



PROBLEM OF ACID ATTACK IN INDIA: A CRITICAL ANALYSIS OF LEGISLATIVE AND JUDICIAL RESPONSE

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Abstract

Acid Attacks is on rise around the world and has emerged as a form of gender based violence aimed at silencing and controlling women and young girls; these crimes leave behind a very traumatic effect on the victims both physically and mentally, as a result women are more subjected to physical, mental and social sufferings. In India, even though legislations have been brought and piecemeal amendments, substitutions and deletions in penal procedural or special and local laws have been made to ameliorate the conditions of women victims, and to handle these crimes effectively, but they don't appear to have achieved their intended purpose in full measure and the process of prevention of victimization and protection of victims, is facing many challenges.

Keywords: *District Legal Services Authorities, F.I.R., Gender-based violence, IPC, PIL, Acid attack survivor.*

Abbreviations

ASFI- The Acid Survivors Foundation India

ASTI - Acid Survivors Trust International

CEDAW - Convention on the Elimination of All Forms of Discrimination

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CSWI - Committee on the Status of Women in India

Introduction

Acid attack or acid throwing, more formally known as a vitriol attack or Vitriolage¹, is a form of violent assault used mostly against women. It is the act of throwing acid or an alternative corrosive substance on to a person's body, with the intention to disfigure, maim, torture or kill. Acid attacks are usually directed at a victim's face because women consider it is one of most cherished property of her life. It is grotesque and violent crime against women as it renders them living dead for the rest of their lives.

Some victims even consider those who succumb to the attack luckier as the survivors have to live with "half a face and half a life"² for the rest of their lives, victims consider it worse than murder, because as compared to other kinds of assaults on women, an acid attack is a terrifying experience and its impact on the victim is much horrific and inflict severe physical, mental suffering and economic burden on

¹ Vitriol appeared in Europe during the 16th century, and a recorded case of an acid attack occurred in 17th century in France under the rule of Louis XIV, It is defined as the premeditated act of throwing acid onto the body of a person "with the intention to disfigure, maim, torture, or kill." See Jane Welsh (2009). "It was like burning in hell": A Comparative exploration of acid attack violence, Carolina Papers on International Health, Sources: <http://cgi.unc.edu/research/carolina-papers/health-papers.html>, accessed on: 02.06.2014, See also Viriolage Introduction, sources: currentaffairs.in/wp-content/uploads/2013/14_vitrolage.pdf, accessed on: 02.06.2017

² Acid Test on Humanity, "Deccan Herald (Karnataka)", July 11, 2013.



victim, this generally brings about a secluded life for her.³ These attacks can be attributed to various factors such as social weakness of women and the existence of a male-dominated society. In these kinds of attacks offenders usually use Hydrochloric acid (HCL), Sulphuric acid (H₂SO₄), Nitric acid (HNO₃), which are readily available in the market.

The consequences of an acid attack are the lifelong bodily disfigurement and it also causes severe physical, psychological and social stigma. Victims are often left with no legal recourse, limited access to medical or psychological assistance and without the means to support themselves

Now Acid violence is a worldwide phenomenon that is not restricted to a particular race, religion or geographical location. It occurs in many countries of South-east Asia, Sub-Saharan Africa, the West Indies and the Middle East. Recently attacks have emerged in other regions including the United Kingdom and the United States. But Acid attacks are most

Prevalent problem throughout South Asia. India has an uprising problem of acid attacks, along with Bangladesh,⁴ Pakistan⁵ and Cambodia⁶, and has seen the highest occurrences of this brutal crime. Acid violence is widespread in these countries because of three related factors: gender inequality and discrimination, the easy availability of acid, and impunity for acid attack perpetrators.⁷

Acid Attack as Gender Based Violence

Gender-based violence (GBV) is the general term used to capture violence that occurs as a result of the normative role expectations associated with each gender, along with the unequal power relationships between the two genders, within the context of a specific society.⁸ Therefore GBV is violence directed at an individual based on his or her sex, gender identity or expression of socially defined norms of masculinity and femininity. Both men and women can be victim of GBV, the vast majority of GBV cases are carried out against women and girls, so it has been widely acknowledged that the majority of

³ Dhananjay Malhotra, “No change in law needed to make acid attack a heinous offence: Centre”, Times of India, April 15,2010, sources: <http://articles.timesofindia.indiatimes.com>, accessed on: 20.02.2017

⁴ According to the Acid Survivors Foundation, Bangladesh, 1999, Acid attack incidents in Bangladesh, in between 1999 and 2010 there were about 2,500, reported cases of acid attacks in the country, in 2002, 485 cases reported, and it was came down to 98 in 2012. Bangladesh was the first country to pass acid specific legislation in 2002, The Acid Control Act 2002 and The Acid Crime Prevention Acts 2002, restricting import and sale of acid in open markets. See Acid Survivors Foundation, Bangladesh, annual report 2009, Sources: <http://www.acidsurvivors.org/AR-2009.pdf>, also See The Independent (Asia). Acid Attacks: Bangladesh’s Hidden Victims, 15 July 2011, Sources: <http://www.independent.co.uk/news/world/Asia/acid-attacks-Bangladesh-hidden-victims-2307990.html>, accessed on: 26.06.2021.

