



WHY THE BAN ON THE SALE OF ACID OVER THE COUNTER BY THE SUPREME COURT IN THE CASE OF LAXMI V UOI & ORS. COULDN'T REDUCE THE NUMBER OF ACID ATTACKS IN INDIA?

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INTRODUCTION

An acid attack is a form of violent assault involving the act of throwing acid or a similarly corrosive substance onto the body of another with the intention to cause harm. Acid attacks have been at an all time high in our country for the past few years. With young women being victims of such odious crime, it calls for us to question the existing legislations, and why they cannot retard the curve of a rising number of acid attack cases being reported every year.

A VICTIM'S VOICE

For the purpose of this research I reached out to Priya (name changed), one of my friend's neighbours who has been a victim of this abominable crime. Previously I had read about the sufferings that an acid attack victim goes through but after interacting with her I understood it goes way deeper than what we just read in the articles. Now 24 years of age, she was a minor when she was attacked by a 21 year old man on her way to school as a revenge for rejecting his proposal for marriage. 20% of her skin was burnt. No surgery could restore the condition of her

skin or even her faith in the Indian Judicial system. "He is roaming free on the streets today and I have been cornered by the society in my house. Wherever I go I need to cover my face with a scarf as if I am ashamed of committing a crime, yet the criminal walks by unabashed.", she said expressing her anguish. She mentioned how small kids often get scared of her and then she has to deal with the resentful eyes of their mothers, if she goes out in public. When asked why she didn't take any legal steps, I came to know that when her parents went to file a complaint with the police, the police advised them not to file an FIR as it might lead to further complications. This reflects how the state machinery has been a complete failure in aiding acid attack victims. Acts and statutes can't help if the executive authorities are not willing to adapt and enforce them.

BEFORE CRIMINAL LAW AMENDMENT ACT, 2013

India, before the Criminal Law Amendment Act¹ was passed in 2013, did not have any specific laws that particularly dealt with acid attacks. A provision was there under Section 326 of the Indian Penal Code that dealt with causing grievous hurt by dangerous weapons or means voluntarily, which included hurt by corrosive substances. The scope of this section was also very slender and was not fit to deal with this crime appropriately because-

- a) It did not cover the various kinds of injuries inflicted by acid attack and how grievous injury has been caused.
- b) It did not cover the planning and administering of the attack.

¹ The Criminal Law (Amendment) Act, 2013, No. 13, Acts of Parliament, 2013 (India).



- c) It did not punish the intentional act which did not cause any injury to the victim.

CASE OF LAXMI VS THE UNION OF INDIA

Even if acid attack cases have been reduced by 1% in India, then it is the result of a landmark case in the Indian legal history, Laxmi v the Union of India and Ors². This case brought about significant changes in Indian Penal Code as well as led to the publishing of guidelines on regulation of the sale of acids or other corrosive substances.

A PIL was filed by Laxmi, a victim of acid attack seeking amelioration of acid attack survivors. Through the PIL she pointed out easy availability of acids in the market, lack of a proper provision related to acid attacks as primary reasons for the rising number of acid attack cases in the country. Due to the lack of proper legislation governing crimes related to acid attacks, the delinquents committed such a grave crime with liberty and in some cases even did not get any punishment. The prerequisite law treated acid attacks as a general offence instead of dedicating a separate section for it. The respondent, the then Solicitor General of India, Ranjit Kumar, acknowledged her petition and decided to implement the model rules without any further delay. Due to this case, the Government of the State and the Union territories contended that all offences under the Poisons Act, 1919³ should be made completely non-bailable and non-cognizable.

