

# **LAW COMMISSION OF INDIA**

**Report submitted to the Hon'ble Supreme Court of India for its consideration in the pending proceedings filed by one Laxmi in W.P. (Crl.) No. 129 of 2006**

**ON**

**“The Inclusion of Acid Attacks as Specific Offences in the Indian Penal Code and a law for Compensation for Victims of Crime”**

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# LAW COMMISSION OF INDIA

## **PROPOSAL FOR THE INCLUSION OF ACID ATTACKS AS SPECIFIC OFFENCES IN THE INDIAN PENAL CODE AND A LAW FOR COMPENSATION FOR VICTIMS OF CRIME**

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# **CHAPTER1**

## **Introduction**

The victim of a gruesome acid attack, Laxmi, has filed a writ petition in the Supreme Court of India in May, 2006 in which the Law Commission of India has been arrayed as the Respondent No.2. Though the Law Commission had pointed out to the Court that the reliefs in the petition cannot be prayed for from the Law Commission, it has decided to take up the matter *suo moto* in view of the gravity of the offence of acid attacks.

Acid attacks are becoming a growing phenomenon in India. Laxmi's case is an example of what normally occurs in such cases. The petition states that Laxmi, a young girl, was subject to an acid attack following her refusal to marry the accused. As a result of the attack the victim's arms, face and other body parts were severely disfigured and deformed. Though the victim and her parents were/are poor they were fortunately helped by a benefactor who bore the medical expenses approximating to Rs. 2.5 Lakhs. However, even after 4 plastic surgeries the victim's physical appearance remains horrific and many more surgeries would be required to make her physical appearance a semblance of what it was. The victim can of course never look as she did before the attack.

Though acid attack is a crime which can be committed against any man or woman, 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. 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.

Thus, acid throwing is an extremely violent crime by which the perpetrator of the crime seeks to inflict severe physical and mental suffering on his victim. As stated above this kind of violence is often motivated by deep-seated jealousy or feelings of revenge against a woman. For instance, in Bangladesh 78 percent of the reported acid violence is inflicted on women with the most common reasons for attack being the refusal of marriage, the denial of sex, and the rejection of

romance.<sup>1</sup> The acid is usually thrown at the victim's face. The perpetrator wants to disfigure the victims and turn them into a monster. Aside from the reasons stated above the other reasons for acid attacks include robbery, land disputes etc.

Perpetrators of the crime act cruelly and deliberately. Acid violence is a premeditated act of violence as the perpetrator of the crime carries out the attack by first obtaining the acid, carrying it on him and then stalking the victim before executing the act.

Furthermore, an acid attack has long-lasting consequences on the life of the victim who faces perpetual torture, permanent damage and other problems for the rest of her life. Victims normally feel worthless, afraid and modified and become social outcasts because of their appearance. They may become too traumatized and embarrassed to walk out of their house and carry out simple tasks let alone get married, have children, get a job, go to school, etc. Even if they are willing to pursue a normal life, there is no guarantee that society itself will treat them as normal human beings given their appearance and disabilities after an attack. They may not be able to work, or be able to find a job, and thus perpetually struggle to survive.<sup>2</sup>

It has been contended by those working for these victims that the Criminal law relating to grievous hurts in Sections 320, 322, 325 and 326 of the Indian Penal Code (I.P.C) is insufficient to deal with the phenomenon of acid attacks. Section 320 deals with grievous hurt and reads as under-

**Section 320. Grievous hurt.** - The following kinds of hurt only are designated as "grievous":-

*First.* - Emasculation.

*Secondly.* - Permanent privation of the sight of either eye.

*Thirdly.* - Permanent privation of the hearing of either ear,

*Fourthly.* - Privation of any member or joint.

*Fifthly.*-Destruction or permanent impairing of the powers of any member or joint

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<sup>1</sup> 1.Acid Survivors Foundation. *Acid Throwing Fact Sheet*. Dhaka, Bangladesh, 2001

<sup>2</sup> *Baseline Survey with International Comparative Analysis of the Legal Aspects of Acid Violence in Uganda*, Commissioned by: Acid Survivors Foundation Uganda with funding support from the US Democracy & Human Rights Fund, Legal Consultant: Rachel Forster , November, 2004

*Sixthly.* - Permanent disfiguration of the head or face.

*Seventhly.* - Fracture or dislocation of a bone or tooth.

*Eighthly.* - Any hurt which endangers life or which causes the sufferer to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

This definition of grievous hurt has been criticized as the definition does not take within its purview the various kinds of deliberate hurt that is inflicted on important parts of a female's body nor does this definition apply to offences like acid attack in which multiple types of grievous hurts occur.

Section 322<sup>15</sup> IPC defines voluntarily causing grievous hurt and Section 325<sup>4</sup> IPC provides for punishment for grievous hurt. The offence is punishable by imprisonment upto seven years and is cognizable, bailable, and compoundable as well as being triable by a first class Magistrate. The offence of grievous hurt is not caused unless the offender both causes grievous hurt and intends, or knows himself to be likely, to cause grievous hurt

Section 326 of the Indian Penal Code which applies in cases of voluntarily causing grievous hurt by means of any corrosive substance is punishable with imprisonment for life or with imprisonment of either description for a term which may extend to 10 years and fine<sup>5</sup>. Thus, punishment for voluntarily causing grievous hurt even by corrosive substances like Acid can be imprisonment for life or with imprisonment for a term which may extend to 10 years. It has been argued that this period of punishment does not match the gravity of the offence.

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<sup>15</sup><sub>3</sub> **Section 322. Voluntarily causing grievous hurt.**- Whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said to "voluntarily to cause grievous hurt."

*Explanation.* - A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if intending or knowing himself to be likely to cause grievous hurt of one kind; he actually causes grievous hurt of another kind.

<sup>4</sup> **Section 325. Punishment for voluntarily causing grievous hurt.**- Whoever, except in the case provided for by section 335(Voluntarily causing grievous hurt on provocation), voluntarily causes grievous hurt, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

<sup>5</sup> **Section 326 Voluntarily causing grievous hurt by dangerous weapons or means**- Whoever , except in the case provided for by section 335, voluntarily causes grievous hurt by means of any instrument for shooting, stabbing or cutting , or any instrument which , used as a weapon of offence , is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance, or by means of any explosive substance, or by means of any substance which it is deleterious to the human body to inhale , to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment for life or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

The petition argues that though in some cases like the petitioner's case Section 307 of the I.P.C has been applied, even this is not enough as courts tend to grant bail easily in cases of Sec.307 I.P.C and mens rea is extremely difficult to prove.

The Laxmi Writ petition further states that compensation to victims of acid attacks is of vital importance as huge medical costs are often involved. The victims of acid attack need both short term as well as long term specialized medical treatments and plastic surgeries. The provisions in the Indian law for giving compensation to the victims are insufficient. The writ petition therefore prays that:

- An amendment be made in the Indian Penal Code, Evidence Act and the Criminal Procedure Code for dealing with acid attack as a special offence;
- Guidelines be framed and an act be passed to attend to the needs of all the acid attack victims in India;
- A committee be constituted and appointed for adopting measures for the proper treatment, aftercare and rehabilitation of the victims of acid attacks;
- That acid in all forms be made a scheduled banned chemical which is not readily available over the counter.

It is therefore important to examine and analyse the various provisions of the Indian Penal Code to see whether the law as it exists in India is sufficient to deal with the phenomenon of acid attacks. The Law Commission has also examined the laws relating to acid attacks in different countries before giving its recommendations, both for punishing the perpetrators of these attacks and for monetary and economic rehabilitation of the victim of the attack.

