



JUSTICE? WHAT JUSTICE?

Tackling acid violence and ensuring justice for survivors

CAMBODIA, COLOMBIA, INDIA, UNITED KINGDOM

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Acid Survivors Trust International (ASTI) is a UK registered charity (no. 1079290) and the only international organisation whose sole purpose is to end acid violence. ASTI was founded in 2002 and now works with a network of in-country partners to support acid attack survivors and end acid violence. ASTI has helped provide medical expertise and training to partners, raised valuable funds to support survivors of acid attacks and helped change laws.

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FOREWORD

In October 2012, I was in Phnom Penh, Cambodia, with the primary purpose to meet a young mother and her seven year old daughter, both survivors of an acid attack. They lived in a tiny apartment in a slum district of the city. The mother wore a veil when we met. She was ashamed of her appearance. Over the course of my visit she removed her veil to reveal very serious facial scarring. She was blind in both eyes as a direct consequence of the attack. Her hearing was also impaired. Her seven year old daughter was also heavily scarred across her face, back and hairless head. The care worker informed me the girl used to wear a wig to school to hide her baldness, but due to constant teasing from her fellow students now refuses to wear it. The mother earns two dollars a day by bagging rice. She lives in a constant state of fear and anxiety for her daughter. Her daily routine is enveloped by anxiety. As she is blind she is fearful of burning down the apartment while cooking rice. The physical and mental trauma suffered by mother and child is unimaginable. The majority of the assistance they receive comes from a small local NGO partner in Cambodia who arranges medical and psychosocial support. The perpetrator, the husband and father of the young mother and child, escaped capture and punishment. He fled to France immediately after the attack. The obvious questions came to my mind. What is the government doing to ensure they receive quality medical care? What efforts have been made to investigate and punish the perpetrator? It became clear that there was a need to better understand how effectively laws were being enforced across countries, particularly on justice for survivors.

Every year thousands of people across the world are subjected to deliberate and pre-meditated attacks with Nitric, Hydrochloric or Sulphuric Acid. Acid violence is a form of gender-based violence as it affects women disproportionately and is prohibited under international law. India, UK, Cambodia and UK have ratified The Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”) which places a number of obligations in relation to acid violence.

It is estimated that there may be over a thousand cases a year in India alone. Attacks often occur as a result of domestic or land disputes, a violent act of revenge towards a girl or woman who has rejected a marriage proposal or spurned sexual advances. During an attack, children are often in close proximity to their mother and as a result suffer burns. Attacks are most common in societies where the rule of law is weak. The easy availability of acid, used in manufacturing and processing of cotton and rubber, contributes to incidents of acid violence in many countries. Acid violence can occur anywhere but the countries with the highest recorded levels of acid violence include Afghanistan, Bangladesh, Colombia, India, Pakistan, Nepal, and Uganda.

There are as many as 1500 recorded attacks a year. However, the real figure is likely to be far higher. There could be as many as 1000 attacks a year in India alone but many attacks go unreported. Survivors of acid attacks live in fear of reprisals for reporting the attack. They also know that their chances of achieving a successful prosecution are small.

This study does not seek to provide a detailed explanation on why acid attacks occur. This is covered very adequately in the excellent “Combating Acid Violence in Bangladesh, India, and Cambodia”, a report by the Avon Global Center for Women and Justice at Cornell Law School. This comparative law study, commissioned by Acid Survivors Trust International (ASTI), focuses on the existing legislation and how it has been implemented and enforced in India, Colombia, UK and Cambodia. The study has a particular focus on how effectively acids are controlled in order to limit their availability. Are survivors provided with sufficient compensation? Are perpetrators of attacks adequately punished?

This study reveals some very disturbing findings. In India, out of 55 cases studied, the time taken for litigation around a case to end is between five to ten years, on average. Considering the physical and psychological trauma and devastation inflicted on victims of such attacks, this finding is particularly worrying. Very few of the survivors received compensation.

Acid attacks are not a new phenomenon nor are they restricted to the global south. The story of Hugh Kennedy, a perpetrator of an acid attack in Glasgow in 1834, provides one of the earliest accounts of an acid attack. The attack and the punishment of Kennedy are covered in “The Reformers’ Gazette”, February 1, 1834. The article notes that, “The crime of throwing vitriol (acid) has, we grieve to say, become so common in this part of the country, as to become almost a stain on the national character”. The wishes of the authors that “law officers institute the most rigid investigation into all such cases whenever they occur...” and that, “we should never have to notice such another case again” remain unfulfilled.

It is our hope that this study will provide an evidence base for policy makers to reform and implement policy to deliver justice for survivors. Over the years I have had an opportunity to meet many survivors. Their courage and strength serve as an inspiration to all those individuals and organisations working alongside them to bring an end to acid violence.



Jaf Shah
Executive Director
Acid Survivors Trust International

INTRODUCTION

Acid violence is one of the most brutal forms of violence and there are several thousand attacks across the world every year. Legal intervention in the form of legislation specific to the crime has been possible in several countries owing to the advocacy efforts of various civil society organisations and citizen groups. One of the biggest challenges for NGOs and advocacy groups lobbying for better legal structures to combat acid violence has been the lack of data and information on the efficacy of the laws, the manner in which courts have interpreted the laws and delivered judgments.

This comparative study seeks to address this gap by analysing data from four different jurisdictions – Cambodia, Colombia, India and the United Kingdom – in the hope that it will serve as an advocacy tool for any organisation/individual committed to supporting the cause of the victims of acid violence.

METHODOLOGY

In each jurisdiction the laws relating to three main aspects of acid violence were analysed, i.e. the control and sale of acid, criminal offences relating to acid violence, the prosecution of perpetrators of acid violence, and laws relating to redress and compensation available to the victims of these crimes. Measures undertaken in each jurisdiction by various government and quasi-government bodies were also analysed. Case law analysis was undertaken in India and the United Kingdom; both common law jurisdictions. Access to case law was limited in Cambodia and Colombia as they are jurisdictions following the civil law system.

The data obtained through this study has been analysed wherever possible to understand trends including those relating to the gender of the perpetrator/victim, the success of prosecutions, the adequacy of compensation schemes, and the successful control of the sale and regulation of acid. This has helped us make conclusions regarding the adequacy of the existing laws and procedures and identify various gaps that require to be addressed. A separate section has been dedicated to each jurisdiction with the final section containing the overall conclusions and recommendations. The comparative nature of the study allows us to learn by contrasting jurisdictions.

CAMBODIA



The law in Cambodia

The Civil Law System still remains the fundamental basis of the legal system of Cambodia. It is clearly marked by the enactment of the Civil Code, the Code of Civil Procedure, the Criminal Code, and the Code of Criminal Procedure.

A. Criminal provisions

Besides general customary law, Cambodian criminal provisions were set out in its old Penal Code of 1956. This code did not contain any provision that directly dealt with acid related incidents when any offense or injury was committed by way of the acid use. However, with the application of the new Criminal Code of Cambodia 2009 created with support from France, most of the laws that existed before 1992, during the transitional period in Cambodia, are deemed as abrogated. Regarding the criminal procedural laws, the new 2007 Code of Criminal Procedure of Cambodia, also created with French support, expressly abrogates all the older codes.

