Journal of Contemporary Law and Society, *Volume 1, Issue 3, September 2024, pp. 179-182*

CASE COMMENT
Online ISSN: 3139-1079
DOI: 10.18311/JCLS/2024/v1i3/49342

Online ISSN : XXXX-XXXX

Journal of Contemporary Law and Society

Contents available at: *www.informaticsjournals.co.in/index.php/jcls*

JCLS

Commentary on the Case Law of Laxmi v. Union of India

Aviral Saini

TheWestBengalNationalUniversityofJuridicalSciences,Sector-III,LBBlock,SaltLakeCity,Kolkata-700106,WestBengal, India; aviralsaini108@gmail.com

Abstract

Acid attacks have been a common form of atrocity against women in a patriarchal society, the motive behind the attacks has been to teach women a lesson who refused the proposal of a man to marry a belief that woman does not have the right to say no and saying no is sign of arrogance, as a result pouring acid over the face of women is seen as the best form of revenge by such attackers. Lakshmi Aggarwal's judgement is a landmark precedent as it established guidelines for regulating the sale of acid to prevent such attacks and further punishments related to acid attacks were added to the Indian Penal Code, 1860 by the 2013 Criminal Law Amendment. The article focuses on facts, issues and judgement along with the positive outcomes of it and what are the lacunas still left in the matters of the victim of acid attack and the law regarding it.

Keywords: *Acid Attack, Law, Victim, Dignity, Punishment*
Case Law: **Laxmi v. Union of India**
Citation: **(2014) 4 SCC 427**
Bench: **Justice U.U. Lalit and Justice Madan B. Lokur**

1.0 Facts

Laxmi Aggarwal's age was 15 years old in 2005. Naeem Khan, 32 years old, approached her and she rejected the proposal, she did not divulge it to her parents as she believed that the blame would be put on her which would lead to the discontinuation of her studies. After 10 months of the incident, Naeem again proposed to her, but she again rejected it and subsequently, acid was thrown over her face by him and his brother Kamran assisted him in doing so. She faced physical, psychological and mental trauma due to the incident. Although, a criminal case *Naeem Khan @ Guddu v. State* (Delhi High Court, 2013) case was filed against the accused, which led to his conviction in both the trial court and the Delhi High Court; however, he was soon released on bail. The aggrieved Laxmi filed a Public Interest Litigation to ensure separate punishment for acid attacks and a total ban on the sale of acid as its easy availability has led to an increase in cases of acid attacks at an alarming rate and it also requested for the creation for 'Victim Compensation Scheme'.

2.0 Discussion on the inadequacy of existing laws

The Supreme Court directed the Law Commission of India to analyse the current situation of acid attack cases in India and submit a report on the topic "The Inclusion of Acid Attacks as Specific Offences in the Indian Penal Code and Law for Compensation for Victims of Crime". The 18th Law Commission of India in its report number 226 submitted, discussed and analysed the prevailing laws and suggested the enactment of new laws, the commission discussed the following sections of the Indian Penal Code, 1860:

I Section 20 of Indian Penal Code, 1860

II Section 307 of Indian Penal Code, 1860

III Section 326 of Indian Penal Code, 1860 (Law Commission, 2009)

2.1 Section 20 of the Indian Penal Code, 1860

Section 20 was discussed and the Law Commission of India and it analysed that offence like acid attack which covers the various forms of grievous hurt is not covered in the definition under this section.

2.2 Section 307 of the Indian Penal Code, 1860

The Law Commission analysed that under this section courts in India tend to grant bail easily in the cases of acid attack as the intention of an attempt to murder is extremely difficult to prove.

2.3 Section 326 of the Indian Penal Code, 1860

The Law Commission analysed that the punishment mentioned under this section is inadequate for heinous offences like acid attacks.

3.0 Judgement

The Supreme Court framed guidelines for the sale of acid, the sale of acid cannot be done to a person who is below the age of 18 years of the age and if the person who has attained the age of majority has come to purchase the acid, he or she must have identity proof which has the photograph of the buyer and he or she is required to divulge the purpose of buying the acid. The seller is required to furnish this information to the nearest police station and the stock's report is required to be submitted by the seller to the Sub District Magistrate. He or she will have the power to seize the unreported stock and can impose a fine of up to 50000 rupees. The Apex Court also issued the guidelines for the use of acid for research, academic and other institutional purposes Research must keep a register for the purpose of recording the details of the use of acid and file it with the SDM.

The following guidelines were issued for the hospitals by the government:

- The hospitals cannot deny treating a victim citing the reason for the non-availability of medical facilities and on denial, such a hospital or doctor shall be made liable under Sec. 357 C of Code of Criminal Procedure,1973
- The victim's first aid treatment should be the priority.
- The hospital which treats the survivor initially shall issue a medical certificate to the victim for further reference for treatment.