## CHAPTER II

### A Brief Overview

#### A Statistical Overview:

While very little data is available on acid attacks in India some studies have reported an increasing trend in cases relating to acid attack. According to a study 174 cases of acid attack were reported in India in 2000. This was a per capita incidence of about 1/15 of that of Bangladesh, which has the highest incidence rate as well as the highest number of acid attack cases in the world. However, the absolute number of cases was approaching those of Bangladesh.<sup>6</sup>

35 cases of acid attacks were reported in Karnataka between 1999 and 2004<sup>7</sup>. This figure does not include victims that do not report their case because they fear further violence or being socially stigmatized. In this regard, the Campaign and Struggle Against Acid Attacks on Women (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<sup>8</sup>. 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<sup>9</sup>. A newspaper report<sup>10</sup> put the total number of acid attacks as 60 by 2007 in Karnataka alone adding 8 more cases till February 2007.

In most of these cases Hydrochloric and sulphuric acid were used and all the victims were women. The victims in Karnataka were very young women between 16 and 25 years of age, and were attacked by men known to them. Most attacks took place in public places or at home.<sup>11</sup>

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<sup>6</sup> *Acid Attacks: Bangladesh's Efforts to Stop the Violence*, Jordan Swanson, Harvard Health Policy Review Archives, Spring 2002; Vol 3, No 1

<sup>7</sup> *Burnt Not Defeated*, Report by CSAAAW, April 2007, CSAAAW Bangalore publication

<sup>8</sup> The Hindu, *Another Face of Violence*, 15.08.2004

<sup>9</sup> The Hindu, *PIL filed for steps to curb acid attacks*, 20.09.2006

<sup>10</sup> The Hindu, *The 'acid test': will Government regulate sale of deadly chemicals?*, Bageshree S. and M.V. Chandrashekhar, 5 February 2007

<sup>11</sup> Deccan Herald News Service, Bangalore, *Acid test of Humanity*, Bala Chauhan

These cases showed the kind of injuries that victims of acid attack suffered. The injuries range from burns to permanent disfigurement to death. In many acid attacks the victim suffers a slow and painful death. On the other hand, some victims who do survive the attack like Hasina<sup>12</sup> (in April 1999) and Shruti (in October 2001) are permanently disfigured, maimed and confined to homes for life. <sup>13</sup>Acid attack survivors are physically, psychologically and socially traumatized. The physical extents of their injuries are deep, permanent and have a direct impact on their psychological well-being and social functionality.

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 the acid dissolves the bones too. Permanent scars as can be seen in Hasina's <sup>14</sup>case disfigure a human being's body for life. Furthermore, if acid enters the eyes of the victim during an attack, as is common in acid attack cases, it damages these vital organs permanently. Many acid attack survivors have lost the use of one or both eyes.

As a result of disfigurement and disability victims are permanently debilitated and are forced to give up their lives, their work, their education. In this regard, compensation to cover vital surgeries for victims who can no longer support themselves becomes imperative.

However aside from compensation there are other points as well that the law should be sensitized to when it comes to dealing with acid attack victims. In an interview with the Hindu newspaper CSAAAW's lawyer, Sheela Ramanathan, pointed out that acid attack victims had to be handled separately as their situation entails a series of "medical complications, social stigma, psychological trauma, gender bias and a complete loss of livelihood."<sup>15</sup> Ms. Ramanathan particularly drew attention to the medical negligence on these victims: "Medical awareness on the mode of treatment is also abysmal," "(t)here have been cases where coconut

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<sup>12</sup> *State of Karnataka Vs. Joseph Rodrigues, Decided by the Hon'ble Karnataka High Court on 22/8/2006*

<sup>13</sup> *The Hindu, The 'acid test': will Government regulate sale of deadly chemicals?, Bageshree S. and M.V. Chandrashekhar, 5 February 2007*

<sup>14</sup> *Supra note 11*

<sup>15</sup> *The Hindu, PIL filed for steps to curb acid attacks, 20.09.2006*

oil has been applied on the affected area and the victim wrapped in blankets. Such mishandling can cause irreparable damage."<sup>16</sup>

### **Acid attacks and their Consequences**

As stated earlier acid attacks are a form of violence against women, where the perpetrator splashes a person or object with acid in order to deface or kill them.<sup>17</sup> Although acid throwing, also known as vitriol age, has been a form of violence known to be committed throughout history, there has been a steep rise in the cases documented in recent years, particularly in certain South Asian countries. Some of this increase has been attributed to better documentation of cases and also to the fact that victims of attacks have begun to report an attack more often. However, there appears to be a substantive increase in the number of acid attacks that are being committed in recent times due to various factors.

Acid attacks are seen as one of the most vicious crimes as it causes perpetual suffering to the victim. As acid melts flesh and even the bones of a person, it causes an unparalleled degree of pain to the victim and leaves her mutilated and scarred as well as giving permanent disabilities at times such as blindness. Victims face lifetime physical, social, psychological and economic consequences.

Some of the well known effects of acid are as under:

- Acids are corrosive substances that will cause visible necrosis (death) of human skin tissue and will even corrode a metal in higher concentration.
- They can cause serious poisoning, burning and serious injury can result from exposure to strong acids.
- Commonly available acids include Sulphuric acid, Hydrochloric acid Hydrofluoric acid, Phospaic acid etc. Acids are used in laboratories and factories/industries.
- In an acid attack the skin is the main organ of contact. The effects of acid on the skin may include redness, and burns. In severe cases, it could lead to shock and death. Some other effects include permanent hair loss and

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<sup>16</sup> Ibid

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<sup>17</sup> Wikipedia Encyclopedia

scaring. If inhaled in large quantity it can also lead to pulmonary disorders.

The consequences of acid attack have been well documented and include the following<sup>18</sup>:

#### INJURIES AND PHYSICAL CONSEQUENCES:

Acid eats through 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 deepness 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.

Thrown on a person's face, acid rapidly eats into eyes, ears, nose and mouth. 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. Skin and bone on the skull, forehead, cheeks and chin may dissolve. When the acid splashes or drips over the neck, chest, back, arms or legs, it burns everywhere it touches.

The biggest immediate danger for victims is breathing failure. Inhalation of acid vapors can create breathing problems in two ways: i.e. by causing a poisonous reaction in the lungs or by swelling the neck, which constricts the airway and strangles the victim.

When the burns from an acid attack heal, they form thick scars which pull the skin very tight and can cause disfigurements. For instance, eyelids may no longer close, the mouth may no longer open; and the chin becomes welded to the chest.

The following information on physical consequences has been described by an NGO<sup>19</sup>:

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<sup>18</sup> *Living in the Shadows: Acid Attacks in Cambodia*,  
2003 LICADHO Report

<sup>19</sup> Medecins Du Monde and doctors at Calmette hospital in Phnom Penh

**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.

## TREATMENT

The first thing that should be done when the acid gets in contact with the skin is to flush the burned flesh with water for at least 60 minutes and to wash off the acid with water for as long as possible.

Emergency treatment at hospitals should include cleaning and bandaging the burns, and relieving any breathing problems caused by acid fumes.

Infection is a major danger because the dead tissue around deep burns becomes easily infected and prevents the burns from healing. Infection may spread to the healthy part of the skin, and may even kill the victim and it can attack the victim at any stage during the weeks and months right after the attack. Thus the wounds need to be kept clean and antibiotics need to be given to fight infection.

The eyes are very vulnerable to infection and can cause blindness. Most important is to ensure that victims can close their eyes, preventing them from becoming dry and infected. Surgery may be needed to rebuild the eyelids, if they were destroyed by acid, or remove thick scars around the eyes as burns heal.