Therefore, the new Criminal Code and the new Code of Criminal Procedure of Cambodia fundamentally serve as legal grounds relevant to the criminal cases and criminal procedures in Cambodia, including any acid attack cases. Since there were no specific provisions on acid issues before the Acid Law came into force, acid-related crimes were legally prosecuted under general provisions of the Cambodian Criminal Code.

Despite existing codes governing criminal cases, Cambodia passed a specific law directly dealing with strong acid issues. The Law on the Management of Strong Acid ("Acid Law") was passed on 4 November 2011, promulgated on 21 December 2011, and entered into force on 11 January 2012. The Acid Law criminalised acid violence and established regulations governing criminal liability of individuals and legal entities.

The Acid Law clearly states that the intentional killing of a victim using Concentrate Acid will be punished with 15 to 30 years in prison.¹ In addition, a perpetrator will be punished to life imprisonment if the above criminal offence has any advanced plan or ambush, or if² torture or cruel acts are performed on the victim before or at the time of the killing. In the above offense, additional penalties (of nature and duration) stated in article 206 of the Criminal Code can be declared. The use of torture and other cruel acts involving acid is punishable by 10 to 15 years' imprisonment, which is increased to 15 to 25 years in the event that the act leads to permanent disability, and 20 to 30 years if the torture leads to the unintentional death or suicide of the victim.²

Intentional violence by using acid is punishable by 2 to 5 years, a sentence which is increased to 5 to 10 years' imprisonment in the event that the intentional violence leads to permanent disability, and 15 to 25 years in the case that the intentional violence leads to the unintentional

B. Source of procurement/Control of sale

The widespread and unregulated use of corrosive substances in Cambodia, in addition to their relatively low cost, has resulted in acid becoming a choice weapon for settling disputes. Research also shows a correlation between the incident of attack and the availability of acid. Kompong Cham province is where acid is most widely available owing to its use in the process of making rubber. Proper regulation and strict management of the use of acid that covers all areas of the acid economy is fundamental to reducing the number of acid attacks, particularly in these regions.

In order to efficiently implement the Acid Law, the Sub-Decree on the Formalities and Conditions for Strong Acid Control ("Acid Sub-Decree") was adopted by the royal government of Cambodia to determine the formalities and conditions for sale, purchase, storage, transportation, packaging, carrying and use of strong acid of all types.⁴ To strictly control its usage, the location of sellers and distributors of acid needs to be authorised by competent administrative authorities. Sellers and distributors only have permission to sell and distribute strong acid to customers who provide appropriate documentation. They are also required to record all information relating to purchases and customers, as well as to pack and correctly store acid in safe bottles or containers with warning labels written in Khmer and a certificate of origin attached.⁵ Furthermore, the buyers of acid must be at least 18 years old and must provide sufficient documents clarifying their professional occupation relevant to the use of acid and the specific purpose of the acid purchased. They must also keep an invoice for inspection during transportation. Warehouses used for the storage of acid must be located far from the downtown area, be equipped with safe fire prevention and extinguishing systems and keep records of all the acid stored; this is required to comply with the technical standard of chemical storage in accordance with the conditions specified by Article 8 of the Acid Sub-Decree. In addition, regulations concerning the transportation of acid state that acid may only be transported in accordance with the specific technical standard and if it is properly packed. Additionally, acid weighing 1000 or more kilograms cannot be transported through populated areas.⁶

Article 3 of the law states that it applies to all aspects of importing, producing, transporting, distributing, buying, selling, storing and using concentrated acid, though is silent with regards to acid waste disposal, which can equally be used for the purposes of acid violence, and does not include any provisions on the subject of labelling.

The Acid Law goes on to provide a loose framework for a regulation regime, stating that unless a person or a legal entity has a licence or letter issued by the concerned ministry or responsible authority, they shall not be allowed to import, transport, distribute, buy, sell, store or use acid. The law specifically provides that the import, export, production, or dilution of concentrated acid is under the competence of the Ministry of Industry Mines and Energy. The licensing or permission letter for concentrated acid used in the health sector is under the competence of the Ministry of Health.

The Acid Law does not contain important provisions with regards to penalties for not having a licence. The penalties are determined in relation to the quantity of concentrated acid found

and differ depending on whether the acid is held by a person or legal entity. Article 14 of the Acid Law contains penalties involving fines and confiscation for those operating without a licence. Any physical person who does not have a licence or permission letter in possession of a quantity of less than 500 millilitres of acid is subjected to fines ranging from 500,000 riels to 1,500,000 riels and the confiscation of the acid, whereas legal entities are subject to fines from 5,000,000 to 10,000,000 riels. For quantities exceeding 500 millilitres, the acid is confiscated and the individual may be imprisoned from 3 months to 2 years and fined between 2,000,000 and 10,000,000 riels, whereas legal entities will be fined 10,000,000 to 50,000,000 riels. Legal entities can receive additional punishment under Article 168 of the Penal Code for operating without a licence or permission letter, which include the dissolution and confiscation of materials which are used to commit the offense as well as establishment closures.

C. Compensation Schemes:

The royal government of Cambodia provides medical care, legal support and protection to an acid attack victim, and encourages the participation of donors, associations, non-governmental organisations, international organisations in addition to private sector support.⁷

D Analysis of the law:

Until the Acid Law came into effect, Cambodian legislation did not have specific provisions criminalising incidents in which acid was used as an instrument to commit crime. Despite the introduction of extensive legislation covering these issues since, not many Cambodians are aware of the existence of the Acid Law and the Acid Sub-Decree.

Moreover, regardless of the existence of acid regulations, their implementation and enforcement under Cambodia's criminal justice system currently seems problematic. Impunity, a dysfunctional judicial system, lack of judicial autonomy, corruption, lack of resources, shortage of knowledge, and political influence over Cambodian society and its institutions may all be considered as obstacles to the implementation and enforcement of acid related regulations. On the other hand, it can be argued that existing acid regulations do not sufficiently recognise the specific needs of acid burn survivors and the seriousness of the acid crime committed even if the Civil Code on harm reparation is implemented. It is important to note that the relevant acid regulations seem thorough, but it is necessary that they are consistently implemented and enforced. Moreover, competent authorities must deal appropriately with any person who does not comply with acid regulations.

To fill some gaps found in the relevant acid legislation, we believe that awareness of the acid related laws and regulations should be extended to most Cambodians, and in particular to the acid attack victims. The strict implementation of legislation in close cooperation with the relevant authorities needs to be strongly encouraged and enforced. Issues regarding the pain, monetary loss, mental health difficulties and physical prejudice suffered by all acid attack victims should be considered so that the reparation is fully proportionate to the suffering they were subjected to as a result of the incident.

