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Analysis of the 226th Law Commission Report on Acid Attacks.

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Abstract

The paper deals with analysing the 226th Law Commission Report, which speaks of acid-attacks in India. Acid-attacks are a brutal crime and negatively impact the entire life of the victim, in majority of India, this offence is committed against women, and generally are incited by the incidents of rejection of marriage proposals. The judicial system's take so far, in causing a widespread impact on the commission of such offence and the medical infrastructure in place for the treatment of victims is the focus of this article.

Introduction

Acid attacks are not merely an offence, they are traumatizing actions undertaken by certain people in the society. The Law Commission in its 226th report, titled "*The Inclusion of Acid Attacks as Specific Offences in the Indian Penal Code and a law for Compensation for Victims of Crime,*" discusses the overall state of the legal framework, presently existing and the legal framework which should be created in a manner so as to ensure, justice is dispensed to the victim at the earliest possible stage, along with adequate compensation. This paper shall primarily analyse the legal aspects associated with acid-attack as discussed in the report. The report also analyses the laws on acid-attack in several other countries as well such as Bangladesh, Uganda, and Nigeria etc. The motive behind the recommendations in the report is to ensure a just, fair and equitable system wherein victims of acid-attack are not left unheard and the accused are not left scot-free and are put behind bars.

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Literature Review

Cases

Laxmi v. Union of India²

This is the landmark decision *inter alia* the acid-attacks in India, it laid down stringent rules regarding the sale and purchase of acid and also ensured appropriate compensation strategies for the victims who undergo the treatment of acid-attack in India.

State of Maharashtra v. Ankur Narayanlal Panwar³

The decision holds significance due to the fact that it is the first case in which the accused i.e. who threw acid on the face of the victim was given capital punishment, the punishment was given by the trial court, however; the same was not upheld by the Bombay High Court division bench of J. B.P. Dharmadhikari and J. Naik. The Bombay High court upheld the order passed against the accused for causing injury to Ms. Rathi by throwing acid on her face but did not allow the accused to be given capital punishment, claiming that the accused was of a young age and vulnerable, therefore he shouldn't be subjected to the applicability of the "rarest of rare" doctrine apparently.

State of Uttarakhand v. Ajam⁴

The decision is remarkable in stating that acid-attack victims must be provided with free-treatment facility for the state of Uttarakhand. The judgment was delivered by the division bench of J. Sharad and J. Rajeev Sharma. The judgment also celebrated the decision of Laxmi v. UOI.

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

³ State of Maharashtra v. Ankur Narayanlal Panwar 2019 SCC On line Bom 968 : (2019) 2 AIR Bom R (Cri) 753.

⁴ State of Uttarakhand v. Ajam 2017 SCC Online Utt 695.

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Devanand v. State⁵

This incident dealt with a situation wherein, the acid had been thrown on the face of the wife (estranged) and she suffered eye-loss and disfiguration which was permanent in character, the husband of the wife, was punished with 7 years rigorous imprisonment u/s 307 of the IPC.

State of Madhya Pradesh v. Ganga Singh⁶

The case basically dealt with the facts pertaining to murder, rape and molestation. The judgment has been referred in this project due to the reason of it explaining the classical principles of punishment, it explains the motive behind giving punishment under criminal law, the notions associated with it.

Shiv Mohan v. State of Delhi⁷

The case basically elaborates upon the fact that *heinousness* must be considered a relevant factor while determining punishment, the case has been referred to as, acid-attacks in India are a brutal offence and one of the factors while determining the punishment in such scenarios must be *heinousness*.

Pt. Parmanand Katara v. Union of India⁸

The case discusses in major detail the concept of “*animal existence*” the fact that mere rehabilitation and compensation to acid-attack victims shall not suffice their thirst for a fitting punishment for the crime, which includes a physical, mental, emotional and psychological trauma as well.

⁵ Devanand Vs. The State 1987 (1) Crimes 314.