Eating enough food is vital because victims' bodies require a lot of energy to fight infection and heal the wounds. This may be difficult if the victim has burns around the mouth and has difficulty swallowing, or cannot afford the necessary diet.

It can take 3 to 12 months for burn wounds to heal. Thick scars, which are painful and itchy, grow over the healed burns. The scars grow and change over 1 to 2 years. As the scars thicken and contract, they can cause permanent disability by stiffening joints and restricting movement. For example, the scarring on the neck and shoulders, can prevent a patient from moving his head or arms. Doctors may need to perform many operations to release the scars and graft new skin over them. Scars may also grow over the nostrils or ear canals, and surgery is required to remove them.

Long periods of physical therapy are needed to minimize victims' lack of movement from scarring, and special elastic bandages can dramatically reduce the thickness and stiffness of scars.

The final stage of treatment is to try to restore the appearance of the victim as much as possible. By now, the wounds must have healed completely and the full extent of scarring and deformities of the body must be visible. The victim may require many operations over a period of two to three years.

## PSYCHOLOGICAL CONSEQUENCES

Victims of attacks do not only undergo severe physical trauma but also undergo traumatic changes in the way they feel and think. Psychological trauma is caused by both the terror victims suffer during the attack, as they feel their skin burning away, and after the attack by the disfigurement or disabilities that they have to live with for the rest of their lives. Victims suffer psychological symptoms such as depression, insomnia, nightmares, fear about another attack and/or fear about facing the outside world, headaches, weakness and tiredness, difficulty in concentrating and remembering things, etc. They feel perpetually depressed, ashamed, worried, and lonely.

Victims suffer severe psychological symptoms for years, if not forever, because they are reminded every day of their physical scars. The feeling of lack of hope and worth may never leave them.

## SOCIAL AND ECONOMIC CONSEQUENCES

Victims face a lifetime of discrimination from society and they become lonely. They are embarrassed that people may stare or laugh at them and may hesitate to leave their homes fearing an adverse reaction from the outside world. 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 fend for themselves and they become dependent on others for food and money.

It has therefore been argued that acid attacks need to be classified as a separate offence and harsher punishment needs to be prescribed. It has been further stated that the new law must include guidelines for handling/supporting victims economically, socially, and psychologically as well as compensation. It is relevant to mention that in 2006 CSAAAW filed a Public Interest Litigation in the Karnataka High Court seeking a court order to the State Government to ensure speedy and gender-sensitive trials for victims of acid attacks as well as better medical treatment and rehabilitation. The CSAAAW also demanded the

production, distribution and storage of toxic acids be strictly monitored by the State.<sup>20</sup>

Infact since acid is so readily available across the counter in medical and other stores, acid attacks become a relatively cheap and effective way of committing acts of violence against women. In a random check carried out by The Hindu newspaper in Karnataka in 2007, the researchers found that buying “Hydrochloric acid is as easy as cheap as buying a bar of soap.” A litre of acid goes at anywhere between Rs. 16 and Rs. 25 and can be bought at various locations including Nagaratpet, Ragipet and Raja Market.<sup>21</sup>

There is however no law to regulate acid sales except for the Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989 (amended in 2000) and this only applies to industrial situations.<sup>22</sup> Furthermore there are no regular inspections and stock checking for acid sales as there are for explosives.<sup>23</sup>

It has been argued by some that controlling or regulating acid sales is an impossible task, as acid is used for many things including car batteries etc. Thus, the deterrence should come in the form of stringent laws that punish the perpetrators. However, Bangladesh, a country with the highest incident rate of acid attacks, has passed a law in 2002 to control acid sales. Thus, Acid violence can be tackled on both fronts simultaneously with a harsher punishment on the perpetrator as well controlling the sale of acid to stop it from getting into the hands of the criminal. Besides as a member CSAAAW perhaps rightly said, it is unconscionable “how any responsible democracy can cite difficulty in regulation as an excuse for not framing laws.”<sup>24</sup>

International commerce of sulphuric acid is controlled under the [United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988](#), which lists sulfuric acid under Table II of the convention as a chemical

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<sup>20</sup> The Hindu, *Acid Attack victims yet to get assistance*, 27.04.2007

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

frequently used in the illicit manufacture of narcotic drugs or psychotropic substances.

The next chapter therefore discusses how the courts in India have dealt with the issue of acid attacks and what the cases show.

## CHAPTER III

### Cases Relating to Acid Attack 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. However, as discussed earlier, 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 insignificant amount. The victim has also often not been given this fine by the court.

In a 1998 Maharashtra case <sup>25</sup>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 case<sup>26</sup>, 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.

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<sup>25</sup> *Gulab Sahiblal Shaikh Vs. The State of Maharashtra*, (1998 Bom CR(Cri))

<sup>26</sup> *Marepally Venkata Sree Nagesh Vs. State of A.p* ( 2002 CriLJ3625)

In another case <sup>27</sup> before the Hon'ble Supreme Court in 1975, acid was poured on a woman by her husband for refusing to grant him divorce. The husband was involved in an extra-marital affair. Due to the attack, the victim suffered 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 Court <sup>28</sup>, 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 Vs. The State* <sup>29</sup> 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. <sup>30</sup>

In a case before the Calcutta High Court <sup>31</sup> 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 arm, breasts, legs, knees and scalp. Her aunt received 25% burns and her aunt's son received 11% burns. The additional sessions Judge

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<sup>27</sup> *Revinder Singh Vs. State of Harayana*(AIR 1975 SC 856)

<sup>28</sup> *Balu Vs. State Represented Inspector of police* decided on 26/10/2006

<sup>29</sup> (1987 (1) Crimes 314)

<sup>30</sup> See also *Veerla Stayanarayna Vs State of A.P* 2002(Supp)1 SC 489

<sup>31</sup> *Ramesh Dey and Ors. vs. State of West Bengal*, Decided on 16/5/2007

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 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.<sup>32</sup>

In *Srimanthula Chinna Sathaiah and Anr. Vs. State of A.P.*<sup>33</sup> enmity developed between two men. The accused was suspicious that the other person had falsely implicated him in a case. He also suspected that his wife was having an affair with the victim's elder son. As a revenge the accused threw acid on the victim, which resulted in severe acid burns on the face and body. The accused was charged under Section 302 and 34 of the IPC and was awarded rigorous imprisonment for life.

In some cases which are targeted against women dowry and property can be the reasons for acid attacks. Property and land disputes and sometimes revenge<sup>34</sup> can prove to be a motive for acid attacks against men. It appears that the idea that acid is an easy effective method of harming and killing enemies can spread to general attacks against both women and men.

In case before the Supreme Court of India<sup>35</sup> the accused was the husband of the deceased, Sushila and wanted to kill her and their daughters, Bindu and Nandini to grab property as he was the immediate beneficiary to her estate. He poured acid over her to kill her. She received extensive burn injuries on large parts of their bodies including the face, chest, neck, etc. According to the Doctor the death was due to the corrosive acid burns and shock. The High Court convicted the appellants Ram Charittar and Kishori Lal under Section 302/34 IPC, and sentenced them to life imprisonment. The appeal for their acquittal was dismissed by the Hon'ble Supreme Court. No compensation was awarded to the victims.

<sup>32</sup> See also *Smt. Bhagwan Kuar Vs Krishna Maharaja* ( AIR 1973 SC 1346)

<sup>33</sup> ( 998(4) ALD 18)

<sup>34</sup> See *State of Madhya Pradesh Vs. Jhaddu and Ors.* (1991 Supp(1)545)

<sup>35</sup> *Ram Charittar and Anr. etc. vs. State of Uttar Pradesh etc.* (04.04.2007 - SC)

In another case <sup>36</sup> before the Madras High Court a nurse and a compounder conspired and poured a mixture of acid and kerosene over a doctor as revenge for an alleged rape by him of the nurse. The doctor sustained 100% burn injuries and later expired due to them. The accused were charged under Sec 302 and 109 of the IPC but were acquitted for the lack of evidence.