COLOMBIA



Acid attack related crimes were recently examined and analysed by the authorities in Colombia. Attacks using acid and other corrosive substances have been considered as a new modality of violence that affects many victims, most of them women. The United Nations states that the most common reasons for acid attacks include the refusal of sexual or romantic advances, land disputes, perceived dishonour, and jealousy. Similarly, Colombian authorities have found that the main reasons behind these kinds of crimes are related to love affairs.

According to statistics from the Colombian Ministry of Health and Social Protection in 2013, during the period between 2005 and 2013 medical assistance was provided to 614 victims of acid attacks, of which 497 (approximately 80%) were women. Furthermore, between January 2008 and July 2013, the National Institute of Legal Medicine and Forensics provided health services to 366 women with side injuries owing to chemical aggressions, with a peak in 2012.

METHODOLOGY

Background

Baker & McKenzie undertook a review of applicable Colombian regulations, the media, reports from different government entities and NGOs, statistical data from official authorities, acid survivors' foundations, and case law studies. Since Colombia follows the Civil law system, access to case law was limited.

Provisions:

Taking into account that Colombia changed the criminal provisions regarding acid related crimes in 2013, we reviewed: (i) the former provisions, (ii) the arguments that were provided by the National Congress to enact the new provisions, (iii) new provisions and their subsequent regulation, and (iv) the bill that the National Congress is currently discussing in order to enact new criminal provisions that regulate, on a more specific basis, attacks involving acid and other corrosive substances.

We also analysed the Colombian criminal policy in order to establish whether new provisions (both those that are currently in effect and the ones that are only drafts) are in accordance to such policy; or whether there are any changes that, from our view, should be implemented.

Specifically, the legal provisions we reviewed are:

- Criminal Code (Law 599, 2000)
- Law 1639, 2013
- Decree 1033, 2014
- Bill of law (August, 2014)
- Resolution 4568, 2014

Case law:

Even though we found that there are some criminal proceedings currently being conducted in courts by the Prosecutor General, Colombia has a policy of privacy regarding criminal matters, especially when there are minors involved. None of the judicial proceedings regarding acid attacks have reached the high courts and, consequently, it is very difficult to find further information regarding these cases.

From the available case law background, we were able to identify different factual criteria regarding each of these cases, such as: (i) the gender of the perpetrator; (ii) the motives; (iii) the relationship between the parties; (iv) the ages; (v) the sources for procurement of acid; (vi) the sentencing guidelines implemented and, (vii) the nature and scope of the punishments.

The Law in Colombia

A. Criminal Provisions

Before the enactment of the current provision (Law 1639, 2013), acid attacks only fit under crimes established in Article 113 of the Colombian Criminal Code titled “personal injury”. However, this provision was found to be insufficient not only because of the sweeping terms that described the crime, but also because penalties were not as stringent as they should be considering the impact of these attacks.

Law 1639, 2013 amended the description of the crime of personal injury by adding a specific punishment when the injury is caused by acid or other chemical corrosive substances, and by establishing a more severe penalty. The statute also restricts the sale of acid and other chemical corrosive substances.

The additions to Article 113 of the Colombian Criminal Code:

- When the deformity is caused by acid or any other kind of chemical corrosive substance, the perpetrator will be subject to imprisonment of 72 to 126 months, and will be compelled to pay a fine equivalent to up to 54 minimum monthly statutory wages (for 2014, a monthly minimum statutory wage was equivalent to USD \$342, approximately, so the maximum fine was approximately USD \$18,470).
- The penalty will increase from one third to a half when the physical injury is caused to the victim’s face. Law 1639 also contemplates extra legal measures in order to help the victims and control the provisions.
- Hotline for women: a free phone line created for women who have been victims of any kind of violence (including attacks with acid or any kind of corrosive substance). The main objective of this hotline is to provide full and truthful information about the female victim’s rights and guidance in judicial matters.
- The creation of a subcommittee with representatives from the Ministry of Justice, the

- National Police, the Ministry of Health and Social Protection and the Women's Secretariat to help acid attack victims, mainly by monitoring the effective implementation of the measures established by Law 1639, 2013, by all the involved actors (government, administrative authorities, vendors entities providing health assistance, among others).

There is a new bill of law that is currently under discussion, which in our opinion must be taken into consideration in this study.

B. Measures to control the sale of acid and other corrosive substances

- Law 1639, 2013 also has a sale control measure chapter devoted to the control of the sale of acid and other corrosive substances. In particular the law:
- Creates a national record for the sale of acid and other corrosive substances reflecting the agents that participate in the manufacture of the product, as well as consumers thereof.
- When acid or any other corrosive substance is sold without complying with the rules regarding the above mentioned national record, and it is used to commit a punishable offense, then the commercial establishment can be closed by the authorities.
- The government has the duty to regulate the specific functions of the national record, and its practical implementation.

Decree 1033, 2014 regulated law 1639, 2013, as follows:

- The vendors of acids and the corrosive chemicals defined by the Ministries of Health and Commerce are obliged to register themselves before the INVIMA (a public agency in charge of overseeing the production of chemicals, medicines and food).
- Once the vendor is registered before the INVIMA, he/she is obliged to fill out a standard form with the specific required data of the buyer and of the acid or chemical that was sold. In addition, all vendors of these substances are obliged to display a sign in their commercial establishment that states: The sale of acid or any other corrosive substance to under age persons and persons under the effects of alcohol or any other psychoactive substance is prohibited.
- Assigns to the INVIMA the duty of implementing the national record of acid and other corrosive substances.
- Assigns to the Ministry of Commerce and the administrative authorities the obligation of surveillance of the vendors of acids and any other corrosive substances.

The Colombian criminal system embraces integral principles of reparation to victims. It enables the victim to ask for justice, truth and economic reparation of injuries.

C. Compensation and Medical Care

The Colombian criminal system embraces integral principles of reparation to victims. It enables the victim to ask for justice, truth and economic reparation of injuries. The Integral Reparation does not have specific parameters, and thus all victims will not benefit from the same reparations.

In Colombia there are few criminal processes regarding acid attacks, and none have reached the Supreme Court of Justice. Therefore there is no precedent with regards to compensation for this type of crime.

Aside from the above, Decree 1033, 2014 regulates the pathway for the comprehensive attention of acid attack victims, as follows:

- The pathway for comprehensive attention of the acid attack victims will include: (i) first aid assistance; (ii) protection to the victim and their family; (iii) access to the courts in order to file claims against the perpetrators; and (iv) the continued employment of the victim.
- The administrative entities charged with implementing the above mentioned pathway are: (i) the National Police; (ii) the Prosecutors General; (iii) the National Institute of Medical Forensics; (iv) the Colombian Institute of Family Welfare; (v) the territorial entities; (vi) health maintenance organisations; and (vii) work inspectors.
- The entities in charge of providing medical services will be obliged to ensure the priority attention of the acid attack victims and will provide all the necessary services in order to ensure the comprehensive medical care of these victims.
- The records in which the health care entities report the acid attack cases will be modified in order to ensure the correct and complete characterisation of each case.