Developments that happened following the judgment of this case include:

² Laxmi v Union of India, (2014) 4 SCC 427.

i. An amendment in the Code of Criminal Procedure, 1973 (hereafter referred to as CrPC) by which, a new section, Section 357-A was introduced to compensate the victims and others dependent on them, and led to the preparation of a scheme which would provide funds to all those who have suffered any loss or injury due to an acid attack and needs rehabilitation. The Supreme Court contended that a compensation of INR 3, 00,000 be given to every acid attack victim in all states and union territories. This victim compensation scheme was to be effective in all states and union territories of India.

ii. Concerning the health and medical aid for victims of acid attack, the court issued guidelines that all hospitals, private or public, run by any of the centre, state or local bodies must provide free medical aid to the acid attack victims. Hospitals and clinics were barred from refusing treatment to any acid attack victim. This provision was inserted under Section 357 C of the CrPC.

iii. An amendment was also made in the Indian Penal Code, 1860 (hereafter referred to as IPC) by which two new sections, Section 326-A and Section 326-B were inserted which exclusively dealt with acid attacks. Section 326-A states that any person with any intent to cause harm, physical or mental causes such harm by throwing acid or any corrosive substance on them, will be punished with imprisonment of at least 10 years which may be further extended to life time imprisonment. This may be accompanied by a fine sufficient enough to meet the treatment and medical expenses of the victim. Section 326-B specifies that any person who has attempted an acid attack will

³ The Poisons Act, 1919, No. 12, Acts of Parliament, 1919 (India).



be punished with an imprisonment of 5 years, which may even be extended up to 10 years and also might be liable to pay any amount of fine as deemed fit by the court as compensation to the victim.

- vi. The Government also issued a ban on over the counter sale of acids and declared it as poison, to stop the easy availability of acids in the markets. No one can buy acids without submitting a photo id according to these guidelines. The shopkeepers must also have a valid license to sell acids.

If these guidelines were followed properly, I believe the number of acid attack cases would have come down at least by a bit. However the problem lies in the fact that these guidelines are mostly not followed. In a social experiment undertaken by the crew of *Chaapak* (movie, 2019), the crew members set out to buy acids from local shops in the guise of different characters, such as a housewife, college student, plumber, street goon, businessman and even a drunkard. It is very surprising to note that only one shop keeper refused to sell acids without proper photo id. Otherwise it was an easy access for the other characters to buy acids. This shows the blatant disregard people of this country pose towards laws passed by the judiciary and also the ignorance of the executive as no step is being taken to reprimand them.

PARIVARTAN KENDRA V UNION OF INDIA & ORS. CASE

After the *Laxmi Vs Union of India* case, the *Parivartan Kendra V Union of India & Ors*⁴. Case through a similar petition filed to the

⁴ *Parivartan Kendra v Union of India & Ors*, (2016) 3 SCC 571.

⁵ *Balu vs. State Represented Inspector of the Police*, (2006).

Supreme Court, pointed out the deficiencies which were yet to be filled in the matters of compensating the victims of acid attack. In this case two sisters were attacked with acid at midnight, on 21st October, 2012 while in sleep by a group of four men as a response to denial of sexual advances made by the attackers. This Petition also brought into light the absence of a legal assurance to free medical facilities, rehabilitative facilities, or satisfactory remuneration under the Survivor Compensation Schemes. There was also a delay in providing medical aid to the victim by the hospital authorities. After a long fight, the father of the victim could only get a compensation of rupees three lakh which was not at all sufficient to cover the medical expenses.

Preceding the Criminal Law Amendment Act 2013, cases of acid attacks were listed under various sections of the IPC but there was no provision about granting compensation to the victims and even if it were given, the amount was insufficient. We can take the example of *Balu vs. State Represented Inspector of the Police*.⁵ In this case the husband was convicted of throwing acid on the face of the wife and was directed by the court to pay only rupees two thousand. In another similar case of *Syed Shafique Ahmed vs. the State of Maharashtra*⁶ the accused was directed to pay a compensation of rupees five thousand as a compensation for burning the face of the victim. No monetary compensation can ever compensate for the mental and physical torture that the victims go through. But the State must at least try to cover the medical expenses incurred to reduce the burden on the

⁶ *Syed Shafique Ahmed vs. the State of Maharashtra*, 2002 Cri LJ 1403(B).



victims. The Supreme Court in this case directed the accused to pay a sum of ten lakh as compensation for damaging the face of the elder sister and to pay three lakh as compensation for hurting the younger sister as well.

