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ACID VIOLENCE AGAINST WOMAN AND HER RIGHTS: LEGAL PERSPECTIVE AND PUNISHMENT IN INDIA

Dr. Vaishali Gupta*

Associate Professor, Law,
N.R.E.C. College Khurja
vguptaj@gmail.com

Abstract:

Any kind of violence against woman directly attack on her dignity. But throwing acid on her disturbs her life physically, socially and psychologically. Acid violence is an inhuman, cruel and degrading treatment that is amount to torture and deprived the victim from enjoying right to life and other human rights. In addition, victims of acid and burns violence suffer psychological trauma, economic and social ostracism. They may not be able to work, or be able to find a job, and thus perpetually struggle to survive. This research will explore the legislative lacunas in the penal system for punishing culprits as well as inadequacy of native penal laws for stricter punishment in such heinous crime. Therefore it discusses how far the legislature and courts in India have dealt with the issue of acid attacks and what the cases show. In Indian system there must be stronger law to curb such violence and urgent need to provide social security to victim.

INTRODUCTION

Acid violence happens across the world and it impacts women disproportionately. Although it is also unacceptable when acid violence occurs against men. Acid and burns, like other forms of violence against women and girls, both reflect and perpetuate discrimination of women and girls in society; therefore it is prohibited by international law. Acid attack is a form of gender-based violence against women in which a person usually throws rusty acid on her

* Ford Fellow, Associate Professor, Department of Law, N.R.E.C. College Khurja, Email:vguptaj@gmail.com

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face to seriously injure her and disrupt her socio-economic life. 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. Most of the reported acid attacks have been committed, particularly on young women for spurning suitors, for rejecting proposals of marriage, to avenge the rejection of sexual promotions, affair proposals, land and property disputes etc., in case of domestic violence it is managed by the husband or in-laws seeking dowry, or to show their superiority. Perpetrators of the crime act cruelly and deliberately. According to Acid Survivors Trust International, there are 15,000 cases worldwide and 80% of them involve women as a sex offender. The National Crime Records Bureau Report¹ states that 228 cases of acid attack were reported in India. However, the actual number of cases is likely to exceed 1000 but it was not reported due to fear.

Acid attacks are seen as one of the most vicious crimes as it causes perpetual suffering to the victim. Acid attacks can lead to permanent partial or complete blindness along with far-reaching physical, social, psychological, and economic difficulties. The injuries range from burns to permanent disfigurement to death. 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. Such violence causes immediate damage, disfigurement, pain and long-lasting medical complications for victims. Significant surgery is required by acid burns victims, as well as long-term support and rehabilitation.

Today, acid attacks are reported in many parts of the world, though more commonly in developing countries especially in South Asia.² In India, acid attacks are at an all-time high and increasing every year, with 250–300 reported incidents every year, while the "actual

¹ Crime in India, 2018, Statistics Vol 1 Govt of India

² Acid Survivors Trust International (ASTI)

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number could exceed 1,000.³ According to Acid Survivors' Trust International, from 2011 to 2016, there were 1,464 crimes involving acid or corrosive substance in London alone.

CONCEPTION

An acid is a chemical substance, usually a liquid, which contains hydrogen and can react with other substances to form salts. Some acids burn or dissolve other substances that they come into contact with. Acid throwing or vitriol attack, or vitriolage, is a form of violent assault involving the deliberate splashing or throwing acid or a similarly corrosive substance onto the body of another "with the intention to disfigure, maim, torture, or kill".

Acid has been used in metallurgy and for etching since ancient times. The rhetorical and theatrical term "La Vitriol use" was coined in France after a "wave of vitriol age" occurred according to the popular press where, in 1879, 16 cases of vitriol attacks were widely reported as crimes of passion perpetrated predominantly by women against other women.⁴

On October 17, 1915, acid was fatally thrown on Prince Leopold Clement of Saxe-Coburg and Gotha, heir to the House of Koháry, by his distraught mistress, Camilla Rybicka, who then killed herself. Similarly, multiple acid attacks were reported in the UK in the nineteenth century and the first half of the twentieth century. Again, these were seen as a crime carried out by women, although in practice perpetrators were as likely to be male as female.⁵

The use of acid as a weapon began to rise in many developing nations, specifically those in South Asia. The first recorded acid attacks in South Asia occurred in Bangladesh in 1967, India in 1982, and Cambodia in 1993.⁶ Since then, research has witnessed an increase in the quantity and severity of acid attacks in the region.