Resolution 4568, 2014, adopted an emergency services protocol which requires healthcare institutions to guarantee prompt and appropriate health services for victims of chemical attacks. The protocol establishes first aid attention at the place where the attack took place, pre-hospital care, blood supply, purging and initial recovery, collection of forensic evidence, notice to the Public Health National Surveillance System and the District Health Secretary, and transfer of the victim to the closest Burn Unit or high complexity medical institution. The protocol also establishes an interdisciplinary medical handling (including a mental health specialist) of the injuries and the physical rehabilitation process of the victim.

Note that this protocol was not adopted or published until recently (the beginning of November), and therefore is still in an implementation and assessment phase.

Analysis of the law

A. Adequacy of the existing law/procedure

In Colombia, acid attacks have been construed by judges and prosecutors as either an attempted homicide or a personal injury, which are two different crimes with different penalties established under the Criminal Code.

The National Congress, attempting to clarify the applicable crime to acid attacks, added article 113 of the Colombian Criminal Code, as explained in section 3-a (i.e. that it is a form of personal injury). However, nowadays some prosecutors and judges continue to argue that there are two different theories which may be applicable to these kind of attacks, namely: (i) attempted homicide; or (ii) personal injury.

According to the arguments considered in Article 113, in order to establish what type of crime an acid attacks is, the criminal judge should analyse the intention of the perpetrator of the crime at the moment of throwing the acid or the corrosive substance on the victim. This means that the prosecutor or victim has to prove the perpetrator's intent when the crime was committed: (i) whether he or she wanted to make an attempt against the victim's life; or (ii) whether he or she wished to injure the victim.

We consider that the classification of the crime should depend on the intention of the perpetrator, instead of the affected area of the body.

From a practical standpoint, we have noted a few cases in which the analysis that judges and prosecutors make depends on the area of the body that is affected by the acid or the corrosive substance, in order to establish if it was a murder attempt or a personal injury. As an example, an acid attack would be characterised as personal injury when the affected area is an extremity, and as a murder attempt when the attack is straight to the face.

There is an important difference between a murder attempt and personal injury⁸, the first one has harsher penalties: between 156 and 300 months of imprisonment or, if it is aggravated, between 300 and 480 months. It depends on how close the perpetrator was to committing the actual crime (murder). Personal injury has lower penalties: from 72 to 126 months, or, if the attack is to the face, between 96 and 189 months.

Prosecutors may use a murder attempt theory to seek higher penalties, leaving aside the intention of the perpetrator and stripping the acid attack of its nature as a criminal offence. Law 1639, 2013 intended to solve this issue by limiting the penalty with regards to the correct type of crime. However, prosecutors continue to apply the attempt murder theory.

This misapplication of the law could trigger uncertainty of the consequences of the perpetrators' conduct for the victims, the perpetrator and for society as a whole because it will depend on the theory that the judge decides to apply in each particular case, and not on a uniform basis, which creates legal instability and lack of confidence in our judicial institutions.

Colombia has a civil law system, based on the written law as opposed to the common law system, therefore judicial decisions are not applicable to everyone unless the ruling is issued by a high court.

As aforementioned, none of the judicial proceedings regarding acid attacks have reached a high court.

The only case that reached a Tribunal was one in which the perpetrator gave instructions to a ten year old child to throw acid at the face of his former girlfriend. In compensation, the defendant was to provide the child money, a video game, a mobile phone and some clothes. The defendant told the child that it was a "harmless substance". When the victim was returning home from school with two friends the child threw the substance at her face and body. The two friends of the victim also sustained injuries on their bodies. The acid attack left the victim permanently disabled with physical deformities of the face and body, permanently limiting movements of the neck as well as permanently limiting the victim's ability to hear. The collateral victims had medical leave for 10 days, and they did not suffer any permanent injury.

The criminal court characterised the attack as attempted homicide and sentenced the perpetrator to jail for 150 months and to pay a fine of 90 minimum legal wages. Had the court characterised it as a personal injury, the sentence would have been lower.

Thereafter, the Criminal Tribunal modified the decision and reduced the sentence to 108 months and a fine of 60 minimum monthly legal wages because it concluded that the attack should have been characterised as personal injury. The Tribunal changed the decision of the Criminal Judge, because it decided to categorise the conduct as a different felony. These kinds of dilemmas in the application of a criminal law system create legal instability, and send improper messages to society. Currently, the National Congress is drafting a new law whereby acid attacks will be considered as an autonomous and independent crime. The type of crime is called "*injuries caused with chemical agents, acid and/or similar substances*" and it will establish harsher penalties ranging from 150 to 240 months in prison, and 251 to 360 months in prison if the conduct causes deformation, functional or anatomical loss.

We consider that defining a new criminal offence is not the proper solution to fix the legal instability that prosecutors and judges have created. The real solution would be to apply the criminal policy on a strict basis with a correct analysis of the intention at the moment of the crime. We believe that the intention of an acid or chemical agent attack is not to murder the victim, but rather to cause severe harm and personal injury.

Decree 1033, 2014 regulated the national record of the sale of acid and other corrosive substances, as we mentioned at section 3(b). However the implementation of the measures seems insufficient. In our view, the prohibitions regarding the sale of acid and other corrosive substances should not only apply to underage individuals or persons under the effects of alcohol or drugs, as established in the Decree, but also to any other person (individuals or legal entities).

Currently any adult can buy acid (or other corrosive substances) by filling in a form with his/her personal data for a small amount of money. It is unusual that a perpetrator buys acid or corrosive substances under the influence of alcohol or any other psychoactive substance.

B. Gaps which need to be addressed

- The regulations and the application of the rules aimed at Integral Reparation (mentioned in section 1(c)) require a more comprehensive study, on a case by case basis, taking into account the injuries that the acid attack has caused to the victim. The medical procedures are very expensive, and it is important to study the actual loss and the loss of profits of the victim in order to establish the amount owed, since they will be unable to work. We consider that it is not possible to create a standardised compensation scheme as not all acid attacks have the same consequences and the same impact.
- The government should become more strict with regards to the sale of acid to individuals, without affecting companies that require these substances for business purposes, irrespective of the liability of the companies and specialised controls.
- Companies are liable for the damages caused by their employees, which means that according to Colombian civil law, the lack of surveillance and security of employees could potentially entail a lawsuit against the company as a result of the actions of its employees.
- The National Institute of Surveillance of Medicines and Food (“INVIMA”) should harshen the standards that allow commercial establishments to sell acid and other corrosive substances, to ensure that only specialised establishments would be allowed to do so, similarly to the manner in which the government controls chemical substances required to process psychotropic substances. This should be controlled before the licence is issued, verifying the details provided by the commercial establishment, its sales plan, its potential clients and the possible amount of substances required. After verifying that the establishment meets the necessary standards, INVIMA could issue an authorisation to sell acid and other corrosive substances. This authorisation could be for a limited amount of substances and for a limited time, with the possibility of being suspended by INVIMA if the establishment does not strictly follow the safety protocol for the sale of these substances.
- Failure to follow the mentioned security protocol could also be sanctioned with fines by the Colombian government.
- The government could also promote educational campaigns regarding the consequences of the acid attacks, demonstrating the permanent disfigurement of the victims and the physical and mental pain resulting from these incidents in order to raise awareness of their pain and suffering.

