

# Reparative Rights for Acid Attack Survivors under the Indian Criminal Justice System

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## Abstract

The present paper seeks to examine various problems and hurdles faced by the acid attack survivors in getting the adequate redress. The idea is to explore the victim's present position in our criminal justice system from the lens of reparative justice. In order to appreciate the recent trends, emphasis is placed on Law Commission recommendations and statutory amendments to ensure that more victims' needs are met. This paper examines the idea of reparative justice in two main contexts: drawing from international standards the need for compensatory jurisprudence for victims and secondly, it reflects on the state institutional mechanism to safeguard against both- primary and secondary victimization.

**Keywords:** Acid Attack Survivors, Compensation, Reparation, Victim Compensation Scheme

## Introduction

In recent years, the phenomenon of 'victims' rights' has been catapulted to the forefront of policymaking on both domestic and international platforms. While the criminal justice system has traditionally been conceptualized as a mechanism for the state to resolve its grievances against offenders, it's now broadly accepted that justice cannot be administered effectively without due recognition of the rights and interests of other parties affected by criminal action.<sup>1</sup>

This paper demonstrates the progress of domestic criminal justice policy which makes an attempt to restore the victim-survivor of acid attacks by acknowledging the reparative justice which not only includes the monetary compensation from the State but a corresponding shift in the criminal justice processes towards redressing the physical, emotional and psychological reparation of the Victims in accordance with the International Standards. It outlines the recent positive amendments which identified the acid attack as a separate offence, and newly emergent form of reparative justice providing for the medical treatment, psychological support, and social assistance. It acknowledges the gap between the existing statutory provisions and their implementations.

## Defining Victim and Reparation

In order to do complete justice to a victim, it is often felt necessary to define or identify victims of crime. The alternative term 'survivor' is sometimes preferred, as it implies the seriousness of the experience with crime and promotes images of strength.<sup>2</sup>

The term victim means 'someone or something that has been hurt, damaged, or killed or has suffered, either because of the actions of someone or something else, or because of illness or chance.'<sup>3</sup> In the context of India, the Law Commission report on 'Committee on Reforms of Criminal Justice System' to address the absence of a definition of 'victim', subsection (wa) has been inserted in Section 2 of Code of Criminal Procedure, 1973 (here in after referred as CrPC, 1973) amended by the Code of Criminal Procedure (Amendment) Act, 2008 as below:

'Victim' means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression 'victim' includes his or her guardian or legal heir.

The definition of 'victim' under the amended CrPC, 1973 is on the same lines of the UN Declaration. However, on the analysis of this definition, it can be observed that it is narrower than the definition under



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UN Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power 1985, as such it does not include explicitly in its ambit emotional suffering, economic loss and those who suffers harm in assisting the victims.<sup>4</sup>

#### **Aim of the Study**

This study critically analyzes the redress available to the victims of acid attack under the Indian criminal justice system, how far they have access to it. Additionally, it seeks to examine whether the compensation alone is sufficient to repair the harm done to the victims of acid attack.

Acid Attack is a premeditated violent assault using a corrosive substance with an intention to maim, disfigure, or kill. The victims of acid attacks are overwhelmingly women and children; however men and the elderly are also attacked. Many bystanders are accidentally burned as well. The high number of accidental burn is due to the fact that acid is thrown at the individuals, and since it's a liquid substance, it tends to bounce off the intended victim and moves out of the way and hits someone else. An acid attack not only affects the victim physiologically as it usually results in erosion of the skin, dysfunction of vital organs and loss of life or limb but it leaves a scar on the victim's psyche as well. Survivors wearing the scars of their attack are further violated through ostracism and shame within their community and vulnerable to further violent attacks.<sup>5</sup>

From the social standpoint, survivors often become forlorn and ashamed because the community may stare at them and blame them for what happened. They may not want to go outside their homes because of the stigma attached to these attacks, leaving them helpless and dependent on others. Many lose the ability to earn a living and the independence they once had, which causes additional struggle. Due to these adverse psychological effects such as depression and low self-esteem lead many people decide not to work.

Due to disfigurement, disability, and social stigma associated with acid injuries, many survivors have been dislodged from their economic and professional pursuit. The financial consequences are even more overwhelming when the survivor is the only wage earner. Once the acid violence occurs, survivors usually have to spend a long time in hospital, until their wounds start to heal and the risk of infection is zero. Survivors often have to incur expenses for their medical treatment as survivors need multiple surgical operations and treatments lasting for years to come. The quality of the treatment they receive may depend upon their financial status and where they are located. In sum, survivors of acid attack face a long road of recovery, not just from the physical damage but from the resulting societal response to their disfigurement. Thus, along with the financial compensation, reparation to victims in terms of other kinds of help such as physical, psychological, protection and re-integration into the society should be extended.