LEGAL PERSPECTIVE

³ 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

⁴Welsh, Jane (Fall 2009) "It was like burning in Hell": A comprehensive exploration of acid attack violence. Centre for Global Initiative Carolina Papers on International Health, UNC GLOBAL AT 22

⁵ Watson, Cassie (2017-09-13). "Acid Attacks in Nineteenth-Century Britain". Legal History Miscellany.

⁶Acid Attacks: Bangladesh's Efforts to Stop the Violence, Jordan Swanson, Harvard Health Policy Review Archives, Spring 2002; Vol 3, No 1 Burnt Not Defeated, Report by CSAAAW, April 2007, CSAAAW

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As India does not have a separate law governing the crime of acid attack, cases has been registered under Indian Penal Code (IPC) particularly the sections relating to hurt, grievous hurt, grievous hurt by corrosive substances, culpable homicide, attempt to murder and murder. However, 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. Compensation was scarcely ever granted to the victims or was of the insufficient amount in case it is given.

In a 1998 **Maharashtra case**⁷ 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. The woman and her daughter lost their eyesight finally died due to burn injuries. 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 *Srimanthula Chinna Sathaiah and Anr. Vs. State of A.P*⁸ 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 revenge the accused threw acid on the victim, resulting in severe acid burns on the face and body. In a **2002 AP case**⁹, the accused was suspicious about the character of his wife and inserted mercuric chloride into her vagina, she died due to renal failure. In a **2004 Madras High Court case**¹⁰ 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. In 2006 another **Madras High Court case**¹¹ a person suspected his wife had developed an illicit relationship with one of his acquaintances. In the fit of anger he threw acid on her resulting in severe burns and death of the victim. In a **Calcutta High Court**¹² case 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

⁷Gulab Sahiblal Shaikh Vs. The State of Maharashtra, (1998 Bom CR(Cri))

⁸ 1998(4)ALD 18

⁹ Marepally Venkata Sree Nagesh Vs. State of A.P (2002) Cri L J 3625

¹⁰ Mahesh and parimaladevi vs. State Cri. App. 1078 of 2004 Madras High court

¹¹ Balu v state represented Inspector of Police, 2006

¹²Ramesh Dey and Ors. Vs State of West Bengal 2007 (3)CHN 775

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rebuffed the overtures of the main accused Ramesh. The acid was thrown on the victim Padma, her mother, aunt and son sustained injury, resulting in the death of victim. Accused Ramesh Dey was awarded imprisonment for life, R.I. for one year and Rs. 5000 fine. In another case before the **Hon'ble Supreme Court** in 1975¹³, 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. In another case before the **Supreme Court of India**¹⁴ 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 resulting extensive burn injuries on large parts of their bodies. She died due to the corrosive acid burns and shock. No compensation was awarded to the victims. In all the cases the accused/husbands were charged and convicted under Section 302/34 of the IPC. However, life imprisonment was rarely imposed even though the victim had died.

In a case before the Jharkhand High Court¹⁵ the accused had a photograph of the victim and was blackmailing her but she refused to accede to his demands. The accused poured acid over her head and face at bus stand Dhanbad. The victim suffered burn injuries over the left side of her eye, neck and chest and had to be hospitalized. Accused was charged under Sections 324, 326, 307 IPC and convicted. 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.

Yet another brutal inhuman attack with acid on a 20 year old 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 **Karnataka High Court**¹⁶ stated '**now we are in a more**

¹³ Ravinder Singh v. State of Haryana, AIR 1975 SC 856

¹⁴ Ram Charittar vs. State of Uttar Pradesh etc. (04.04.2007 - SC) See also Smt. Bhagwan Kuar Vs Krishna Maharaja, AIR 1973 SC 1346, State of Madhya Pradesh Vs. Jhaddu and Ors. (1991 Supp(1)545)

¹⁵ Awadhesh Roy Vs. State of Jharkhand (Decided on 12/6/2006)

¹⁶State of Karnataka Bai Jalahalli Police Station vs Joseph Rodrigues, 22 aug 2006, See also Barati Vs. State of U.P., AIR 1974 SC 839

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civilized society governed by law. The court has to balance the gravity of the crime with the appropriate punishment' and sentenced the accused imprisonment for life under Section 307 IPC. 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 Delhi¹⁷ 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 under Section 323 IPC for causing hurt and a little fine of Rs. 300 along with 15 days imprisonment. In a case from Maharashtra¹⁸ 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 convicted under Section 326/324 IPC and Rs 5000 as fine.