⁵ Acid Trust Foundation Pakistan, estimates number of acid attacks 150 each year, since 1994, 8800 acid attack incidents were recorded. Sources: www.acidviolencepakistan.org, accessed on: 28.06.2021

⁶ The Cambodian Acid Survivors Charity (CASC) 2006 has estimated 364 acid attack incidents in 2011 amongst 51.6% are female. The current legislation which tackles the issue of acid attacks in Cambodia is The Criminal Code of the Kingdom of Cambodia 2009 Available at: <http://www.cambodianacidurvivorscharity.org/>, accessed on: 26.06.2021.

⁷ See Avon Global Center for Women and Justice at Cornell Law School, Committee on International Human Rights of the New York City bar Association, Cornell Law School international Human Rights Clinic, & the Virtue Foundation, “Combating Acid Violence in Bangladesh, India, and Cambodia” 2011, sources: ohchr.org/Documents/HRBodies/CEDAW/HarmfulPractices/AvonGlobalCentreforWomenandJustice.pdf, accessed on 26.06.2021

⁸ <https://genderbasedviolenceinindia.wordpress.com/.../what-is-gender-based-violence/>, Accessed on 26.5.2021



persons affected by gender-based violence are women and girls, as a result of unequal distribution of power in society between women and men. The Gender-based violence is a form of discrimination that seriously inhibits women's ability to enjoy rights and freedoms on a basis of equality with men.⁹ It nullifies the enjoyment by women of human rights and fundamental freedom under general international and human rights convention. Therefore, the term GBV is often used synonymously with violence against women (VAW).

As summed up by UNFPA:

“The primary targets of GBV are women and adolescent girls, but not only are they at high risk of GBV; they also suffer exacerbated consequences as compared with what men endure. As a result of gender discrimination and their lower socio-economic status, women have

Fewer options and less resource at their disposal to avoid or escape abusive situations and to seek justice.¹⁰

The UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) 1979 in its committee on VAW 1992 General Recommendation No. 19 (GR 19)¹³ clarifies that GBV against women is a form of discrimination and therefore covered by the scope of CEDAW. GBV is defined as “violence that is directed against a woman because she is a woman or that affects women disproportionately”, thereby underlining that violence against women is not something occurring to women randomly, but rather an issue affecting them because of their gender. Further, GBV is defined as including “acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty.”

The GR 19 also specifies Traditional attitudes by which women are regarded as subordinate to men or as having stereotyped roles perpetuate widespread practices involving violence or coercion, such as family violence and abuse, forced marriage, dowry deaths, acid attacks and female circumcision. These forms of GVB prejudices and practices may justify gender-based violence as a form of protection or control of women. The consequences of these forms of gender-based violence, force women to subordinate roles and contribute to the low level of political participation and to their lower level of education, skills and work opportunities. These violence effects on the physical and mental integrity of women are to deprive them the equal enjoyment, exercise and knowledge of human rights and fundamental freedoms.

The UN Declaration on the Elimination of Violence against Women (DEVAW) adopted by the UN General Assembly in 1993 has been influenced by CEDAW General Recommendation No. 19. It defines VAW as: “Any act of gender based violence that results in, or is likely to result in, physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or in private life.” The declaration

⁹ CEDAW General Recommendation No. 19 on VAW, See Mary Lou Bertucci, Encyclopedia of Human Rights, (Washington: Taylor & Francis, 2005) p.288

¹⁰ United Nations Fund for Population Activities, is a UN organization, the name was changed in 1987 as The United Nations Population Fund; UNFPA Strategy and Framework for Action to Addressing GBV, 2008-2011, P.7, source: <http://www.unfpa.org/press/breakthrough-health-and-rights-women-and-girls>, Accessed on 26.5.2017



encompasses all forms of gender-based violence against women (physical, sexual and psychological), no matter in which context or setting they occur:

Article 2 of the Declaration makes clear that violence against women takes many forms: Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation; physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution; Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs

Further, DEVAW specifies that violence against women is a manifestation of unequal power relationships between men and women and a violation of women's human rights (preamble). Article 3 lists examples of these rights, such as the right to life, the right to equality, the right to the highest standard attainable of physical and mental health, or the right not to be subjected to torture, or other inhuman or degrading treatment or punishment.