⁶ State of Madhya Pradesh v. Ganga Singh 1987 CriLJ 128 (131).

⁷ Shiv Mohan v, State of Delhi AIR (1977) SC 949

⁸ Pt. Parmanand Katara v. Union of India (1989) 4 SCC 286.

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Reports

National Crime Records Bureau Report⁹

The report provides detailed information on the crime of acid-attack or vitriolage committed across different states, places and union territories, it helps to analyse which state requires more attention with regard to such offences.

Articles

Acid Attack: A Burning Issue in India.¹⁰

The article deals with the concept of acid-attack and the pertaining legal framework with regard to acid-attack in India, it also covers several judgments and important decisions of the Indian court on the matter.

Discretion in the Sentencing Process A Case Study of India Criminal Justice System

This article deals with analysing the issues pertaining to imprisonment in India, how and on what basis punishment is imposed and goes on to analyse several judgments associated with it; the factors which are considered relevant in case of punishment and sentencing are also elucidated well in this article.

Acid Attacks on Women in India - A Socio Legal Study With Special Reference To Delhi

This article analyses the issues pertaining to acid-attack in India and how it affects the Indian capital i.e. New Delhi, in particular, the article also discusses several legal concepts such as the

⁹ National Crime Records Bureau, Crimes in India 2018 (Vol. I) ;

<https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202018%20-%20Volume%201.pdf>.

¹⁰ Bajpai Meghna, Singh Sugandha, Acid Attack: A Burning Issue In India, Galgotias Journal of Legal Studies (Vol. III No. 2); Das, Durga Pada, Discretion in the sentencing process a case study of India criminal justice system, (The University of Burdwan, (1999); Kaur, Navpreet; Acid attacks on women in India a socio legal study with special reference to Delhi (2018).

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compensation to the victim and other points, apart from which the article also presents a broader picture of the legal framework pertaining to acid-attack in India.

Adequacy of Punishment

The punishment for any offence committed, must be proportional to the crime itself. This concept is called **proportional justice**. Acid-attack as an offence tends to bring into light the gravity of suffering which the victim goes through and which, in some severe cases, is death. The Law Commission in its 226th report provides for minimum punishment of 5 years, which is subjected to further extension by a period of 10 years along with fine. However, this punishment does not appear to be proportionate to the offence so committed. As per the report, there are several physical injuries, mental and psychological trauma which the patient suffers.¹¹

Prior to the insertion of §326A in the IPC, several instances came across wherein the punishment for the offence committed by throwing acid, were charged under other sections of IPC and the punishment was provided for the same, according to those sections.

The classical principles of sentencing may be summed up in these four words: Retribution, deterrence, Prevention and rehabilitation. ...A Judge while considering the award of sentence must bear in mind these principles with reference to the facts of the particular case as to which to them has greatest importance in the case. ...The quantum of punishment should be such as deserved for the offence no more no less.¹²

¹¹ The Law Commission 226th Report- *"The Inclusion of Acid-Attack Specific Offences in the Indian Penal Code and a law for Compensation for Victims of Crime."* The report has in detail described several physical injuries such as blindness which could be caused permanently considering the corrosive nature of acid. Apart from this, the body parts melt down in several severe cases, since acid holds the properties of burning a substance down, this is not merely one situation, the physical trauma if set aside, when analysed from the mental trauma and societal pressure which the person goes through is also pertinent to considered while determining the punishment for the offenders of this brutal crime.

¹² State of Madhya Pradesh v. Ganga Singh 1987 CriLJ 128 (131).

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Punishment should be imposed in a manner such that the offender can never do the same wrong in future. In the case of **Shiv Mohan v. State of Delhi**¹³, it had been observed that heinousness of the offence must be laid emphasis upon when the punishment for any particular offence is to be imposed upon the offender.

However, punishment for the offence of acid-attack must be such that it not only reforms the mentality of the offender, specifically in cases wherein the offender is young, say 19 to 30 years, but generates fear in the minds of those who commit such an offence so that the same is not repeated in future.