Both these cases jointly made a great impact and brought a positive change regarding the payment of compensation to the victims. After the case of *Laxmi vs. Union of India*, many other such victims could come forward to seek justice for the pain they suffered and have been paid their due compensation. Cases such as *Shabana Khatun vs. State of West Bengal & Ors*⁷, or *Raja vs. State of Haryana*⁸ came up later where the decision was influenced by the guidelines which followed after the *Laxmi v The Union of India* case. These were cases where the victim's repeated petitions for compensation were not being acknowledged by the court due to that lack of a proper framework. *Laxmi v the Union of India* and *Parivartan Kendra v The Union of India* led to a change in the fate of acid attack survivors.

WHY BANGLADESH WAS SUCCESSFUL IN REDUCING THE NUMBER OF ACID ATTACK CASES IN THE PAST YEARS?

If we look at our neighbour Bangladesh's efforts to effectively reduce the number of acid attack cases in their country then one will surely laud them for their consistent and dedicated effort which has drastically reduced the number of acid attack cases in the past few years. The crime had first emerged significantly in the 1990s in that country. It

⁷ *Shabana Khatun vs. State of West Bengal & Ors*, SCC 28th February 2014.

⁸ *Raja v State of Haryana*, 2019, SCC 28 May 2019.

was a result of the societal patriarchy that prevailed throughout, where rejecting a marriage proposal or resisting sexual advances by men was seen as an unthinkable step women were not allowed to take. They had to be submissive and any one standing up for their rights or dignity would be meted out with disastrous results. Men would throw nitric or sulphuric acid on women to teach them a lesson for their ostentatious behavior. Acid attack victims would be left with disfigured faces including damaged eyes and skin. Survivors would have to live their life as social outcasts as the society with its pitiful stares would not let them forget their distressing past. To stop this heinous crime, Bangladesh brought out a law in 2002 which punished anyone convicted for acid attack with death penalty. This measure led to a sharp decline in the number of acid attack cases in the country – from 494 cases reported in 2002 to 8 in 2019⁹. The Acid Attack Survivors Foundation in Bangladesh aims for 0 acid attack cases by 2023.

CONCLUSION

For the purpose of this research I made a Google form and circulated it among my acquaintances to get an idea of what people out there think about the different aspects of this case. I asked the following question through the form and the responses are enlisted as follows:

1. What makes acid attacks common in India?

- Easy availability of the acids in the markets
- Lack of a strong legislation to deal with people guilty of acid attacks

⁹ <https://www.straitstimes.com/asia/south-asia/tough-laws-sharply-reduce-bangladesh-acid-attacks-on-women>



Responses: 53.7% of people responded that a lack of strong legislation is the reason which makes acid attacks common in India. There were 3 respondents who believed both contributed equally. And the rest 37% went with easy availability acids in the market.

Acid attacks. Not losing faith in the Indian Judicial System, we can hope that it would bring about such laws and statutes which would help not only in the rehabilitation of the victims but also help to wipe out this crime from the country.

2. According to you, what is the primary reason for acid attacks?

- Rejection of a romantic or marriage proposal
- Denying sexual offers/advancements
- Disputes in the family/Disputes in the workplace
- All of the above

Responses: 59.3% went with rejection of a romantic marriage proposal. 27.8% responded with denial of sexual offers or advancements. And the rest went with all of the above.

3. Do you believe a death penalty for those who are convicted on charges of acid attacks would help to reduce the number of acid attack cases in India?

- Yes
- No

Responses: 81.1% said Yes. 18.9% said No.

The answer to the last question shows the majority of the people believe to stop a crime from being committed, a precedent needs to be set, which would instill a sense of fear among the perpetrators. An acid attack is an odious crime and deserves to be treated with great seriousness and sensitivity by the judicial machinery and society collectively. Comparative analysis shows countries with stricter laws (such as Bangladesh) have recorded a decrease in the number of acid attack cases reported. India still lacks a proper legislation which would act as an exemplary catalyst in reducing the number of