kept in mind that attempt to throw acid on a victim is equally as heinous as throwing acid on a victim and needs to be checked because it is by mere luck that the victim of attempt is

saved from the attack. The authors suggest that the difference between punishment of offence of acid attack and attempt should be done away with. There is absolutely no reason to have two different sections for penalizing the offence and attempt. Both should be dealt in one section with similar punishment of minimum fourteen years upto life imprisonment.

Until the time a sufficient deterrent value is created in the society against this heinous offence, the menace of acid attack would not be curbed. The suggested amendments are hoped to create sufficient deterrent value and root out the evil of acid attack from our country.