Laxmi v. Union of India¹⁴

The case is a landmark case in the legal history of India. This case was brought by Laxmi, an acid attack survivor, it issued guidelines for betterment of Acid Attack Survivor. The Supreme court verdict-imposed restrictions on the sale of Acid and provided compensation to the victim. The bench was headed by J. Madan B. Lokur and J. U.U. Lalit.

Material facts

The facts of this case are similar to those of any other acid-attack incident, Laxmi filed a PIL against acid-attack committed 3 years ago against her, at which time she was a minor, because she refused to marry one, Guddu.

Issues

1. What should be the criteria regarding sale/purchase of acid?
2. What compensation must be given to acid-attack victims?

¹³ Shiv Mohan v, State of Delhi AIR (1977) SC 949

¹⁴ Laxmi v. Union of India (2014) SCC 4 427.

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Discussion

1. The Court in this case decided that the Central government shall ensure that it would follow the model rules and would ensure the sale of acid (along with the different types of it, such as the crystallised form) would only be through obtaining of appropriate licensing.
2. The Central government was also told to figure out a scheme for the purpose of compensation for acid-attack victims.¹⁵

Have Acid Attacks reduced?¹⁶

In India, overall, the total number of cases were for 240 victims, there were 228 on record and in 2017 there were 244 acid-attacks recorded in the country. There were several states that contributed specifically more towards such an offence.

Year	State	Number of Cases
2018	West Bengal	50 – Cases Recorded 53 – Number of Victims
2017	Uttar Pradesh	56 – Victims
2018	Delhi	11 – Cases Recorded

¹⁵ § 326-A reads-

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

¹⁶ National Crime Records Bureau, Crimes in India 2018 (Vol. I) ;

<https://ncrb.gov.in/sites/default/files/Crime%20in%20India%202018%20-%20Volume%201.pdf>.

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*State of Maharashtra v. Ankur Narayanlal Panwar*¹⁷

The decision holds significance due to the fact that it is the first case in which the accused i.e. who threw acid on the face of the victim was given capital punishment, the punishment was given by the trial court, however; the same was not upheld by the Bombay High Court division bench of J. B.P. Dharmadhikari and J. Naik.

Material facts

Ms. Rathi, who is the victim in the present case, was the newly recruited girl for the Nursing Services at the place of Naval Offices, located at Colaba, Mumbai (Maharashtra), the convict in the present case, Mr. Ankur, threw acid on her face (u/s 306 of the IPC) and then ran away, while she was on the railway station for the purpose of travelling in accordance to her job. Mr. Ankur was rejected by Ms. Rathi on account of him proposing her and therefore he undertook such an action. Eventually Ms. Rathi suffered several injuries and died as a consequence of cardiac arrest at the hospital (u/s 302 of the IPC).

Issues

The issues raised before the court were:

1. *Whether Mr. Ankur had committed the offence?*
2. *Whether Mr. Ankur could successfully claim the defence of “alibi” or not?*
3. *Whether Mr. Ankur could be punished with death penalty?*

Discussion

1. The Bombay high Court held that the guilt of the accused had been proved beyond any possible reasonable doubt and therefore he must be liable for the act so committed, the prosecution had provided all the necessary evidence.

¹⁷ State of Maharashtra v. Ankur Narayanlal Panwar 2019 SCC Online Bom 968 : (2019) 2 AIR Bom R (Cri) 753

2. The High Court held that Mr. Ankur cannot claim the defence of alibi in the light of the decision in *S.K. Hasan v. State of Maharashtra*¹⁸, the burden to prove the alibi rests with the person claiming for it and it must be provided with the appropriate evidence in order to ensure substantiation of the claim so raised, the same was not done in this case, therefore the accused cannot claim the defence of alibi.