As per the international norms, an acid attack is one of the forms of gender based violence. Gender based violence is that which is directed against a woman because of her sex. Acid Attacks fall under the category of gender based violence since most of its victims are women and it is often directed against them as punishment for transgressing gender based roles and limitations. An Acid attack is a crime which can be committed against any man or woman but it has a specific gender dimension because it impacts women disproportionately. Acid attacks, like other forms of violence against women, are not random or natural phenomena. They are social phenomena deeply embedded in a gender order that has historically privileged patriarchal control over women and justified the use of violence to “keep women in their places.”

In many countries, women are victims of acid attacks because they allegedly or actually transgress gender norms or roles that discriminate against women and keep them in subordinated positions. Acid violence perpetuates gender inequality and discrimination. Thus Acid attacks fall under the category of gender-based violence¹¹ since most of its victims are women and it is often directed against them as punishment for transgressing gender based roles and limitations. According to statistics of London-based Acid Survivors Trust International (ASTI) about 1500 acid attacks are reported worldwide yearly, among 80% of are female and close to 70% of these women are less than 18 years of age,¹² and in India a review of Indian newspapers and the recent National Crime Bureau report indicates that approximately 75% of the attacks were perpetrated against women. In the light of the facts, it would be impulsive to suggest that acid attacks are not gender-related. Law commission of India also observed

¹¹ Committee on the Elimination of Discrimination against Women (CEDAW Committee) 1992, General Recommendation No. 19 – Violence against Women, interpreted Gender based violence, is violence that is directed against a woman because she is a woman or that affects women disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. See United Nations Treaty Collection Databases, <http://treaties.un.org> , accessed on: 16.06.2021

¹² Acid Survivors Trust International, London, Sources: www.acidsurvivor.org, accessed on: 16.06.2021



that, acid attacks are mostly conventional against a specific gender, i.e. women, as women and girls constitute majority of the victims of the Acid attack¹³.

Magnitude of the Crime

Acid attacks against women have been reported in many countries around the world including in the continents of North America, Africa, Europe, and Asia. According to Acid Survivor Trust International every year around 1,500 people are attacked in this way across the world.¹⁴ The Asia countries like Bangladesh, India, and Cambodia are among the nations with the highest frequency of acid violence. In India there was no recorded statistical information on the number of acid attacks, prior to the recently implemented anti-rape laws (Criminal amendment Act 2013), the National Crime Records Bureau (NCRB)¹⁵ did not classify Acid attacks in isolation and result being no absolute figure about acid attacks in India.

These official data about acid violence is also lacking because many cases go unreported due to the victim's fear of further hostility or social stigma and when reported they might not be registered as separate acid attacks offences, but included the crime in the categories of hurt, grievous hurt, or attempt to murder. Although, there was no comprehensive statistics on the number of acid attacks some of the research centers and NGOs conducted study in this regard. A study conducted by the Avon Global Centre for Women and Justice at Cornell Law School in New York in 2011, states that 153 cases of acid attacks were reported in India from January 2002 to October 2010.¹⁶ The Acid Survivors Foundation India (ASFI)¹⁷ has organized data from newspaper reports that indicates a clear growth in the number of cases - with 80 victims in 2010, 106 in 2011 as well as 2012, 122 in 2013 and 130 up until November of 2014. According to the Stop Acid Attacks campaign rights¹⁸ survey there have were 386 cases in the period 2013 to 2014.¹⁹ The Bangalore based organization, Campaign and Struggle

¹³ The 226th Report of the Law Commission of India has stated that the majority of acid attack victims are women: “particularly young women for spurning suitors, for rejecting proposals of marriage, for denying dowry etc. The attacker cannot bear the fact that he has been rejected and seeks to destroy the body of the woman who has dared to stand up to him.” The Report of the Law Commission of India also adds that acid attacks “are used as a weapon to silence and control women by destroying what is constructed as the primary constituent of her identity.”