In another case from U.P.¹⁹ due to enmity acid was poured by a mother and son duo over the victims. One of the victims 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 and skin was blackened apart from other burns. The accused were convicted under Section 304 (for culpable homicide not amounting to murder) and 323/34 IPC (punishment for voluntarily causing hurt with common intention), with rigorous imprisonment for one year.

¹⁷State(Delhi Administration) Vs. Mewa Singh, 2002 CriLJ1403

¹⁸ Syed Shafique Ahmed Vs. State of Maharashtra ,2002 Cri L J 1403

¹⁹State of Uttar Pradesh V. Smt. Aqueela, 1999 Cr. LJ 2754

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These judgments evidenced that the punishment and compensation that is often awarded does not take into account the deliberate and gruesome nature of the attack and rests on technicalities of injuries. This sort of punishment for acid attack is in itself a mockery of laws that does not take into consideration the gravity of the crime and its' after effects like trauma which affects the victim throughout her life. In cases, 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.

However, in **2011**, a PIL filed in the Supreme Court of India²⁰ by Lakshmi, an acid violence victim due to refusal of the marriage proposal, asking for guidelines for selling and regulation of acid brought a new approach to the issue of acid attack by bringing changes with respect to punishment, compensation, and management of acids.

Besides requesting compensation, she asked for an amendment in current laws like IPC/CrPC and Evidence Act 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 rehabilitations of the victims of acid attacks; Sale of acid in all forms be made a scheduled banned chemical which is not readily available over the counter.

The Supreme Court directed the State Governments to distribute sources for giving pay to survivors of attacks by corrosives with respect to the alteration made to under Section 357A CrPC . The court held that the Central and the State government should regulate the procedure of selling acid in shops unless there is a record with the seller regarding the proper details of the buyer and the reason for purchasing it. In case acid is purchased by any institution, enterprise or lab etc. for the purpose of research, experimentation etc. the credentials of the same need to be maintained in a register to be submitted before the SDM. The court further held that the compensation of at least Rs.3 lakhs by the concerned State

²⁰ Lakshmi Vs. Union of India 5 SCALE 77 (2015); W.P. (Crl.) No. 129 of 2006;2014 SCC 4 427

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Government/Union Territory should be given, out of which Rs. 1 lac will be paid within 15 days of the offence being brought to the notification of the government.

The hospitals or medical practitioner shall be made liable under Sec. 357 C of CrPC, if refuse for treating a victim citing the reason for non-availability of medical facilities. The first aid treatment of the victim should be given the first priority. The hospital which treats the survivor initially shall issue a medical certificate to the victim for the purpose of further reference for treatment. That both State and Central Government shall make effort to streamline the private hospitals as well into treating the acid attack victims.

The decision given by the court in the present case is adequate enough as it tries to cover all the aspects of legal provisions related to offence of Acid attacks. The treatment of victims after the attack, their employability, and vigor to live their rest of life with confidence can be recovered by strict provisions for the culprits and regaining their self-esteem to live confidently in the society. The judgment has touched the aspect of compensation which is an important basis for the sufferings of the victim and the family. It has also covered the aspect of the sale of acid and stricter laws for it thereby not making it easily accessible to the public. This will help in lowering the rate of such crimes.

Parivartan Kendra, a registered NGO had documented and filed a **PIL**²¹ in the Supreme Court of India to address the predicament of victims of acid attack significantly. The petition highlights the deficiency and inadequacy of authoritative measures to manage acid attacks. It also brings into light the legal features like the absence of a legal assurance to free medical facilities, rehabilitative facilities, or satisfactory remuneration under the Survivor Compensation Schemes. The petitioner has prayed: for compensation of at least Rs.10 Lakhs to the victims' family in lieu of their pain and suffering; for issuance of writ of mandamus to develop a standard treatment and management guidelines for the treatment and handling of acid attack victims by constituting a panel of experts; to direct all private hospitals to provide free treatment in acid attack cases and to have pictorial displays with the first aid and primary care protocols and guidelines to neutralize the acid and stabilize the survivor in the

²¹Parivartan Kendra & Anr vs U.O.I & Ors on 7 December, 2015WPC NO. 867 OF 2013 The court permitted compensation of Rs.10 Lacs for Chanchal and that of Rs.3 lacs for her sister.