In a case before the Supreme Court<sup>37</sup> in a dispute between the deceased and accused regarding encroachment, the accused poured acid on the deceased and this caused severe acid burns resulting in death. The main accused was charged under Section 302 of the IPC and awarded rigorous imprisonment for life.

Many cases in which death doesn't occur get registered under the sections related to hurt and grievous hurt and not attempt to murder as no intention of killing or knowledge that the offence is likely to cause death is attributed to the accused.

In a case before the Jharkhand High Court <sup>38</sup> 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 chargesheet 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. <sup>39</sup>

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<sup>36</sup> *Mahesh and Parimaladevi Vs. State*, Decided on 10/4/2003 by the Madras High Court

<sup>37</sup> *Barati Vs. State of U.P.*(AIR 1974 SC 839)

<sup>38</sup> *Awadhesh Roy Vs. State of Jharkhand* (Decided on 12/6/2006)

<sup>39</sup> See also *Students of A.P.A.U and Miss Anuradha, Student Vs The Registrar, A.P.A.U, N.Sreeniwasa Reddy, Student and Ors.* (1997(1) ALT 547)

In one of the most famous cases involving acid attack<sup>40</sup> the accused threw acid on a girl, Hasina, for refusing his job offer. This 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 Hasina's 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.

In a case from Delhi<sup>41</sup> the accused threw acid on the victims face. The liquid splashed on her face produced some redness (erythema) on the skin over a part of her face involving her upper eye-lids. There was no corrosion, of the skin or other deformity. The accused was convicted for causing hurt under Section 323 of the IPC and a meager fine of Rs. 300 along with 15 days imprisonment was awarded. This sort of punishment for acid attack is in itself a mockery of sorts and does not take into consideration the gravity of the crime and its after effects like trauma which affects the victim throughout her life.

In Syed Shafique Ahmed Vs. State of Maharashtra<sup>42</sup> personal enmity with his wife was the reason behind a gruesome acid attack by the husband on his wife as well as another person . This caused disfiguration of the face of both the wife as well as that of the other person and loss of vision of right eye of wife. The accused was charged under Section 326 and 324 of the IPC and was awarded Rs 5000 as fine and 3 years imprisonment. This case again shows that the punishment that is often awarded does not take into account the deliberate and gruesome nature of the attack and rests on technicalities of injuries.

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<sup>40</sup> State of Karnataka by Jalahalli Police Station vs. Joseph Rodrigues S/o V.Z. Rodrigues  
(Decided in the Hon'ble High Court of Kerala on 22/8/2006)

<sup>41</sup> *State(Delhi Administration) Vs. Mewa Singh* 5(1969) DLT 506

<sup>42</sup> 2002 CriLJ1403

In another case<sup>43</sup> due to enmity acid was poured by a mother and son duo over the victims. One of the victim suffered from multiple acid burns on the whole back extending from scapular spine to iliac crest. The other victim suffered Chemical burns on the right side forehead just above medial end of right eye brow and the skin blackened. He also suffered from multiple acid burn on the lateral aspect of left upper arm and skin was blackened apart from other burns. The accused were convicted under Section 304 (punishment for culpable homicide not amounting to murder) and 323/34 IPC (punishment for voluntarily causing hurt with common intention), with imprisonment of a year and rigorous imprisonment for one year.

Thus over the years various kinds of acid attacks have been registered under the sections related to hurt, grievous hurt, murder etc. However, the nature and effect of the crime of acid attack is very distinct and complex and the Sections relating to hurt and grievous hurt do not provide an adequate relief and punishment. Apart from this the police often use their discretion to decide what sections should be registered in the case of acid attacks and this discretion is at times influenced by gender bias and corruption or is a wrong assessment.

In most of the cases no compensation has been awarded. In those in which compensation has been awarded the sum is minimal and is totally inadequate to meet even the medical expenses. Normally courts just levy fines without even giving these to the victims. The section on Compensation in the CrPC should therefore clearly spell out that the fines levied should be given to the victim or their dependents.

The victims suffer a great deal due to a 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.

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<sup>43</sup> *State of U.P Vs. Smt. Aqueela and Others* (1999 CriLJ 2754)

## **CHAPTER 4**

### **Law in Other Countries**

#### **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.”<sup>44</sup> 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. Infact 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”.<sup>45</sup>

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

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<sup>44</sup> Internet Edition Holiday, *The acid violence against women*, Shadnaz Khan, May 27, 2005

<sup>45</sup> *Burnt not Destroyed-Report by CSAAAW*.

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 in 2002 to address the growing problem.

### **Bangladesh:**

There has been a steady increase in acid attacks in Bangladesh from approximately 12 per year to 50 per year in the mid-1990s. An even more significant jump was observed in the late 1990s when NGOs in Bangladesh reported up to 250 cases per annum. The sudden increase in cases has been partly attributed to better reporting and making the cases more visible by NGOs like Naripokkho, a women's advocacy organization, in 1995 and the Acid Survivors Foundation in Dhaka in 1999. These NGOs made sure that as many cases as possible were reported and recorded and that the victims received help and compensation.<sup>46</sup> However, only part of this increase can be explained by this progress that was made in the documentation of cases<sup>47</sup>. In 2001, 340 cases were reported, in 2002, 336 cases were reported and in 2003, 335 cases were reported<sup>48</sup>. Earlier attacks were almost always committed against young women and girls by men who were angered by their victims rejecting their sexual advances or marriage proposals. However, as the crime became more common the motives for attacks grew more varied and presently more than 30% of victims are men, and land disputes are one of the biggest reasons for attacks.<sup>49</sup> Between 1999 and 2002, acid attacks in Bangladesh increased at a rate of 50% per year, culminating in 485 attacks in 2002. In 2003 there was a 15% decrease in cases to 410 per year.<sup>50</sup>

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<sup>46</sup> *Acid Attacks: Bangladesh's Efforts to Stop the Violence*, Jordan Swanson, Harvard Health Policy Review Archives, Spring 2002; Vol 3, No 1

<sup>47</sup> *Baseline Survey with International Comparative Analysis of the Legal Aspects of Acid Violence in Uganda*, Commissioned by: Acid Survivors Foundation Uganda, Legal Consultant: Rachel Forster, November, 2004

<sup>48</sup> *Acid Violence Against Women*, Quoting ASF statistics.

<sup>49</sup> *Acid Survivors Foundation Bangladesh*.

<sup>50</sup> *Acid Survivors Foundation Bangladesh*

The experience in Bangladesh was that acid violence cases took up to 10 years to be prosecuted in court and as many as 1 in 10 cases did not go to trial.<sup>51</sup> By 1999 only 10 men had been imprisoned as a result of an acid crime. Between 1999 and 2001 of the 750 acid attack cases reported and only 25 were convicted.<sup>52</sup>

The Acid Offences Prevention Act 2002<sup>53</sup> reads as follows-

**Section 4: Punishment for killing of a person by acid:** Whoever kills anyone by acid shall be punished with, death or rigorous imprisonment for life and also with fine no exceeding One Lac Taka

**Section 5: Punishment for hurt by acid:** Whoever causes such bodily injury to a person, by acid, that-

- a) His/Her sight or ear is damaged fully or partly or face or breast or sexual organ is disfigured or damaged, he shall be punished with, death or rigorous imprisonment for life and also a fine not exceeding One Lac Taka.
- b) Any member or joint of his/her body is disfigured or damaged or injured in any part thereof, he shall be punished with, imprisonment of either description which may extend to 14 years but not less than 7 years of rigorous imprisonment.