According to Black's Law Dictionary, 'restitution/reparation' is an 'Act of restoring; restoring to its rightful owner; the act of making good or giving

equivalent for any loss, damage or injury; and indemnification'.<sup>6</sup> The concept of reparative justice is based on the premise that a crime represents a debt owed not only to the state, but to the victim, the victim's family and to the community as a whole.<sup>7</sup> Further, payment of compensation should be a matter of right. It should not be linked with the status of the offender. Whether he is convicted or acquitted, whether he is in a position to pay or not should be done away with i.e. payment of compensation should be independent of all such restrictions.

Though no separate law for victims of crime has yet been enacted in India, the silver lining is that compensation has become an important feature of the Indian criminal justice system. Justice through compensation means that if one is injured or sustained losses, aggrieved person thinks that in addition to punishment of convict, he or she should get some compensation for his/her injuries or losses. It is equally important in addition to compensating a victim that victims' needs should be taken into account in order for them to cope with the seriousness that impact of crime causes. Especially the survivors of acid attack may have very strong reactions requiring assistance over a long period of time. It is vital that survivors are provided with appropriate support which rests on a sensitive approach consisting of recognition of the individual needs, provisions of information and help on one side, and avoidance of victim blaming, secondary victimization on the other side.

#### **Legislative Framework on Compensation in India**

The Criminal Procedure Code is the first and may be the oldest legislation in India to deal with the subject of compensation to the victims of crime. The provisions of Criminal Procedure Code concerning victim compensation occupy a prominent place in the progressive development of the law relating to victim compensation through the judicial approach.

Recognizing that the rights of victims, specific provision for awarding compensation to victim was inserted in CrPC, 1973 under section 357 in pursuance of the recommendation of the Law Commission in its forty-first Report (1969). The provision states that

"Court may award compensation to victims of crime at the time of passing of the judgment, if it considers it appropriate in a particular case, in the interest of justice".

Section 357(1) deals with the imposition of fine, and payment of compensation from the accused. Indeed, it was a step forward in our criminal justice system, but this provision has been criticized for the inadequacy of compensation to be awarded to the victim only after conclusion of criminal trial; if no fine is imposed, compensation to the victim cannot be awarded, and compensation under this section can only be allowed if Court is of the opinion that compensation can be recovered from the accused in a civil proceeding. Moreover, it was seldom invoked by the trial court except in few cases as courts were reluctant to exercise their power under this provision liberally. So far, the victim was a forgotten entity in the criminal justice process and the State was only

satisfied by punishing the offender through its prosecution wing.

Sub-section (3) deals with a situation where fine does not form the part of the sentence imposed by the Court. Thus, the anomaly under sub-section (1) has been removed by the insertion of sub-section (3) which provides for the direct payment of additional compensation even in the absence of imposition of fine. 8

It may be noted that the sub-section (3) to section 357, is a new provision which was not available under the replaced Criminal Procedure of 1989. In other words, power to award compensation is not ancillary to other sentence, but in addition thereto.<sup>9</sup> However, the discretion lies with the court to decide the amount of compensation in each case and it has been criticized in various judgments that judiciary fails to invoke this provision perhaps due to the ignorance of the object it. 10

**The Justice Malimath Committee on Reforms of Criminal Justice System (Government of India, 2003)**

It would be misleading to assert that the Indian Policymakers have not paid any attention to the issue of victims' rights. In India, The Malimath Committee (2003)<sup>11</sup> expressing its concern for the victims has also laid emphasis on compensation and restitution of the victims. It is guided by the principle that the victim should be put back into the position which he occupied before the offence had taken place.<sup>12</sup>

According to Malimath Committee Report adopting the compensation principle, within the ambit of Criminal Justice System, will provide a healing touch and serve as a cushion to the shocked, silent and suffering of the victim.<sup>13</sup> The committee recognized that the victims deserve more effective remedy than the traditional practice of bringing civil suit for compensation.<sup>14</sup>

The Committee further recognized that there was not any statutory obligation on the State to constitute a victim compensation scheme. But, its desire was expressed by the higher judiciary and academicians to introduce a statutory provision for the constitution of victim welfare board or Council.<sup>15</sup> Thus, it was recognized on all the fronts that there must be sensitivity on the part of agencies and organizations of the criminal justice system towards the victims of violent crimes from the inception when the intervention with law sets into motion, during trial proceedings and afterwards, on the determination of guilt of the accused.