4.0 Criminal Law Amendment 2013

The amendment in Criminal laws was done during the Nirbhaya incident on the behest of the report prepared by the Verma Committee which was formed 6 days after the Nirbhaya incident in 2012, the committee was presided over by Justice J.S. Verma and the other two members of this committee were Justice Leila Seith (former Judge of Supreme Court) and Mr. Gopal Subramaniam (Senior Advocate) were its members. The bill was passed by Lok Sabha on 19 March 2013 and by Rajya Sabha on 21 March 2013. The Bill was given assent on 2 April 2013 by the President of India, Mr Pranab Mukherjee and was deemed to be effective from 3 February 2013. The bill was originally promulgated as an ordinance on 3 February by the President due to the protests for ensuring justice for Nirbhaya. The Amendment brought key changes in cases of acid attacks as two new sections were added and made this offence gender-neutral, the additions in detail are as follows:

- **Section 326-A** of the Indian Penal Code, 1860 mentions the punishment for acid attacks which range from 10 years imprisonment up to life imprisonment along with the fine which shall be just and reasonable to meet the expenses of the victim for medical treatment.
- **Section 326-B** of the Indian Penal Code, 1860 mentions the punishment for attempting of acid attack which ranges from 5 years imprisonment up to 7 years imprisonment along with the fine.

5.0 Provisions in Bhartiya Nyaya Sanhita, 2023

Section 124(1) mentions the punishment for acid attack which ranges from 10 years imprisonment up to life

imprisonment along with the fine which shall be just and reasonable to meet the expenses of the victim for medical treatment.

Section 124(2) mentions the punishment for attempting of acid attack which ranges from 5 years imprisonment up to 7 years imprisonment along with the fine.

6.0 NALSA's Compensation Scheme for Women Victims/ Survivors of Sexual Assault/ other Crimes, 2018

The compensation scheme also covers victims of acid attacks in its ambit but this provision is not gender neutral, the following provisions cover the compensation and also mention who are the victims of the act:

Section 2(p) covers a woman who has suffered physical or mental injury as a result of any offence mentioned in the attached Schedule including Sections 304 B, Section 326A, Section 498A IPC (in case of physical injury of the nature specified in the schedule) including the attempts and abetment**.**

Section 3 mentions about Women Victim Compensation Fund.

Section 4 mentions the eligibility of compensation It mentions that a woman the female or her dependants, according to the case may be eligible to have compensation from multiple sources. However, the compensation received by her in the other schemes shall be taken into consideration concerning Section 357 of the Code of Criminal Procedure, 1973 while deciding the quantum in such subsequent application.

Section 5 mentions the procedure for making an application before SLSA or DLSA, it mentions the mandatory filing of the First Information Report and it also mentions who can file compensation.

Section 6 mentions the place of applying: The application/recommendation for compensation can be moved either before the State Legal Services Authority or the concerned District Legal Services Authority or it can be filed online on a portal which shall be created by all State Legal Services Authorities. The Secretary of the respective DLSA shall decide the application/recommendation moved before him/her as per the Scheme.

Section 7 mentions that The SLSA or DLSA may award compensation to the victim or her dependents to the limit mentioned in the attached schedule.

Explanation: In the case of acid attack victims, the deciding authority shall be the Criminal Injury Compensation Board as directed by Hon'ble Supreme Court in Laxmi vs. Union of India W.P. CRML 129/2006 order dated 10.04.2015 which includes Ld. District & Sessions Judge, DM, SP, Civil Surgeon/CMO of the district.

7.0 Rights of Persons with Disability Act, 2016

It recognises disability from sociological aspects. It recognises 'acid attack victims' as persons with a specified disability and are entitled to disability certificates. The people who suffer from benchmark disabilities, i.e. those who have 40% or more 'disfigurement', are entitled to reservations in government jobs. They are also entitled to other benefits under Chapters VI and VII of the Act including free education for their children.

8.0 Analysis of the Judgement

The **Laxmi Aggarwal** holds paramount importance in addressing the plight of acid attack survivors. The guidelines for regulation of acid sale were laid down and it was vital as the easy availability of acid has been a key factor in acid attack against women. Moreover, the callous attitude of the hospital in treating such victims was also made punishable which is a bold step by the judiciary as professional ethics mention that the doctors can't deny treatment to any patient and hypocritical oath also mentions the same, otherwise hypocritical oath will become synonymous to the hypocritical oath. The hefty fine of rupees 50000 acts as a deterrent for the shopkeeper for his or her non-compliance in reporting the acid attack. The judgement aptly justified the discipline of victimology because the rights of victims were emphasized and regulations along with directions were given to protect the interests of victims and the guidelines. The judgment also emphasized the principles of victimology, focusing on safeguarding the rights and interests of victims. By directing the establishment of a Criminal Injuries Compensation Board, the Supreme Court sought to ensure a systematic and rationalized approach towards compensating victims. The mandatory minimum compensation amount of ₹3,00,000 was a significant measure, considering the inadequacies in

the compensation schemes of various states, which often failed to cover the exorbitant medical expenses incurred by survivors.