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all Public Health Centres, sub-centres and government hospitals. Petitioner has also prayed for inclusion of acid attacks in the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and to reform educational programs in primary school to understand the gravity of violence against women.

The Court go through the Laxmi vs. Union of India, passed the following order: The Centre and States/Union Territories shall work towards making the offences under the Poison Act, 1919 cognizable and non-bailable. The State shall upon itself take full responsibility for the treatment and rehabilitation of the victims of acid attack as per the Guidelines provided in Laxmi's case. Considering the gravity of the offence it was also held that Rs.3 Lacs accommodated as compensation for Laxmi's situation should be the minimum amount given to a victim and more can be given as per the facts and circumstances of the case to assist in securing medical expenses but also motivate. The state is not only introducing the guidelines for acid attacks but also its strict implementation to prevent such crimes in the future. The Supreme Court additionally guided all the States to mention the names of acid attack victims in the disability list. This perceives the deep-rooted outcomes that the victims had to face, as was viably brought up by the Court, and would likewise empower them to rights under the law related to disabled people.

Furthermore the states have additionally failed in following the **Victim Compensation Scheme** as requested by the Court before and have been endorsing a small sum which isn't adequate to address the injury and the shock the victim is going through.

Piyali Dutta²² did not get any compensation despite appealing to the Chief Secretary for compensation after she suffered an acid attack. The West Bengal Legal Services Authority took up the matter and argued that the provisions in CrPC as well as IPC were introduced after her acid attack in 2005 and therefore, she should not be eligible for any compensation. The High Court passed the order in her favour and asked the authority to pay her compensation.

Criminal Law (Amendment) Act, 2013

Prior to Amendment Act 2013 Criminal law relating to grievous hurts in Sections 320, 322, 325 and 326 of the Indian Penal Code (IPC) is insufficient to deal with the phenomenon of acid violence. This definition of grievous hurt has been criticized as grievous hurt does not

²² PiyaliDatta Vs. State of West Bengal (2017)

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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 307 of the I.P.C 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 Law Commission and National Commission on Women²³ 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.

Indian Parliament enacted **The Criminal Law (Amendment) Act, 2013** made special provisions for victims of acid attack by inserting Section 326A²⁴ and Section 326B²⁵ in the IPC, 1860. Offenders convicted under these sections shall be liable to ten years imprisonment with a fine which may extend to life imprisonment and fair and just penalty to cover the medical expenses incurred by the victim will be paid to the victim. For the purposes of this section, "acid" includes any substance having an acidic or damaged character or burning nature, capable of inflicting bodily injury which leads to scarring or deformity or temporary or permanent disability. Section 326B of the Indian Penal Code provides minimum 5-7 years imprisonment for attempted acid attack. A separate law was passed to punish the offenders in such cases with an amendment to the law on sexual offenses.

²³226th Report on "The Inclusion of Acid Attacks As Specific Offences In the Indian Penal Code and a law for Compensation for Victims of Crime" by Law Commission of India, July 2008 at 43–44; National Commission for Women, Prevention of Offences (By Acids) Act 2008 – Draft Bill (2008): Both the Law Commission of India and the NCW recommend adding a Section 326A to the IPC and a Section 114B to the Indian Evidence Act.

²⁴ Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables, any part or parts of the body of a person or causes grievous hurt by throwing acid onshall be punished with imprisonment of either description for a term which shall not be less than ten years but which may extend to imprisonment for life, and with fine: just and reasonable to meet the medical expenses of the treatment of the victim; Provided further that any fine imposed under this section shall be paid to the victim.

²⁵326B: Whoever throws or attempts to throw acid on any person or attempts to administer acid to any person, or attempts to use any other means, with the intention of causing permanent or partial damage or deformity of burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either for a term which shall not be less than five years, but which may extent to seven years and also be liable to fine.

Explanation 2- For the purposes of section 326 A and this section, permanent or partial damage or deformity shall not be required to be irreversible.'

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Therefore Acid violence essentially includes Throwing/attempting to throw/administering acid; Causing grievous hurt; Causes permanent or partial damage (burns, maims, disfigures or disables).This offence is a cognizable and non-bailable offence.