It is an initiative towards restorative justice that Section-357 was amended in 2009 and in pursuance of the mandate of Section-357 (A)<sup>16</sup>; some States formulated "The Victim Compensation Scheme" making provisions for compensation for victims who are sexually abused being victims of rape, trafficking, and acid attack who have suffered physical and psychological injury as the result of violence and require rehabilitation. Section 357 has a British origin and section 357-A reflected an Indian supplement.<sup>17</sup> Section.357 says about the power of the court to order compensation whereas Sec 357A

incorporated with effect from December 31, 2009 underlines the duty of the State to evolve a victim compensation scheme.<sup>18</sup>

However, it is pertinent to note here that such disbursements of compensation are to be made on orders of the court, when it is of the opinion that the compensation awarded under Section 357 is inadequate or, in cases of discharge or acquittal of the accused, where the victim has to be rehabilitated. A victim is also entitled under the sub-section (4) to maintain an application to the District and Legal Service Authority in cases where the offender is not traceable or identifiable etc. The section has widened the scope of the authority to do further acts in order to alleviate the suffering of the victim which includes, proper medical services.

It is a significant movement to address the needs of victims, which entrusts the responsibility to the Legal Service Authority where the technical experts decide the quantum of compensation, since they are better equipped to calculate the loss suffered (i.e. expenses for medical treatment) by a survivor of rape and acid attack. However, the provision loses its teeth because the discretion remains with the judge to refer the case to the Legal Services Authority- a situation that has previously been the vanishing point of Indian victim compensation law.<sup>19</sup> The problem lies in the fact that traditionally judiciary has been reluctant to invoke this provision. A more effective solution could be to make compensation a statutory right, with a provision mandating that the judges have to record reasons for not awarding compensation.<sup>20</sup>

In July 2009 the law commission submitted its report 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." Law commission recommended that a separate Act should be proposed for dealing with compensation to victims of acid attacks, rape, sexual assault, kidnapping etc. It suggested a broader legislation so that it can deal with the problems of victims of different crimes who need rehabilitation and compensation for survival.<sup>21</sup> Further, it recognized that there is no law to regulate sales of acid except for the Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989 (amended in 2000) and this only applies to industrial trade and practices. Furthermore, there are no regular inspections and stock checking for acid sales as such.<sup>22</sup>

The Law Commission has recommended for establishment of a Criminal Injuries Compensation Board which focuses on providing only interim and final monetary compensation to victims of certain acts like Acid Attack, Sexual Assault, and Rape in particular amongst others. Further, it includes in its ambit the provision for medical and other special expenses required for physical and psychological treatment, rehabilitation, and loss of earnings.

The law commission has suggested to adopt a matrix model similar to the one adopted by United Kingdom to calculate the amount of compensation to be awarded under the Criminal Injuries Compensation

Act. Any compensation already received by the victim can be taken into consideration while computing the quantum of compensation under the provisions of this Act.

Unfortunately, the entire emphasis is on the monetary issues overlooking the fact, that the government should not only financially help the acid attack, sexual assault, or rape victim to get the rehabilitation cost, but must also take a step further and provide for prompt and effective rehabilitation facilities, which are easily accessible. Further, other rehabilitation mechanisms/schemes should be formulated taking into account the specific needs of the victim.

Acid attacks raise three important key issues: firstly, the effectiveness of policies for the regulation of sale or trade of acid across states. Secondly, to make available health facilities for medical treatment and rehabilitation of acid attack victims. Thirdly, the establishment of uniform victim compensation schemes in every state.

#### **Criminal Law (Amendment) Act of 2013**

Until 2013, acid attack was not a separate offence under the Indian Penal Code (IPC). Cases of acid attack were registered under the category of attempt to murder or grievous harm, and no fine was imposed on the perpetrators who often got out on bail, or got mild sentences. A new direction was given to the movement against acid attack by the Criminal Law (Amendment) Act of 2013 based on the recommendations of Justice J.S. Verma Committee Report which also enunciated the importance of bringing in provision to deal with the gravity of this offence.<sup>23</sup>

Now the Indian Penal Code has been amended by making acid violence a separate offence under Section 326A<sup>24</sup> which penalizes voluntarily causing grievous hurt by use of acid, etc. and Section 326B<sup>25</sup> also penalizes the attempt to throw acid which came into force from 3<sup>rd</sup> February, 2013. Therefore, the new amendment is a welcoming step towards strengthening the law related to this crime. This places India in a transition phase, where there has been a response to the screams of the scorching survivors, yet the practical effects and implementations will determine how powerful this tool will be in combating acid violence.<sup>26</sup>

Another refreshing step which has been brought about by the Amendment Act, 2013 has been integration of Section 357C to the Code of Criminal Procedure. The Section states that:

“all hospitals, public or private, whether run by the Central Government, the State or local bodies or any other person, shall immediately, provide the first-aid or medical treatment, free of cost, to the victims of any offence covered under section 326A, 376, 376A, 376B, 376C, 376D or section 376E of the Indian Penal Code, and shall immediately inform the police of such incident.”