- The government should provide adequate healthcare as well as suitable facilities to access appropriate medical treatment, and assess if the emergency services protocol adopted by Resolution 4568, 2014 is being implemented and followed. For this, it should invest in institutions and qualified physicians providing specialised care in acid burns in order to guarantee proper medical care for the victims. Monies collected from the imposed fines could be reinvested in campaigns, in the training of required health specialists, and for the improvement of healthcare facilities.
- It is also important to promote the reporting of acid attacks by victims and the community. It is imperative to generate confidence in the criminal system through the effective prosecution and punishment of perpetrators of acid attacks, with an adequate criminal policy, investigation and trial.

INDIA



As a contribution to this report, J. Sagar Associates has studied the legislative history of the penal provisions relating to acid attacks up to the most recent 2013 Amendment. The intervention by different agencies such as the Law Commission of India, the National Commission for Women and the Commission on Amendments to Criminal Laws (“Verma Commission”) have also been analysed to understand how changes in the legislative framework came about.

The Supreme Court of India’s intervention in the case of *Laxmi Vs. Union of India*⁹ has been the most instrumental in bringing about positive change. It has prompted changes in the regulatory framework controlling the sale of acids, nationwide guidelines regarding the emergency medical response to be provided by hospitals in cases of acid violence and also a clear victim compensation scheme with a specific fixed quantum of compensation.

We have also analysed 55 cases decided by Indian courts since 1991 in detail. 14 of these cases are the decisions of the Indian Supreme Court and the remaining 41 are decisions issued by various High Courts in India. The cases have been analysed under different parameters to understand the effectiveness of the present system and to conclude with certain recommendations.

I. Some Limitations of the Study

- (i)** Owing to the fact that India is a large country with more than 28 states, it was not possible to look at all the decided cases. Hence the sample of research is restricted to only 55 cases decided since 1991.
- (ii)** The case law in India is available from various databases which provide access to reported cases. However, as far as notifications and other government circulars are concerned, we were only able to access what was available in the public domain.
- (iii)** There has not been much case law since the 2013 Amendment. Hence, we are unable to study the effectiveness of the new amendments in detail.

II. The Law in India

The Indian Penal Code, 1860 (“IPC”) is the legislation which deals with substantive provisions of criminal law in India. Annexure-I details the various procedural steps involved in prosecuting a case. The Amendment in 2013 provided for the insertion of Sections 326A and 326B into the Penal Code which deal with, inter alia, criminalising the act and attempt of causing any injury with acid. It also included certain other provisions to lead to the better prosecution of acid attacks. This Amendment was the first attempt to explicitly include provisions relating to acid attacks in a statute.

Prior to this Amendment, any such attack was punishable under Sections 320 ("Grievous hurt including causing emasculation, privation and disfigurement"), 322 and 325 ("Voluntarily causing grievous hurt, punishment") and 326 ("Causing grievous hurt by dangerous weapons or means") of the IPC. In certain extreme cases, Section 307 IPC ("Attempt to Murder") is used and in cases leading to the death of the victim Section 302 IPC ("Murder") is used.

In the aftermath of the fatal rape of a young student in Delhi in December 2012, a three-member committee led by Justice J.S. Verma, former Chief Justice of the Supreme Court, was constituted to recommend amendments to various criminal laws ("Verma Committee"). The Verma Committee was of the opinion that the offences relating to acid attacks should not be clubbed under the provisions of 'grievous hurt' which is punishable with 7 years imprisonment under the IPC. The Verma Committee further recommended that the Central and State Governments create a corpus to compensate victims of crimes against women.

The provisions of the Amendment were also the outcome of a Law Commission of India report submitted to the Supreme Court of India for its consideration in July 2008 and later published under the title "The Inclusion of Acid Attacks as Specific Offences in the Indian Penal Code and a Law for Compensation for Victims of Crime" ("Report"). The Report recommended the introduction of provisions in the IPC that would deal specifically with acid attacks, as well as provide a comprehensive law on compensation to victims. The Report also recommended that the sale of acid be banned except for commercial and scientific purposes.

The National Commission for Women prepared and submitted a draft bill titled "Prevention of offences (by Acids) Act 2008" ("NCW Bill") to the Union Ministry for Women and Child Development. The NCW Bill criminalizes acid attacks as a separate, serious, non-bailable and non-compoundable offence; addresses medical, psychological, social, rehabilitative and legal support for victims of acid attacks; lays down a procedure for providing assistance to the victims; establishes the roles and functions of the implementing authorities and regulates the sale of acid and other corrosives. The NCW Bill proposes the establishment of a National Acid Attack Victim's Assistance Board, a Monitoring Agency to implement the provisions of the proposed act and a National Acid Attack Victim's Assistance Fund in which compensation is earmarked for the victim's medical treatment, special needs and rehabilitation and children in the event of the victim's death. These reliefs are not dependent on the conviction, or identification, of the perpetrator. Whilst some of the proposed provisions of the NCW Bill have been included in the Amendment, several of the substantive suggestions have not been considered. It remains to be seen whether the NCW Bill is passed by Parliament at a later date.

PENAL PROVISIONS

(a) Section 326A of the IPC

This section criminalises the act of causing permanent or partial damage/deformity to any part of the body of another person or grievous hurt to another person by throwing acid on/ administering acid to the person/using any other means accompanied with the intention/ knowledge that such an act is likely to cause such hurt. The punishment for such an offence is imprisonment for a period of 10 years to life along with a fine. The quantum of the fine is to be determined on the basis of meeting the medical expenses of the victim.

(b) Section 326B of the IPC

This section criminalises an attempt to cause permanent or partial damage/ deformity to any part of the body of another person or grievous hurt by throwing acid on/ administering acid to the person. The offence is punishable with imprisonment for a term of 5 to 7 years and the perpetrator shall also be liable to pay a fine. Acid, for the purposes of Sections 326A and 326B has been defined as 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. Permanent or partial damage or deformity shall not be required to be irreversible in order to impose punishment under Sections 326A or 326B.

(c) Section 100 IPC

If there is an act of throwing or administering acid or an attempt to throw or administer acid, which causes reasonable apprehension in the mind of the accused that grievous hurt will be caused; the right of self-defence is available.

(d) Section 154 of the Code of Criminal Procedure

This section deals with the recording of information by the police officers when they receive information regarding the commission of a cognizable offence. This is the stage when an FIR, i.e. First Information Report, is registered. As per the amendment, if the information pertains to an offence or an attempt to commit an offence under Section 326A or Section 326 B (or any of the other offences listed) the information can only be recorded by a female police officer or any female officer.

(e) Section 166 A (3) of the Indian Penal Code

As per this provision, if a police official fails to record the information provided to him regarding the commission of a set of cognizable offences including Section 326A and Section 326B which deal with acid attacks, he/she shall be punishable with 6 months to 2 years of imprisonment and a fine.