**Section 6: Punishment for acid throwing or attempt to throwing:** Whosoever throws or attempts to throw acid on any other person even if such an act causes no damage or injury to that other person whether physically, mentally or otherwise, he shall be punished with, imprisonment of either description which may extend to 7 years but not less than 3 years of rigorous imprisonment also with a fine not exceeding Fifty Thousand Taka.

It is relevant to mention that prior to 1983, all acid crimes in Bangladesh were prosecuted using the penal code. In 1983, the word “acid” was included in the

<sup>51</sup> Monira Rahman, Executive Director, Acid Survivors Foundation, Bangladesh.

<sup>52</sup> supra 21

<sup>53</sup> Unofficial translation of Act 2 of 2002, The Parliament of Bangladesh.

penal code to try to provide some clarity, but there were still gaps in the law when considering the very specific nature of acid crimes. <sup>54</sup>In 1995 the government enacted the Cruelty to Women and Children Act and this Act addressed acid attacks specifically. At that point in time, acid violence was thought to be a gender specific issue and all acid crimes against women and children were prosecuted through this Act. However any attack committed against a man had to be prosecuted through the old penal code. From 1995 onwards there was an increased trend in the use of acid against men and so a new law was needed to prosecute cases inflicted on men. When the law was revised and in 2002, the maximum punishment was increased from 7 years under the penal code to death.

1. The law addresses the problem of delay in prosecuting cases by providing a fixed time for investigations:
  - The investigating police officer must complete the investigation within 30 days following the reported attack or the Magistrate's order for an investigation.
  - Two extensions of 15 days each can be granted on application to the court
  - If after 60 days, the officer is unable to complete the investigation, a new officer must be assigned and action will be taken against the first officer
  - The new officer has 15 days to complete the investigation.
2. Trial Procedures:
  - The total time allowed for investigations is 90 days. The trial then has to be completed and a conviction secured within 90 days of the end of the investigation period.
3. The court is very proactive in ensuring that the police investigate acid cases. Section 13 in the Act states that legal action will be taken against any officers who are negligent or corrupt in investigating the crime.
4. Medical Examination of the Victim: This Section is to ensure that the acid attack victim gets proper medical examination immediately and receive a certificate regarding the examination. The Section also lays down that action will be taken against a negligent doctor.
5. All offences under the Act are cognizable, non-compoundable and non-bailable.
6. Although the crime is regarded as non-bailable in Section 13 of the Act, Section 14 of the act is a specific provision that gives the Court some discretion as to when it can grant bail. This Section states that a bail petition

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<sup>54</sup> supra 21

cannot be filed if the Court is convinced that the complainant is not given the chance for hearing on the bail petition, or there are reasonable ground for conviction or He/she is not woman or child, or not physically impaired and the tribunal is not satisfied that ends of justice will not be hampered if he is enlarged on bail. If the Court is satisfied that the person is not involved in the offence, it can grant bail.

7. Acid-offences Prevention Tribunals have been set up solely to try acid cases, headed by district or session judges. These topic-specific Tribunals are to ensure that members on the Tribunals are properly sensitized to acid attack cases.

The Acid Control Act, deals with restricting and controlling the sale and supply of acid in Bangladesh. This Act attempts to control the sale and supply of acid in Bangladesh. 15-member National Acid Control Councils have been established across the country. Each council is headed by a District Commissioner. Members of the Councils are selected from the government and also lawyers, commerce people, medical professionals, specialists in women's issues and members of the media. The councils make proposals to take action to enforce and monitor the laws regarding acid sale in their respective area as well as to assist in the proper reporting, treatment and rehabilitation of victims.

The councils raise public awareness about the consequences of acid crime. In spite of the enactment of the new law the experience in Bangladesh has been that it is still very hard to restrict the sale of acid. It is first difficult to find the source of the acid used during the attack and thus to prosecute the supplier. It is also easy disguising the reason for requiring acid by proposing legitimate excuses. Furthermore, covering up the real supply of acid in their records is an effortless task for suppliers and as bribery is common in Bangladesh, acid is easy to obtain.

## **Cambodia**

In a 2003 report on acid attacks in Cambodia<sup>55</sup>, collected from newspapers it was reported that between December 1999 and November 2002, 63 people were subject to acid attack. Out of these, 30 victims were female and 31 male.

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<sup>55</sup> 2003 report by licadho, *living in the shadows: acid attacks in cambodia*. published by project against torture cambodian league for the promotion of human rights (licadho).

However, 29% of the victims were not targets of the attack and 12 males and 4 females, plus two others whose sex had not been reported were injured by accidents and included friends and family members of the victims or their drivers and other nearby passers. Thus, most the intended victims were women. Thereafter it has been reported <sup>56</sup> that atleast 60 known cases of acid attack violence occurred in 2005. However, others <sup>57</sup> suspect that the annual incidence rate could be as high as 100. A newspaper report <sup>58</sup> states that from October 1999 to December 2006 there have been 111 cases of acid attacks with a total of 181 victims. Most of these attacks were perpetrated on women <sup>59</sup> and involved husbands throwing acid on their wives or former wives, wives throwing acid on the second wives or mistresses and in some cases women throwing acids at their husband because of husband's violence (beating and abusing) towards them.

#### The Law :

Acid Violence is not specifically addressed in Cambodian criminal law. Perpetrators can be charged with battery with injury, which carries a sentence of up to 10 years imprisonment.

#### **Article 41: assault and battery<sup>60</sup>**

1. Anyone who voluntarily strikes another resulting in injury leading to permanent disability or temporary disability lasting more than six months, is guilty of battery and shall be liable to a punishment of one to five years in prison.
2. If the disability lasts less than six months, the offence shall be punished by a term of imprisonment of six months to two years.

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<sup>56</sup> Data provided by Cambodian Acid Survivors Charity (CASC)

<sup>57</sup> suspect Acid Survivors Trust International (ASTI)

<sup>58</sup> *The Cambodia Daily*, 5 Dec 06

<sup>59</sup> 2003 report by LICADHO, *Living in the Shadows: Acid Attacks in Cambodia*

<sup>60</sup> Provisions dated September 10, 1992 relating to the judiciary and criminal law and procedure applicable in Cambodia during the transitional period, [www.licadho.org](http://www.licadho.org)

3. If there is no disability, the punishment shall be a term of imprisonment of two months to one year.

4. If any weapon is used to strike the blows, the period of imprisonment shall be doubled.

If the victims dies or receives life-threatening injuries, more serious charges such as murder, attempted murder or manslaughter should be laid. They carry sentences of 10 years to life imprisonment.

### **Article 31: murder**

1. Anyone who kills or attempts to kill another person after premeditating the crime, or by preparing an ambush, or who kills or attempts to kill another person in the course of theft or rape, is guilty of the murder, and shall be liable to a punishment of imprisonment for a term of ten to twenty years.

2. Premeditation is the process of conceiving and preparing an attack on another person before the actual execution of the attack. An ambush consists of lying in wait with the intention of committing an act of violence against another person.

### **Article 32: voluntary manslaughter**

Anyone who voluntarily kills or attempts to kill another person without any of the aggravating circumstances mentioned in Article 31, whether or not a weapon is used, is guilty of the crime of voluntary manslaughter, and shall be liable to imprisonment for a term of eight to fifteen years.