This Section is suggestive of the fact that the Government is trying to provide proper first aid and medical healthcare facilities to the victims of acid attack and sexual assault. Denial of treatment of rape and acid attack survivors is punishable under Section

166 B IPC with imprisonment for a term which may extend to one year or with fine or with both. Health professionals need to respond comprehensively to the needs of survivors.

#### **Experience after 2013 Amendment**

Though the courts had been granting compensation but the major question which still remained was related to the quantum of compensation as it varied from case to case and court to court because of lack of a comprehensive scheme related to compensation to crime victims. Moreover, the State Victim Compensation Schemes followed different eligibility criteria for awarding the compensation under the scheme constituted pursuant to Section 357A of Code of Criminal Procedure.

For instance, pursuant to Delhi Victims' Compensation Scheme, 2011, a victim was liable to get compensation only after the order of the Court or when Legal Services Authority recommended it. First, the area SHO would share the FIR with the Secretary of the district. Then it would reach to the Legal Service Authority. After its recommendation, the case would reach to the Delhi Government, which gave the sanction to cases it deemed fit. The compensation was then released by the Divisional Commissioner.”<sup>27</sup>

According to Delhi Legal Service Authority data, the Authority had recommended 201 cases in 2013 for compensation after the Nirbhaya incident, but merely 38 cases received the sanction.<sup>28</sup> Unfortunately, State Compensation schemes tend to conceptualize monetary payment alone as being the appropriate means for putting right the harm that has been caused.<sup>29</sup> Such a perspective fell short of radically improving the practical and emotional support, rather than payment of compensation which a victim receives after the long duration of the incident as there was no statutory provision awarding any interim financial support to the victims of acid attack. A Right to Information reply received by an NGO-Pratidhi revealed that the no compensation was given to sexual assault, rape or acid attack victims by the Delhi Government for first initial one year, from 2012 to 2013 under the Delhi Victims' Compensation Scheme, 2011 and further, has paid only about Rs.2 crore of the allotted Rs.15 crore in the last three years.<sup>30</sup> The government however failed to furnish the details of where and to whom this sum of 2 crore has been disbursed. It is indicative of the fact that the Victim Compensation Scheme was not victim friendly, and failed to comply with the best practices adopted by signatories to the UN Declaration. Also, these schemes did not lay down the grounds for rejection of the application for the grant of compensation.

It is crucial to note that the mere existence of the compensatory provision does not achieve the goal to redress the victims effectively unless they are readily made available to the victims.

Subsequently, Delhi Victims Compensation scheme was modified in the year 2015 and mandated that in the urgent cases, the Secretary of the Legal Services Authorities can suo-moto or an application of the victim can proceed to grant interim compensation to the victim or the dependents of the victim and

mandated the authority to give a speaking order in writing while rejecting the application for compensation.

In the year 2012, the Supreme Court in the case of Nipun Saxena vs. Union of India<sup>31</sup> entreated NALSA to constitute a committee to formulate the Model Rules for Victim Compensation for sexual offences and acid attack. Accordingly, treating the Delhi Victim Compensation Scheme as the base model, NALSA finalized the 'Compensation Scheme for Women Victim/Survivors of Sexual Assault/other Crime, 2018' which was accepted by the Supreme Court on 11 May 2018. Henceforth, directions were issued to all the States and UTs to adopt the same. The money for 2018 Scheme shall be sourced from Central Victim Compensation Fund, out of Nirbhaya Fund, and from the State Victim Compensation Grants as well.<sup>32</sup>

The 2018 Scheme postulates for both the minimum and maximum quantum for compensation for the offences against women listed in the appended schedule. The amounts of compensation for survivors of acid attack are as follows:<sup>33</sup>

1. Minimum of Rs.7 Lakh and Maximum of Rs.8 Lakh in case of disfigurement of face.<sup>34</sup>
2. Minimum of Rs.5 Lakh and Maximum of Rs.8 Lakh in case of injury more than 50%.<sup>35</sup>
3. Minimum of Rs.3 Lakh and Maximum of Rs.5 Lakh in case of injury less than 50%.<sup>36</sup>
4. Minimum of Rs.3 Lakh and Maximum of Rs.4 Lakh in case of injury less than 20%.<sup>37</sup>

The scheme mandates the police to report all the cases mentioned in the scheme with concerned State Legal Services Authority/District Legal Services Authority by supplying the hard or soft copy of First Information Report as and when lodged. Further, it also provides for suo-moto cognizance for the grant for interim compensation by the Secretary of the Legal Services Authorities.