(f) Section 161 of the Code of Criminal Procedure

During the investigation, police officers usually record statements of victims and of those connected with the crime as well as those who are acquainted with the facts of the case. As per the amendment, the recording of the statement of a person against whom an offence under Section 326A or 326B is said to be committed should only be done by a female police officer or any female officer.

(g) Section 357 C of the Code of Criminal Procedure:

This provision states that all hospitals, whether public or private and whether run by the central government or the state government, shall provide first aid and medical treatment free of cost to the victims who have been subjected to offences under Section 326 A and Section 326B (along with other offences), and are obligated to inform the police immediately.

(h) Section 166 B of the Indian Penal Code:

According to this provision, if a person in charge of a hospital obliged to provide treatment free of cost under Section 357C refuses to provide such first aid and treatment, they shall be punished with a term of imprisonment of up to 1 year, or be subject to a fine, or both.

III. Procurement and Sale of Acid:

The 1919 Poisons Act is the Indian legislation that deals with the import, possession and sale of poisons. Section 2 of the Poisons Act grants rule-making powers to the States. In the case of *Laxmi Vs. Union of India*¹⁰, the Union of India informed the Court that after meeting the representatives of all the States and Union Territories, it was agreed that it would enact rules under the 1919 Poisons Act to regulate the possession and sale of acid by classifying it as 'poison' under this Act.

Pursuant to this, the Central Government came out with the present Model Rules and submitted them to the Supreme Court. The Supreme Court directed all States and Union Territories to revise or modify and adopt these Rules via its order dated 18 July 2013.

The salient features of these Model Rules are as follows:

- It provides for a clear system of licensing. The Licensing Authority under the Rules is the District Magistrate or any other officer designated by the State Government.
- Any poison listed out in the Schedule to the Rules can be possessed for sale or sold only if a valid licence is issued for the same.
- The Rules should be prominently displayed at the place of business.
- The standard duration of a licence shall be 5 years.
- The Licensing Authority shall cancel or revoke the licence at its discretion. Before doing the same, sufficient opportunity should be given to the licence holder to offer an explanation and an Appellate Authority shall also be designated.
- When there is an order to cancel or revoke a licence, the licence holder shall dispose the stock to another licence holder within 3 months time.
- An Executive Magistrate (a police officer of the rank of a sub-inspector of police), a Medical Officer appointed by the State Government or a Drug Inspector under the Drugs and Cosmetics Act has the power of inspection of the premises of the licence holders.
- A licence is to be granted only to those persons who, in the view of the granting authority, are capable of conducting business in poisons.
- The sale of poison shall be made by the licence holder in person or under his/her supervision. Additionally, the poisons shall only be sold from the premises that are specified in the licence.
- The poison may only be sold by the licence holder if they personally know the buyer or if the buyer produces proof of identity and provides basic details about themselves

- below the age of 18 or not found to be in a sane state of mind. .
- A register should be maintained by the licence holder which records all the specified details of the buyers, stock in store, etc.
- Provisions are made for the safekeeping and possession of the poisons as well as labelling methods. The Rules also make the printing of universal warning symbols on the labels compulsory.
- Provisions are also made for the standard operating procedures with respect to the security, storage and incident management of acids and corrosive substances. It details step-by-step processes.
- Schedule 1 lists the poisons that cannot be sold without a licence. This includes all the acids that are commonly used for acid violence including acetic acid, hydrochloric acid and sulphuric acid.

The Supreme Court of India in its final order dated 10th April, 2015 directed that the Ministry of Home Affairs and the Ministry of Health and Family Welfare should ensure that notifications to ban the over the counter sale of acid is issued at the earliest.

IV. COMPENSATION SCHEMES

Adequate compensation is a key component to securing justice for the victims of acid attacks given the high costs (specifically medical ones) incurred by victims in the course of their rehabilitation.

Prior to the enactment of Section 357-A of the 1973 Criminal Procedure Code (“Section 357-A”) (inserted by the 2008 Code of Criminal Procedure (Amendment) Act , effective as of January 7, 2009) the prevailing criminal law provisions did not provide for specific compensation for the victims of acid attacks. Even in cases where fines were levied by the courts, the amounts were nominal and the proceeds were not awarded to the victims.

The Supreme Court of India (“Supreme Court”) emphasised the urgent need for legislation specifically for victims of acid attacks in several cases, regardless of whether the perpetrator is brought to trial and convicted.

With the enactment of Section 357-A, each State is required to formulate a Victim Compensation Scheme in coordination with the Central Government, for the benefit of victims or persons who depend on them, who have suffered loss or injury as a result of a crime. It is important to note that the victim compensation schemes are not only directed at acid attack victims but also at the victims of several other crimes.

The procedure set out by Section 357-A states that, upon a recommendation by the court hearing the case, the State Legal Services Authority is required to conduct an inquiry to determine the quantum of compensation payable to the victim. In the event that the perpetrator cannot be found/is absconding and no trial is conducted, a direct application is made to the Legal Service Authority. The State Legal Service Authority may order immediate first aid, free medical benefits, or other such benefits (as may be determined by the authority) upon receipt of a certificate from a police officer not below the rank of a person in charge of the station or the Magistrate.

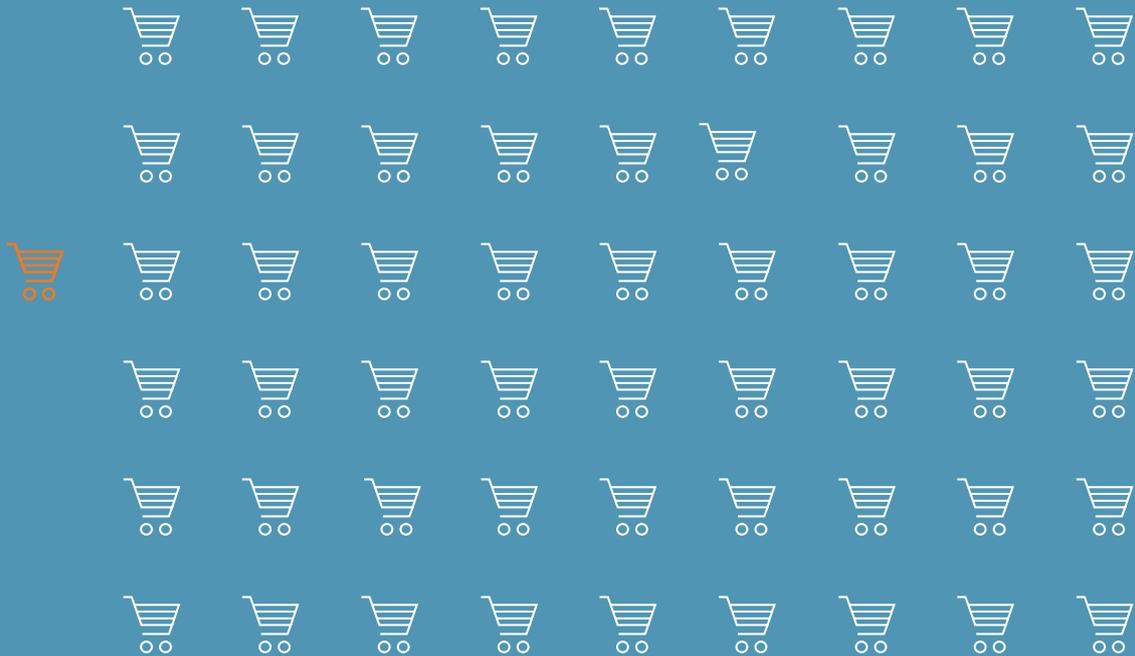
An analysis of the Schemes notified by some of the states reveals that states have set the monetary thresholds for compensation at their own discretion. The Supreme Court alluded to this in *Laxmi Vs. Union of India and Others* and passed specific directions in this regard on July 18, 2013. The Supreme Court stated that the victims' compensation schemes formulated by the States and Union Territories were not uniform. Further, the Supreme Court observed that the compensation provided under most schemes was inadequate.