The reforms though have been added in theory, but the ground reality is quite different as the implementation of Laxmi guidelines is not up to the mark. The acid attack survivors must face the stigma throughout their lives, they feel isolated from rest of the society. They face both primary and secondary victimisation, in primary victimisation they face injuries and burns due to the acid whereas in secondary victimisation they are blamed for the incident; as a result, they die many deaths before natural death.

9.0 The Judicial Activism in Matters of the Acid Attack

The judiciary has shown its activism over violation of guidelines; in 2020, the Punjab and Haryana High Court expressed disappointment over the casual attitude of the state in a matter of awarding compensation to victims of acid attacks. In *Gulnaz Khan v. The State of Uttarakhand and Others*, (Wankhede, 2022) which was decided in 2023, the Uttarakhand High Court directed the Government of Uttarakhand to pay 3500000 rupees compensation to acid attack survivors. In *Union Territory of Jammu and Kashmir v. Sajid Altaf Sheikh*, (Dar, 2024) was decided in 2024, the Jammu and Kashmir High Court awarded life imprisonment to a man and ordered him to pay ₹40 lakh fine for throwing acid on a 26-year-old woman after she had refused to marry him in 2022. The sex-based stereotype regarding acid attacks has been broken by the Calcutta High Court in the case of *Surya Sankar Barak v. State of West Bengal* (Benwal, 2023) where the order was given to West Bengal State Legal Services Authority (WBSLSA) to consider enhancement of compensation which is payable to a male acid attack victim. In *State v. Afroz @Sharib* (Singh, 2024), the Delhi High Court ordered 5 lakh rupees as compensation to the victim despite the accused receiving acquittal.

10.0 Concluding Remarks

The judgment marked a pivotal moment in ensuring justice for acid attack survivors, reinforcing their right to live with dignity as enshrined in Article 21 of the Constitution. The judicial activism in such matters is commendable as it enhances belief in Constitutionalism, still, a lot has to be done to nip the evil in the bud. Minimising the gap between theory and practical is the need of an hour and victimology has to focus on such victims, the protection of Section 72 of Bhartiya Nyaya Sanhita, 2023 should also be granted to victims of acid attacks. Moreover, the lacunae in NALSA's Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes, 2018 has to be removed which contradicts the concept of gender neutrality in acid attacks which has been provided in Bhartiya Nyaya Sanhita, 2023. The Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 must be pondered over to ensure victim rights are taken seriously in such matters. The societal structures also need overhauling, the philosophy of "consent", "free will", and "equality" is required to be infused in Indian society to minimize acid attacks and prevent survivors from enduring repeated traumas and the word "life" acquires true meaning in their lives.

11.0 References

Benwal, N. (2023, December 22). *Calcutta High Court asks the Legal Services Authority to consider enhancing compensation to male acid attack victims*. Bar And Bench - Indian Legal News. https://www.barandbench.com/news/calcutta-high-court-legal-services-authority-consider-enhancing-compensation-male-acid-attack-victim

Dar, M. (2024, March 7). *Srinagar court sends man to jail for life, slaps ₹40 lakh fine for throwing acid on woman who refused to marry him*. Bar And Bench - Indian Legal News. https://www.barandbench.com/news/srinagar-court-life-imprisonment-40-lakh-fine-man-acid-attack-on-woman-who-refused-to-marry-him

Law Commission, *The Inclusion of Acid Attacks as Specific Offences in the Indian Penal Code and a Law for Compensation for Victims of Crime*. (226, 2009).

Naeem Khan @ Guddu v. State, Unreported Judgements, 980 of 2009, decided on 7 October, 2013 (Delhi HC)

Singh, R. (2024, April 4). Acid Attack: Delhi High Court upholds acquittal of accused but orders ₹5 lakh compensation each to the victims. Bar And Bench - Indian Legal News. https://www.barandbench.com/news/delhi-high-court-acquittal-accused-5-lakh-compensation-each-acid-attack-victims

Wankhade, S. (2022, December 23). The dignity of individuals on the same pedestal as unity of nation: Uttarakhand High Court awards ₹35 lakh to acid attack survivors. Bar And Bench - Indian Legal News. https://www.barandbench. com/news/dignity-of-individuals-on-same-pedestal-as-unity-of-nation-uttarakhand-high-court-awards-35- lakh-to-acid-attack-survivor