Death penalty is given in the rarest of the rare case as has been provided in the landmark decision of *Bachan Singh v. UOI*¹⁹, the High Court while rejecting the decision to give capital punishment to the accused in the present case, stated, “*It should always be remembered that while the crime is important, the criminal is equally important insofar as the sentencing process is concerned.*” Apparently, the court pointed out further that the age of the accused, as per the facts of the case, is 23 years, the court explained that it is not improbable for the accused to rehabilitate and further reform, therefore the accused must not be provided capital punishment.

Medical Infrastructure and Regulations for the Acid Attack Victims

In the **Pt. Parmananda Katara** case the following it was held,

There can be no second opinion that preservation of human life is of paramount importance. That is so on account of the fact that once life is lost, the status quo ante cannot be restored as resurrection is beyond the capacity of man. The patient, whether he be an innocent person or be a criminal liable to punishment under the laws of the society, it is the obligation of those who are in-charge of the health of the community to preserve life so that the innocent may be protected and the guilty may be punished. Social laws do not contemplate death by negligence to tantamount to legal punishment.²⁰

¹⁸ *S.K. Hasan v. State of Maharashtra* 2003 SCC Online Bom 1167.

¹⁹ *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684.

²⁰ *Pt. Parmanand Katara v. Union of India* (1989) 4 SCC 286.

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*State of Uttarakhand v. Ajam*²¹

The decision is remarkable in the sense that it states that acid-attack victims must be provided with free-treatment facility for the state of Uttarakhand. The judgment was delivered by the division bench of J. Sharad and J. Rajeev Sharma.

Material facts

The facts of the case are similar to all the other acid-attack incidents. The victim is Ms. Kavita, she was returning home from her tuitions and on the way, the accused began following her, she started running faster, however was not able to escape, at that point of time the accused was coming with a container in his hand, containing acid, he threw the same on her face, however prior to throwing the liquid he shouted that if she didn't stop, "*he would ruin her life*", the father of the victim Mr. Kunwar Singh, filed the application.

Issues

1. *Whether the accused could be made liable for the act committed?*
2. *Whether the accused had the intention to kill the victim?*
3. *The issues pertaining to the concept of defining "life" were also discussed thoroughly in this judgement.*

Discussion

1. The court found the accused liable for the commission of the offence and said that the prosecution has firmly corroborated all the evidence.
2. In this case, the counsel for the accused pleaded that, the accused had been carrying warm water and not acid in the container, however, the judges took into consideration that the accused had the intention to kill and this was in itself sufficient to understand the guilt of the accused in the present case, it does not matter what kind of liquid the accused had been

²¹ State of Uttarakhand v. Ajam 2017 SCC Online Utt 695.

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carrying, further it was found by the court that the victim had suffered burn injuries which had been testified by the doctor in the present case, therefore it could not be justified that the accused had no intention to kill the person.

3. The court reiterated the concept laid down in the case of *Chameli Singh v. State of U.P.*²² regarding the animal existence and stated that life merely does not imply the state of animal existence.

Although the report has specifically pointed out the issues pertaining to the acid-attack victims, however, it fails to acknowledge the fact, that mere punishment to the offender cannot justify or avenge the commission of such a brutal offence. The government must ensure that not only the government authorities but also the private institutes take notice of it.

Conclusion

The offence of acid-attack in India has a long-way to go; in spite of some of the most important decisions and policies adopted. First issue is in relation to the punishment for the offenders of acid-attack; the age of the offender and the brutality or heinousness of the offence are some factors which need to be taken into account prior to the punishment, another important consideration must be that, the body part which is injured along with the degree of damage caused. The medical infrastructure for the survivors of acid-attack must not merely deal with their health needs, but the emotional and social isolation which they suffer from must also be addressed. The victims must be capable of starting a normal life, and this must be a major consideration while taking into account the rehabilitation process, and must not only deal with the victim individually but also; the family of the victim. *Heinrich Triepel, Dionisio Anzilotti and Lassa Francis Lawrence Oppenheim* are the chief exponents of this theory.

²² *Chameli Singh v. State of U.P.* (1996) 2 SCC 549.

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