On the recommendation of the Solicitor General of India and citing the need for acid attack victims to undergo a series of plastic surgeries and other corrective treatments, the Supreme Court directed the States and Union Territories to enhance the compensation to Rs. 3,00,000. Further, the Supreme Court stated that out of the aforesaid amount, Rs. 1,00,000 should be paid within 15 days of the incident and the balance no later than two months from such date. The Supreme Court directed the Chief Secretaries of the States and Administrators of the Union Territories to ensure compliance with these directions.

Furthermore, the Ministry of Health and Family Welfare issued an Advisory dated 2 March 2013. Through this notification, attention was drawn to the amendment to the 2013 Code of Criminal Procedure via the 2013 Criminal Law Amendment Act which inserted Section 357-C. Section 357-C provides that all hospitals, whether public or private, or run by the Central Government, the State Government, local bodies or any other person shall provide free first aid and medical treatment to the victims of certain classes of offences, including an offence under section 326 –A which pertains to acid attacks. It is also the duty of the hospital to immediately inform the police regarding the same. In a meeting convened by the Home Secretary, it was agreed that State Governments/Union Territories may be requested to provide free treatment victims of acid attacks. In pursuance of the same, the present advisory was issued requesting State Governments/Union Territories to direct all hospitals whether private, public, autonomous or otherwise to follow the provision of free treatment in a right earnest manner. The Supreme Court has also directed that the hospital shall give a certificate that the individual is a victim of acid attack.

V. ANALYSIS OF CASES

1. SOURCE OF PROCUREMENT OF ACID



1/55 **KNOWN** | 54/55 **UNKNOWN**

As exemplified above, out of the 55 cases analysed as part of this study, only one case had a reference to the source of procurement of acid and no action has been taken against the seller of the acid in any of the other cases. Almost all the cases analysed were under criminal law for penal prosecution, but nothing prevents the concerned judicial officer or the investigating agency to refer the matter for enquiry under provisions of the 1919 Poisons Act to ensure that the seller of the acid is also made accountable for the consequences of stocking and making such dangerous substances available.

The cases analysed clearly show the lack of interconnectedness between the different laws addressing acid violence i.e. criminal laws and laws dealing with regulating sale.

2. Who are the victims of these crimes, who commits these crimes and for what reasons?

A. VICTIMS



62%
FEMALE



24%
MALE



14%
UNKNOWN

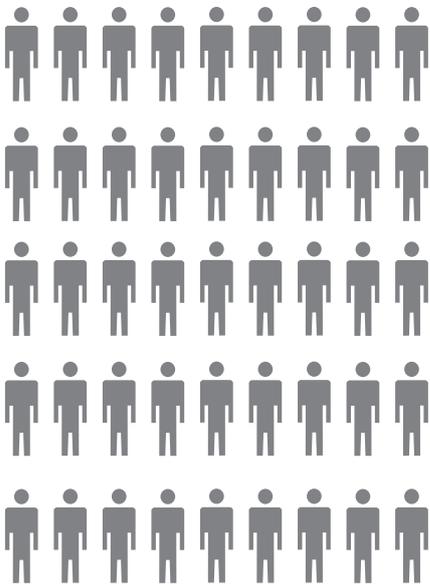
ACID ATTACKS VICTIMS BY GENDER

This infographic demonstrates that the majority of the victims are female (62%). But there are also a sizeable percentage of male victims (24%).

3. Gender of the accused



2/55
FEMALE



46/55
MALE



7/55
BOTH, UNKNOWN OR
IRRELEVANT

This infographic indicates that the majority of the accused are male (84%) and that the number of female accused is extremely small (4%), excluding cases where the gender of the accused is unknown, irrelevant or there are both male and female defendants.

4. Was the crime committed by a person known to the victim?

42/55

KNOWN ATTACKER

09/55

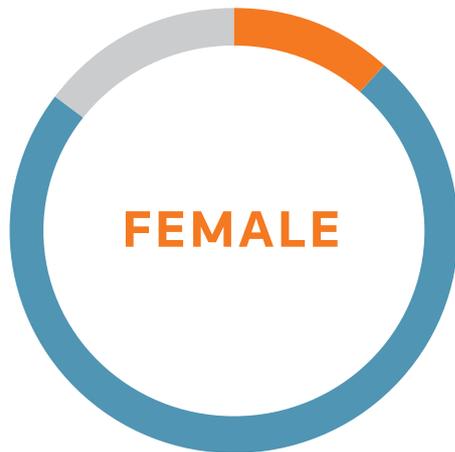
UNKNOWN ATTACKER

04/55

DATA NOT AVAILABLE, OR IRRELEVANT

This infograph indicates that in 76% of the cases, the crime is committed by a person who is known to the victim and in about 16% of the cases it is committed by unknown persons/strangers.

5. Motive for the crime



4 CASES

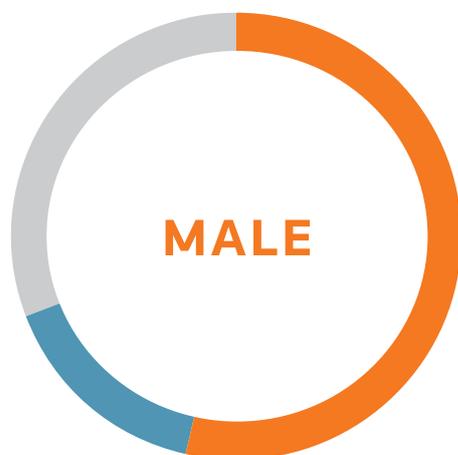
Political rivalry, property disputes, et al.

5 CASES

Motive Unknown

25 CASES

Personal: Marriage/dowry related, refusal of proposal or sexual advances



4 CASES

Motive Unknown

2 CASES

Personal relationship related

7 CASES

Political rivalry, property disputes, et al.