However, convictions have been reported in only 6 cases and women have normally received more severe punishments than men<sup>61</sup>

A draft provision in Cambodia's domestic violence law is being approved by the National Assembly and Senate. It proposes a punishment for acid throwers of between 5 – 10 years imprisonment. Activists are still campaigning for the

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<sup>61</sup> 2003 LICADHO report

wording to be changed to apply to any person who throws acid, rather than just the current application only to family members who throw acid on other family members. This would exclude people who throw acid at victims who are not related to them. Also, activists argue that the maximum penalty for acid throwing should be increased, especially if permanent disfigurement or disability, like blindness, has been caused. This would be the first time that Cambodian law specifically refers to acid attacks.

However till date the Domestic Violence Law, which was approved in 2005 does not deal with acid attacks in specific terms.

## **Uganda**

In Uganda according to Acid Survivor's Foundation(ASFU) Acid violence in affects both men(48%) and women(52%) in almost equal numbers<sup>62</sup>. The motives behind the attacks are domestic arguments, land disputes, business rivalry etc. There are also cases of victims that have been injured by mistake for being there at the time of the acid throwing as there were in Cambodia. These are often children who were being carried by the mother victims at the time of the attack. ASFU is also aware of many cases where victims have no idea why they were the target of an attack. Acid violence crosses the social strata of society in Uganda – from the very poorest to some very influential and wealthy people. ASFU has found that attacks are not only carried out by the person with the grievance but in 15 % of cases, the acid is thrown by an assassin; who can be hired at a very low cost.

ASFU suspects under-reporting of acid violence cases due to public stigma attached to victims, poor access to justice, police inefficiency and the victim's lack of finances to fight the case through the police system and then the courts.

The relevant section to arrest, prosecute, convict and sentence perpetrators of acid violence under the Ugandan Penal Code is Section 216(g) (formerly S209) and it carries life imprisonment and reads as under:-

“Any person who, with intent to maim, disfigure or disable any person, or to do some grievous *harm to any person or to resist or prevent the lawful arrest or detention of any person* –

*(f) puts any corrosive fluid or any destructive or explosive substance in any place; or*

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<sup>62</sup>, *Baseline Survey with International Comparative Analysis of the Legal Aspects of Acid Violence in Uganda, 2004.*

*(g) unlawfully casts or throws any such fluid or substance at or upon any person, or otherwise applies any such fluid or substance to the person of any person, commits a felony and is liable to imprisonment for life.”*

However, it has been reported that the above section is not applied consistently by the police or the courts. Many attackers have been charged under other sections of the Penal Code, for example, under Section 219 for “grievous harm” which carries a sentence of upto seven years only. Another problem that arises is that police officers have too much discretion in terms of the degree of charges that they are able to bring on. Moreover, the police are not consistent in bringing charges, as charges that are filed often seem to be dependent on the individual decision of the police officer rather than one of policy.

A charge is also often levied according to the level of injury rather than by investigating the intent and motive behind the attack. Therefore if the victim manages to avoid major injuries, the perpetrator is released or only charged with a minor assault, despite the fact that the perpetrator had intended to disfigure or kill the victim. ASFU has recorded cases where there had not been physical injury and therefore no prosecution of the perpetrator or only a light sentence, resulting in the victim living in fear of a later attack. In Uganda only a few acid attacks have been charged under attempted murder which seems unfair given the premeditated nature of acid attacks.<sup>63</sup> Apart from this in Uganda the police are often corrupt, the prosecutors inefficient and sometimes cases are dropped because the victims are either silenced by threats or paid off.

As eluded to above, there is no consistency in sentencing, a fact confirmed generally in the sentencing system of Uganda. Sentences vary from a few months (most of which is spent on remand) to life imprisonment. Police and judiciary discretion apply and since many do not understand the severity of acid cases, often light charges and lenient sentences result. Generally sentences are too lenient given the permanent damage caused to the victim in terms of health, job, family and social status. Prior to ASFU intervention, in 62% of known acid cases in Uganda, perpetrators received custodial sentences of less than 10 years. Since the intervention of ASFU, the figure has dropped to 46%.

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<sup>63</sup> ASFU Report 2004

There is currently no form of compensation available to victims of acid attacks, despite the significant costs incurred by victims and their families as a result of the attacks. No government fund exists to provide any form of compensation, fines are not imposed on perpetrators and ASFU has no records of any civil actions being brought against perpetrators.

Concentrated sulphuric acid, commonly used in Uganda for re-charging batteries is readily available at petrol stations, street sides and from outlets in the industrial areas of cities for purchase by any individual without any questions being asked.

Currently there is no adequate legislation to control and regulate the sale and supply of acid and there are no laws to control businesses that use acid in their manufacturing process, nor for those who transport, import and export such chemicals. There are no licensing laws controlling the sale and supply of acid by vendors and no records are kept of those who buy acid and the reasons for their purchase.

However, though it is hardly used Section 230 of the Ugandan Penal Code punishes a person with imprisonment for 6 months and a fine of two thousand shillings “ who does with any poisonous substance any act in a manner so rash or negligent as to endanger human life or to be likely to cause hurt or injury to any other person or knowingly or negligently omits to take such care with any poisonous substance in his or her possession as is sufficient to guard against probable danger to human life from such poisonous substance.”

## **Nigeria.**

Acid violence first reported in the city of Port Harcourt in the early 1990's.<sup>64</sup> The reported cases of acid attacks on women between 2001 and 2004 was 21 and another 14 cases between 1990 and 2000.<sup>65</sup> Although acid violence is a gender-based crime in Nigeria, there have also been reported cases of attacks against men more recently. Between 2003 and 2004 reported 7 attacks that were committed against men by women.<sup>66</sup>

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<sup>64</sup> Project Alert on Violence Against Women, 2004

<sup>65</sup> Ibid.

<sup>66</sup> Ibid.

There is no law currently in Nigeria that specifically deals with acid attacks. Offenders are prosecuted under the penal code for battery or for causing grievous harm<sup>67</sup>. The relevant sections of the Penal Code in Nigeria reads as under-

**Chapter 28**

Offences Endangering Life or Health

**332.** Any person who, with intent to maim, disfigure or disable, any person, or to do some grievous harm to any person, or to resist or prevent the lawful arrest or detention of any person-

- (1) unlawfully wounds or does any grievous harm to any person by any means whatever; or
- (2) unlawfully attempts in any manner to strike any person with any kind of projectile or with a spear, sword, knife, or other dangerous or offensive weapon; or
- (3) unlawfully causes any explosive substance to explode; or
- (4) sends or delivers any explosive substance or other dangerous or noxious thing to any person; or
- (5) causes any such substance or thing to be taken or received by any person; or
- (6) puts any corrosive fluid or any destructive or explosive substance in any place; or
- (7) unlawfully casts or throws any such fluid or substance at or upon any person, or otherwise applies any such fluid or substance to the person of any person;

is guilty of a felony, and is liable to imprisonment for life.

**335.** Any person who unlawfully does grievous harm to another is guilty of a felony, and is liable to imprisonment for seven years

Thus in Nigeria a person can be punished with imprisonment upto life for putting a corrosive fluid in any place or for unlawfully casting or throwing any such fluid at or upon any person even if no injury is caused .

## Jamaica

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<sup>67</sup> Acid Survivors Foundation Uganda, supra 36

In Jamaica the offences against Persons Act (OAPA) provides for a life imprisonment for causing grievous bodily harm. There is no specific law dealing with acid attack even though Jamaica is said to have the largest number of absolute acid attack victims. The relevant sections of the OAPA read as follows-

## Offences Against the Persons Act

Penalty for Murder: Death or life imprisonment, not being less than 15 years.

### *Attempts to Murder:*

**13.** Whosoever shall administer to, or cause to be administered to, or to be taken by any person, any poison or other destructive thing, or shall, by any means whatsoever, wound, or cause any grievous bodily harm to any person, with intent, in any of the cases aforesaid, to commit murder, shall be guilty of felony, and, being convicted thereof, shall be liable to be imprisoned for life, with or without hard labour.