#### Steps to provide Assistance to the Survivors

As the International trends continue to refine and develop the rights of victims, the pressure on the national government to develop policies based on restorative justice increases.

While activists and acid attack victims-survivors have welcomed this move but they also recognize that this is just one small step towards redressing the needs of victims. They have pointed out that the court may have enhanced the amount of compensation but it did not provide any guidelines about the medical treatment of the acid attack victims. These two should be seen as separate categories because the enormous cost of the protracted treatment ruins the families of survivors. The acid attack victims survive the assault; the treatment is a prolonged one and is extremely expensive. Moreover, most victims belong to the lower socio-economic sections of society and cannot afford treatment. They also require extensive reconstructive surgery and psychological counseling, both of which are in short supply. Even if reconstructive surgery were to be made available, it is prohibitively expensive, and cannot give the victim back the physical attributes she once had.

A couple of lakhs of rupees in compensation is nowhere near enough to deal with the unending trauma that a victim has to face. The government must undertake the responsibility of treatment of acid attack survivors, including corrective surgeries as well as counseling. It must also take the responsibility of rehabilitating the victims and enabling them to live with dignity by providing them employment

However, it is of utmost importance that these services should be easily accessible to the victims and the victim should know where exactly they have to go collect the financial help, which again should be provided immediately because if the money is given after two-three months, it is of no use.

The role of judges in ensuring that the perpetrators of this crime are effectively penalized and brought to justice and effectively redressing the plight of the victims of such attack and to hamper others from resorting to the same is undeniable. Indian Judiciary has come a long way while dealing with acid attack cases.

#### Conclusion

Acid attack is the most violent form of crime against women with grave consequences. Due to the nature of violence, there are immense and long term physical and psychological impacts on the survivor which last throughout their lives. No doubt that the insertion of Section 357A under CrPC, 1973 has embarked the sensitization of legislature towards the plight of victims, which mandates the establishment of Victim Compensation Scheme in every state but these schemes have been criticized for not being easily accessible by the survivors or their dependents. In short the criminal-oriented justice system has to be transformed to the victim centered justice system rendering fully restorative justice to the victims of acid attacks. Further, the judiciary has also encapsulated the idea of reparation of victims to some extent and tried to make an attempt to enter an era of transition towards the rights of the victims by adopting a sensitive approach towards these violent crimes against women.

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  13. *Malimath Committee Report*, Vol II Appendix I.
  14. *Supra-note* 12 at 189.
  15. *Supra-note* 8 at 277.
  16. *Inserted by act 5 of 2009, w.e.f. 31/12/2009 (incorporates recommendations of Law commission, 152nd Report, 1994)*
  17. Section 357A :  
 Every State Government in co-ordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.  
 Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1).  
 If the trial Court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.  
 Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.
- On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.
- The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.
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  19. *Ibid.*
  20. Jhalak Kakkar, Shruti Ojha, "An Analysis of the Vanishing Point of Indian Victim Compensation Law" *Indian Journal of Law and Society* 302 Vol.2 (2009) p 325.
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  25. It states- 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 or with the knowledge that he is likely to cause such injury or hurt, 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
  26. Section 326 B: It states 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 or burns or maiming or disfigurement or disability or grievous hurt to that person, shall be punished with imprisonment of either description for a term which shall not be less than five years

- but which may extend to seven years, and shall also be liable to fine.
27. Explanation 1. For the purposes of section 326A and this section, "acid" includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.
  28. Explanation 2. For the purposes of section 326A and this section, permanent or partial damage or deformity shall not be required to be irreversible
  29. <sup>1</sup>Shabina Begum "Acid Violence: Uniting for the Solution," 21 (May-December 2012) available at [http://www.dawsoncornwell.com/en/documents/Acid\\_Violence.pdf](http://www.dawsoncornwell.com/en/documents/Acid_Violence.pdf) (last visited 15<sup>th</sup> Jan 2021).
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