¹⁴ The “Acid Survivors Trust International” is the only organization in the world working at an international level to end this form of violence. It also works with UN agencies to increase awareness and develop effective responses at world level. In India, their partner is called Acid Survivors Forum India

¹⁵ National Crime Records Bureau, sources: www.ncrb.gov.in, accessed on: 16.06.2017

¹⁶ The 226th Report of the Law Commission of India

¹⁷ Acid Survivors Foundation India (ASFI) purports to be leading NGO in India for prevention of acid burn violence as well as for providing support services through a network of chapters and partners, by sharing knowledge, expertise and best practices. ASFI acts as a forum for advocacy of acid related causes, endeavors to promote a social environment conducive to eliminate of all forms of gender violence and espouses a firm legal basis for prosecution of offenders and prescription of national guidelines for treatment, aftercare and rehabilitation of acid survivors. Available at <http://www.asfi.in/>, accessed on 16.06.2021

¹⁸ Stop Acid Attacks (SAA) is a campaign against acid violence started in Delhi. It works with partners and stake holders towards the elimination of acid and other forms of acid and other form of burn violence and the protection and promotion of survivor's rights, including access to medical, legal, social and economic service. Available at: <http://www.stopacidattacks.org/p/about-us.html>, accessed on 16.06.2021

¹⁹ Avon, “Combating Acid Violence In Bangladesh, India, and Cambodia”, Avon Foundation for Women, 2011 Campaign and Struggle against Acid Attack on Women, 1999, Sources: www.acidviolence.org/index.php/news/stopacid, accessed on: 06.06.2021



against Acid Attacks on Women (CSAAAW),²⁰ has investigated 35 cases of acid attacks over the past five years between 1999 and 2004 in Karnataka. The number of cases added up to 53 by 2006 in Karnataka and, as reported by the CSAAAW, verdicts were given in only 9 of these 53 cases.²¹ A newspaper report²² has estimated the total number of acid attacks as 60 by 2007 in Karnataka.

In one of the Right to Information (RTI) petition in the state of West Bengal elicited a figure of 77 recorded Acid attack cases in the past six years and 85 cases of acid attacks from 1967 to 2010 that were prosecuted in Indian courts.²³ In 2013 Times of India has reported there have been 56 such instances in Delhi alone in three months period.²⁴ These numbers, however, are not entirely reliable as not every case of acid attack is reported in newspapers tracked by NGOs or treated in hospitals. As government has not maintained official statistics on acid attacks, a task was usually undertaken by different NGOs that at times yield reports with varied information.

These figures also do not include victims those, who don't report their case because they fear further violence or being socially stigmatized. Hundreds of such incidents take place across the country every year. While most of the cases go unreported as the victims fear further violence or being socially stigmatized, again, in most of the reported cases, the accused is never detained.²⁵ In this regard, CSAAAW noted one incidence in Bangalore in July 2004 that was not included as part of the reported cases partly because the victim and her family have opted not to go public with their trauma.

Conclusion

Acid attacks are the most pernicious form of violence that is reported to and is mostly gender-specific. While acid attacks are reported in many parts of the world, the incidents of acid attacks in India have been on the rise. Although commencement of law reforms in the acid attack legislation is a positive sign, yet there is a long way to go, to effectively implement these provisions. Though it is admitted that once the new legislation is enacted, it takes time to settle and is subsequently evolved by the dynamism of judiciary, some of the shortcomings faced prima facie needs to be addressed.

The current acid attack provisions and judicial approach to the quantum of damages are very restricted in view of nature and the gravity of the offense. A discussion has also been carried out on the lacunae in Indian Law and how essential it is to have a specific law in this regard. This crime appears to be a premeditated one which requires a tremendous ill-will on the part of the perpetrator, and therefore, should be punished severely. In addition to this, sound compensation for the victim is a vital provision for enforcing justice.

²⁰Campaign and Struggle against Acid Attacks on Women,1999,

Sources:www.acidviolence.org/index/php/news/stopacid, accessed on: 06.06.2021

²¹ "PIL filed for steps to curb acid attacks", The Hindu, September 20, 2006, sources: <http://www.thehindu.com/news>, accessed on- 08.06.2021

²² Bageshree S. and M.V. Chandrasekhar, "The 'acid test': will Government regulate sale of deadly chemicals?", The Hindu, February 5, 2007, sources: <http://www.thehindu.com/news>, accessed on- 08.06.2021

²³ India's Acid Attack Victims', sources: www.hrln.org/.../1502-highcourt-at-calcutta-orders-chief-secretary, also see www.globaltimes.cn/content/1805020.shtml,accessed on: 16.02.2021

²⁴ Ambika Pandit, "56 acid attack complaints in 3 months" Times of Indis (Delhi), May 29, 2013, sources: timesofindia.indiatimes.com, accessed on: 28.06.2021.

²⁵ Law Mantra Think Beyond Others (International Monthly Journal, I.S.S.N 2321 6417) Available at: Journal.lawmantra.co.in www.lawmantra.co.in,accessed on: 08.06.2021



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