### *Acts Causing or Tending to Cause Danger to Life, or Bodily Harm:*

**20.** Whosoever shall unlawfully and maliciously, by any means whatsoever, wound, or cause any grievous bodily harm to any person, or shoot **at** any person, or, by drawing a trigger, or in any other manner attempt to discharge any kind of loaded arms at any person, with intent in any of the cases aforesaid, to maim, disfigure or disable any person, or to do some other grievous bodily harm to any person, or with intent to resist or prevent the lawful apprehension or detainer **of** any person, shall be guilty **of** felony, and, being convicted thereof, shall be liable, to be imprisoned for life with or without hard labour.

**22.** Whosoever shall unlawfully and maliciously wound or inflict any grievous bodily harm **upon** any other person, either with or without any weapon or instrument, shall be guilty **of** a misdemeanour, and, being convicted thereof, shall be liable to be imprisoned for a term not exceeding three years, with or without hard labour.

**29.** Whosoever shall unlawfully and maliciously by the explosion of gunpowder or other explosive substance, burn, maim, disfigure, disable, or do any grievous bodily harm to any person, shall be guilty of felony and, being convicted thereof, shall be liable to be imprisoned **for** life, with or without hard labour.

Although acid violence is not common in the UK, the courts have punished the perpetrators harshly, when there have been such attacks. Attacks are charged under Section 29 of the Offences Against the Person Act 1861 (OAPA). This section of the Act specifically refers to “*casting or applying any corrosive fluid with intent to burn maim disfigure or disable any person.*” If not charged under this provision, they are dealt with as murder or attempted murder.

Offences against the Person Act 1861

20. Inflicting bodily injury, with or without weapon.

Whosoever shall unlawfully and maliciously wound or inflict any grievous bodily harm upon any other person, either with or without any weapon or instrument, shall be guilty of a misdemeanor, and being convicted thereof shall be liable [...] <sup>34</sup> to be kept in penal servitude [...] <sup>35</sup>

29. Causing gunpowder to explode, or sending to any person an explosive substance, or throwing corrosive fluid on a person, with intent to do grievous bodily harm.

Whosoever shall unlawfully and maliciously cause any gunpowder or other explosive substance to explode, or send or deliver to or cause to be taken or received by any person any explosive substance or any other dangerous or noxious thing, or put or lay at any place, or cast or throw at or upon or otherwise apply to any person, any corrosive fluid or any destructive or explosive substance, with intent in any of the cases aforesaid to burn, maim, disfigure, or disable any person, or to do some grievous bodily harm to any person, shall, whether any bodily injury be effected or not, be guilty of felony, and being convicted thereof shall be liable, at the discretion of the court, to be kept in penal servitude for life or to be imprisoned

The sentencing guidelines under Section 29 of OAPA 1861, state that there should always be a custodial sentence for this offence and the maximum sentence is life imprisonment. Lengthy sentences have mostly been given by the courts in tune with the premeditated nature of the crime. Sentences of 5- 6 years imprisonment have been upheld in cases where there was no or minimal injury to the victim. For cases of severe disfigurement, sentences of 14 – 16 years imprisonment are awarded. The case of Radford upheld in 1986 where the victim substantially lost vision in one eye and the perpetrator was given only a 5 year sentence, now seems to be out of line with the lengthier sentences imposed in the 1990’s and 2000’s.

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<sup>68</sup> The facts in this chapter have been taken from *The Baseline Survey with International Comparative Analysis of the Legal Aspects of Acid Violence in Uganda*

Below are some cases taken from judgments of the UK courts are as under:

- ***Radford (1986) 8CR App R (S) 60: 5 years imprisonment*** was upheld when a corrosive substance was squirted into the victim's face causing substantial loss of vision in one eye. The appellant had pleaded guilty at the trial and claimed that he had not intended to blind the victim only to disable. However the Appeal judge held that because the attack was premeditated and deliberate, the conviction and sentence would be upheld.
- ***Ismail (1992) 13 CR App R (S) 395: 14 years imprisonment*** was upheld for throwing nitric acid into the face of an estranged partner, causing gross disfigurement and blindness.
- In the case ***Boumphrey (1994) 15 Cr.App.R.(S.) 733***, a sentence of ***13 years imprisonment*** was upheld for the total blinding of an innocent young man. There was a plea of guilty and the appellant was a 47-year-old man with a serious heart condition. And although there were indications of previous violence, he had no previous convictions for violence. These facts reduced the length of the sentence slightly.
- ***Carrington (1999) 2CR App R (S) 206: 6 years imprisonment*** was upheld when sulphuric acid was thrown into the face of the offender's former girlfriend. No long term damage was sustained due to prompt first aid but because the attack was premeditated and no remorse was shown, the sentence was upheld. The judge stated that the fact that the victim did not sustain any serious permanent injury was not something that could go to the credit of the appellant. It was due solely to assistance given by others.
- In the case of ***Newton [1999] 1 Cr.App.R.(S.) 438*** a planned acid attack occurred on an estranged wife by her husband at her place of work, leaving her with 10 per cent burns to her body and with the aggravating feature that he robbed her till at the same time. A ***15- year sentence was reduced by the Court of Appeal to 12 years***. However, it is important to note that in that case there was no permanent scarring and no element of conspiracy, which serve to increase the length of a sentence.
- In the case of ***Jones [1999] 1 Cr.App.R.(S.) 473*** a man was held in a car for 45 minutes and acid poured over him following a dispute between him and the attacker over money, which was said to be owed as the proceeds of a fraudulent enterprise on their mutual behalves. Extensive

burns to the face and the possible loss of one eye was incurred. *Sixteen years was upheld as a proper sentence* on the tariff basis for that offence, although a four-year sentence then being served was ordered to run concurrently on the basis of the totality principle.

- In *Krishan Raja Rai & Earl Robinson (2000) 2 CR App R (S) 120: 15 years imprisonment* was upheld for both offenders – one who had the intent and the other who actually threw the acid. Rai had issued threats to his former girlfriend that “you think you’re so pretty, you won’t be for long” and to the girlfriend’s father he had said “If I don’t get her I’ll spoil her face or I will kill her.” Robinson, who was unknown to the girlfriend ran up one evening on the street and poured concentrated nitric acid over her head from a lucozade bottle. As a result of the attack the girlfriend lost her right ear, significant scarring to her face, neck, scalp and chest. She required several surgical procedures. She also needed regular counselling from a clinical psychologist.

The judge in the first instance held that the penalty for an offence of this nature must be longer than a normal sentence. Also he felt that the public needed to be protected from such offenders.

- The English courts have been equally severe against those behind an attack who have hired someone else to commit the crime. In the unreported case of **Humphries (1996)**, Mr Peter Humphries, hired a stranger to throw acid on his former wife. Miss Hammett was babysitting for the former wife and was injured in a case of mistaken identity as the attacker did not know that she was not the intended victim. Although the attacker was never caught, Humphries received a *12 year sentence*.

The table below shows the kind of sentences that have been awarded in cases of acid attack in different countries where such data was available till .....