The heinous crime of acid attack is prosecuted not only by the IPC and the Indian Evidence Act but also by the relevant provisions of the CrPC.²⁶ It urges state governments to draw up schemes under the guidance of the Central Government, which provide compensation to the victims of acid attack who are in need of rehabilitation. The District Legal Services Authority or the State Legal Services Authority may determine the amount of compensation to be provided. If the compensation for the rehabilitation of the victim appears unsatisfactory, or in the case of acquittal or acquittal of the accused, the court may still recommend the necessary compensation.

Sub-section (4) further discusses the rights granted to victims. If the alleged culprit cannot be traced or absconded, but can be identified. In such a case, the victim may make a written request seeking compensation from the state or district legal services authority. The authority may allow compensation to the victim after conducting a proper investigation as well as do endeavor to provide free medical treatment to the victim. Further Section 357B of the CrPC specifies that the compensation referred to in the preceding section shall be in addition to the compensation already provided under section 326A and section 326B of the IPC. Section 357C of the CrPC commands all hospitals to provide free emergency first aid treatment to any type of victim (local, public, private, etc.).

Conclusion

The success of any law is determined by its implementation. Acid attacks are on the rise even after stricter provisions were introduced in the IPC against it. Acid attack survivors face all sorts of consequences. Physical consequences are not limited to dementia but include other health problems caused by acid fumes. Socially these people face loneliness, negative gaze, sarcasm and other comments. The prospect of marriage fades. They cannot work due to disability and have to depend on others. Even if they are not disabled, deformities motivate many not to give them a job. Psychologically, they suffer from Post-Traumatic Stress Disorder (PTSD) and suffer from low self-esteem, depression, anxiety, lack of hope, etc.

²⁶ Section 375A: Sub sections (1,2,3,4,5,6)

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Many countries have begun pushing for legislation addressing acid attacks, and a few have recently employed new laws against this crime. Under the Qisas law of Pakistan, the perpetrator may suffer the same fate as the victim, and may be punished by having drops of acid placed in their eyes. Now the Acid Control and Acid Crime Prevention Act, 2011 has passed. As punishment, individuals held responsible for acid attacks face harsh fines and life in prison.²⁷

However, the country with the most specific, effective legislation against acid attacks is Bangladesh.²⁸ In 2002²⁹, Bangladesh introduced the death penalty for acid violence and laws strictly controlling the sale, use, storage, and international trade of acids. If the attack results in a loss of hearing or sight or damages the victim's face, breasts, or sex organs then the perpetrator faces either the death penalty or life sentencing. If any other part of the body is maimed, then the criminal faces 7–14 years of imprisonment in addition to a fine of US\$700. Additionally, throwing or attempting to throw acid without causing any physical or mental harm is punishable by this law. Furthermore, conspirators assume the same liability as those actually committing the crime.

After a spate of attacks in London in 2017, there are considerable changes in laws and measures regarding sales of acid, as well as changes in prosecution and sentencing guidelines. As of 2017, it is unlawful to carry acid with the intent to cause harm. Attacks are prosecuted as acts of actual bodily harm and grievous bodily harm.

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 spite of framing such stringent laws and directions for rehabilitation of the victims, not much seems to be done by the governments till date. The victims suffer a great deal due to a slow judicial process,

²⁷ Section 336B of Pakistan Penal Code states: "Whoever causes hurt by corrosive substance shall be punished with imprisonment for life or which shall not be less than fourteen years and a minimum fine of one million rupees." Section 299 defines Qisas and states: "Qisas means punishment by causing similar hurt at the same part of the body of the convict as he has caused to the victim or by causing his death if he has committed qatl-i-amd (intentional manslaughter) in exercise of the right of the victim or a Wali (the guardian of the victim)."

²⁸ Acid Survivors Foundation. Acid Throwing Fact Sheet. Dhaka, Bangladesh, 2001

²⁹ The names of these laws are the Acid Crime Control Act (ACCA) and the Acid Control Act (ACA), respectively

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inadequate compensation and obviously from the after affect of the acid attack itself. Thus, there is an urgent need to legislate separate law and courts to deal with acid attacks and the issue incidental with.

The section 357 CrPC on Compensation should clearly spell out that the fines levied should be given to the victim or their dependents. For supporting the acid victim from their treatment to till their rehabilitation, a Criminal Injuries Compensation Board is needed to setup in India to deal with such cases in an effective manner, to help the victims of acid violence to get compensation for medical expenses and rehabilitation.

To sum up acid violence 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.