### 6.8 Summary table of laws and sentences in other countries.

Country	Specific Law mentioning acid	Maximum Sentence	Usual sentence
Bangladesh	Acid Crime Suppression Act	Life/ Death	7 years - death
Cambodia	Draft resolution being presented	10 years	9 months – 10 years
India	No specific law	Not known	Not known
Nigeria	No specific law	Not known	Not known
Pakistan	No specific law	Not known	Not known
Uganda	S 216 (g) Penal Code	Life	2 years – 15 years
UK	S29 Offences Against the Person Act 1861	Life	10 -15 years

### 6.9 Summary Table of Incidence Rates where yearly figures available.

Country	Population <sup>32</sup>	Number of attacks per year	Incidence
Jamaica	2.6 million	56	1: 46,428
Pakistan	148.4 million	1,030	1:144,077
Bangladesh	138.1 million	410	1:336,829
Uganda	25.3 million	25	1:1,012,000
Cambodia	13.4 million	10	1:1,340,000

*Source Tables taken from the Baseline Survey with International Comparative Analysis of the Legal Aspects of Acid Violence in Uganda*

## CHAPTER V

### Compensation for the Victim

In the Delhi Domestic Working Women's Forum case <sup>69</sup>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

<sup>69</sup> Delhi Domestic Working Women's Forum Vs. Union of India (1995) I SCC 14

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.

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 <sup>70</sup>, 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 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 been provided that the board can give interim financial relief upto Rs. 1 Lakh within a period of 30 days directly to the hospital. Apart from other issues the main problem with the suggestions of the N.C.W is that it is restricting the function of the board to only acid attack cases.

The Commission has also examined the Canadian legislation for payment of compensation under the “ Compensation for Victims of Crime Act”. This act applies to compensation claims arising from an injury or death resulting from certain offences. Thus, the act provides for compensation inter-alia to victims of offences like sexual assault, aggravated sexual assault, murder, manslaughter, sexual exploitation, assault, kidnapping etc. The act sets up a Criminal Injuries Compensation Board, which can pay compensation to the victim or a person who is responsible for maintenance of the victim or where death has occurred, the

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<sup>70</sup> *Bodhisattwa Gautam Vs. Shubhra Chakraborty* AIR 1996 SCC 922

dependants or any of them of the victim or the person who was responsible for the victim's maintenance. The compensation can be awarded under the following heads –

- a) Expenses actually and reasonably incurred or to be incurred as a result of the victims injury or death;
- b) Pecuniary loss or damages incurred by the victim as a result of total or partial disability affecting the victims capacity for work;
- c) Pecuniary loss or damages incurred by the dependants as a result of the victim's death;
- d) Pain and suffering ;
- e) Maintenance of a child born as a result of sexual assault;
- f) Other pecuniary loss or damages resulting from the victims injury and any expense that in the opinion of the board it is reasonable to incur.

Interim payments to the applicant preceding the award can also be made. The total compensation ordered to be paid cannot exceed \$100,000 in lump sum payments for one occurrence. The payment of the compensation has to be paid out of the consolidated fund.

The U.K Criminal Injuries Compensation Act 1995<sup>71</sup> makes the government responsible for setting up a scheme and states as under-

“(1)The Secretary of State shall make arrangements for the payment of compensation to, or in respect of, persons who have sustained one or more criminal injuries.

(2) Any such arrangements shall include the making of a scheme providing, in particular, for—

(a) the circumstances in which awards may be made; and

(b) the categories of person to whom awards may be made.

(3) The scheme shall be known as the Criminal Injuries Compensation Scheme.”<sup>72</sup>

It states that a standard amount of compensation will be determined by reference of the nature of the injury and additional amounts with respect to special expenses and fatal injuries can be provided for. The act states that the government should prepare a table showing the amount which should be paid in different cases or for

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<sup>71</sup> [http://www.opsi.gov.uk/acts/acts1995/ukpga\\_19950053\\_en\\_1#11g1](http://www.opsi.gov.uk/acts/acts1995/ukpga_19950053_en_1#11g1)

<sup>72</sup> Section 1 of Criminal Injuries Compensation Act 1995

different injuries. A claim officer to award the claim and adjudicators to hear an appeal have also been specified under the act

It has been pointed out that Financial Compensation for the victim can be very generous in the UK. The UK Criminal Injuries Compensation Board provided a victim GBP £86,250 (approximately US \$140,000). The Assessment of general damages read as under:-

“The women was aged 44 at the date of the assault and 50 when she was injured in an acid attack. 31 She had 8% thickness burns to her face, right arm, dorsum of both hands and the left upper chest plus damage to both eyes. She had to have several skin grafts 10 months, two years eight months and two years 11 months after the assault. She was left with extensive scarring to her whole face, loss of hair above the left forehead, severe scarring to the right arm and left forearm and scarring to both hands. All scarring was permanent. Her left earlobe was destroyed, she suffered a perforated left eardrum, likely to have been caused by chemical burns and suffered permanent hearing loss, tinnitus and a persistent and foul smelling variable discharge from the left ear. She also experienced pain in the throat, on the left side of the face and ear, particularly when in the cold, soreness in her eyes with extensive watering on a permanent basis. There was some visual impairment. She also suffered from headaches, dizziness and a loss of balance. Prior to the attack she had worked full time in a supermarket that she ran with her husband and was outgoing and sociable. Following the attack she developed agoraphobic tendencies and suffered from sleep disturbance, anxiety, frequent flashbacks, excessive sensitivity to heat and became socially withdrawn and more distant in her relationships. There was a diagnosis of severe post traumatic stress disorder and a moderately severe depressive reaction. The prognosis for the psychiatric injuries was poor although there had been some small improvement by the hearing. Due to the severity of her injuries, S was unable to work again.”

After looking at the various legislations we feel that a separate act should be proposed for dealing with compensation to victims of acid attacks, rape, sexual assault, kidnapping etc. We are suggesting a broader legislation so that it can deal with the problems of victims of different crimes who need rehabilitation and compensation for survival.

## CHAPTER VI

### Conclusion and Recommendations

The preceding chapters highlight 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 I.P.C, which deals with causing grievous hurt by throwing of a corrosive substance etc. is insufficient/ inadequate to deal with the issue. *Firstly*, the definition of grievous hurt is not broad enough to cover the various kinds of injuries which are inflicted during acid attacks. *Secondly*, the section does not cover the act of administering acid. *Thirdly*, 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. *Fourthly*, the section in the I.P.C does not punish the intentional act of throwing of acid if no injuries occur. *Lastly*, the section also does not specify who the fine should be awarded to.

We also feel that 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.

Apart from the above we feel that 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 purchasers of acid should be recorded.

We have also examined the various laws in different countries relating to compensation for criminal injuries. 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. The suggestion of the National Commission for Women for setting up a board specifically for acid victims has also been examined by us. We however feel that since not only victims of acid attacks but other victims of different crimes also need compensation for rehabilitation, like victims of rape, a law should be enacted to set in place Criminal Injuries Compensation Boards at the Centre, State and District levels in our country.

1. We therefore propose that a new section 326A be added to the Indian Penal Code. The proposed Section 326 A will read as follows-

**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 Lakhs.

Provided that any fine levied under this section shall be given to the person on whom acid has been thrown or administered.

#### CLASSIFICATION OF OFFENCE

Minimum Imprisonment of 10 years extendable upto imprisonment for life and fine--cognizable-- non-bailable—triable by court of session—non-compoundable.

**(ii) Intentionally throwing or administering acid-** Whoever throws acid on, or administers acid to, any person with the intention of causing burns or maiming or disfiguring or disabling or causing grievous hurt to that person shall be liable to imprisonment of either description for a term not less than 5 years but which may extend to 10 years and with fine which may extend to Rs. 5 Lakh.

#### CLASSIFICATION OF OFFENCE

Minimum Imprisonment of 5 years extendable upto 10 years and fine--cognizable-- non-bailable—triable by court of session—non-compoundable.

2. We 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.

3. We propose 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.
  
4. We further recommend that the distribution and sale of acid be strictly regulated and the sale of Acid across shop counters be banned.

(Justice AR. Lakshmanan)  
Chairman, Law Commission of India

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