- When the victim is a female, the primary reason for the attack in 74% of the cases is linked to relationship issues or the refusal of romantic and sexual advances. In about 15% of the cases, the motive is unknown. The reasons behind the incidents in the remaining cases vary from political rivalry to property disputes and the like.
- When the victim is male, the motive behind the acid attack in 54% of the cases relates to political rivalry, enmity or property disputes. For the remaining 31% of the cases, the motive is of a personal nature such as relationship disputes and suspicions of infidelity. The motive was unknown in 15% of the male victim cases examined.

5. Nature of Prosecution and Outcome

A. What are the legal provisions used in prosecuting crimes involving acid violence?

From the sample of cases studied as a part of this research, 50% of them ended up in prosecution for the offence of murder under Section 300 IPC. In some cases, where the clear intention to commit murder could not be proved, the prosecution was conducted under Section 304 for culpable homicide (not amounting to murder). In cases where there was no resultant death, prosecution was for grievous hurt, attempt to murder or simple hurt.

B. Extent of Punishment awarded and the Outcome of Prosecution

- i. Out of the 24 cases where the prosecution was for the offence of murder, the lower courts confirmed the conviction in 14 of the 24 cases and awarded rigorous imprisonment for life. However, none of the cases qualified under the 'rarest of rare' category warranting the award of the death sentence. In the remaining 6 cases, the Appellate Court acquitted the accused, reversing the conviction decision of the lower court. These acquittals were either because the motive could not be established, or due to the lack of compelling evidence and the admissibility of the dying declaration of the victim. Only one case resulted in the reversal of a judgment of acquittal by the Appellate Court. In 3 other cases, acquittal orders of the lower courts were confirmed.
- ii. Out of the 4 cases where the prosecution was for offences under Section 304 IPC, 3 were instances where the charge was reduced from that of murder because the intention to commit murder could not be established. In two other cases, 10 years of rigorous imprisonment was awarded in one case and life imprisonment in another.
- iii. Out of the 8 cases where prosecution was carried out for offences under Section 307 IPC, two resulted in acquittals and conviction was confirmed in the rest. Punishment ranged from rigorous imprisonment for 3 years to rigorous imprisonment for life.
- iv. Out of the 8 cases where data was available for prosecution under Section 326 IPC, one case resulted in an acquittal by reversing the lower court's verdict. In the remaining 6 cases, there was a confirmation of the conviction, and conviction by reducing the charge from that under S. 307 in one of the cases. The punishment ranged from imprisonment for 2 years to 10 years of rigorous imprisonment. The average punishment was imprisonment from 5 to 9 years.
- v. Out of the 3 cases where prosecution was carried out for an offence under Section 324 IPC, two cases resulted in the confirmation of the conviction by an appellate court and in another, the conviction resulted in the lowering of a charge under Section 326 IPC. Punishment ranged from 1 to 3 years of rigorous imprisonment.

6. Compensation:

Out of the 55 cases studied, 50 cases were relevant to the study of the awarding of

compensation. Out these 50, 41 cases (82%) did not award any compensation. Out of the 9 cases where compensation was awarded, it ranged from Rs. 50,000/- to Rs. 5,000,000/-. Even though some cases alluded to the need for compensation, in practice this only translated to an award in few cases. The Supreme Court's directives in the case of *Laxmi* have had a positive impact.

7. Time taken for Proceedings:

a) Duration of time between the incident and the completion of the trial –

The interval between the incident and the completion of the trial lasted between 1 to 3 years in more than 50% of the cases, with 2 cases extending beyond 5 years before they were completed.

b) Time taken by the High Court to decide the appeal–

The High Court took between 1 to 5 years to decide the appeal in most cases; about 25% of them were completed within 3 years and another 25% took up to 5 years. Almost 30% of the cases took beyond 5 years, with a few cases even taking as long as 20 years. It appears that the longest delays have occurred during the appeal stage..

c) Length of time in the Supreme Court–

More than 50% of the cases were completed within 3 years at the Supreme Court.

Thus, the total taken for litigation around a case to end is between 5-10 years on an average.

VI. ADEQUACY OF THE LAW AND GAPS:

(A) REGULATION AND SALE

a) The primary reason behind the continued occurrence of acid attacks is that there is no control over the availability of acid. The study clearly demonstrates that acid is very easily accessible and available. The prosecution only steps in after the incident and there is no regulation on the sale of corrosive substances despite the 1919 Poisons Act.

b) We understand from the *Laxmi* case that even though it had been over 90 years since the 1919 Poisons Act first came into effect, rules to give effect to the legislation had not been framed by many State Executives until the Supreme Court took note of the matter and Model Rules were framed by the Central Government and subsequently adopted by the Indian States.

c) The case studies also demonstrate that no action is taken against the seller of the acid even when there are successful criminal prosecutions, as the law stipulates separate proceedings and procedures under the 1919 Poisons Act can be initiated. The lack of interconnectedness between the criminal prosecution for the offence and the action to be taken against the provision of acid has led to almost all sellers ending up scot-free.

d) Effective implementation of the provisions of the Poisons Act and the Rules thereunder, along with the application of immediate measures to curb the wide availability of acids, are important steps in reducing this type of crime.

(B) CRIMINAL PROSECUTION

a) In many of the cases prior to the inclusion of special provisions for acid attacks analysed, where there had been a resultant death, the validity of the dying declaration of the victim was questioned by the accused and some of the acquittals were on this account.

b) The delays incurred at every step of the criminal justice system play a major role in reduced punishments. The study shows that an average case lasts anytime between three to five years and this leads to ineffective trials since witness accounts are not very clear with the passing of time, and the leniency shown towards the accused also increases with time. In many cases, there is a delay even at the stage of initiating the First Information Report. In addition, the length and cost of pursuing legal proceedings discourages many victims from coming forwards.

c) It remains to be seen whether the presence of special offences criminalizing acid attacks leads to a better conviction rate.

d) The study of the victim profiles and the motives for the crimes demonstrates that even though men are also victims in some cases, the majority of attacks are against women and are perpetrated by men. These prosecutions need to be fast tracked along with other cases of crimes against women, and clear timelines should be drawn up for the trials, which should be completed in a timely manner.

(C) COMPENSATION:

a) The absolute lack of compensation in most cases until the *Laxmi* case is once again reflective of the lack of a victim friendly atmosphere in the criminal justice system. The guidelines issued pursuant to *Laxmi* will go a long way in ensuring that justice is effectively delivered, by ensuring that proper medical attention is provided and that the costs are covered by the State in addition to the victim being compensated for their trauma and suffering.

b) The case of *Laxmi* and the uproar in the aftermath of the Nirbhaya incident that led to the setting up of the Verma Commission and the subsequent amendments to the criminal law all point to how citizen groups and movements can create the momentum for large scale legal reform. The challenge lies in converting the symbolic presence of the legislation, rules and schemes into systems that function effectively and consistently by addressing the systemic concerns.

UNITED KINGDOM

1. The UK Legal System and Methodology of Study

The United Kingdom (“UK”) is comprised of the countries of England, Wales, Scotland and Northern Ireland. There is no system of “UK law” as such since each of the countries has its own legal system. It should be noted that we have only reviewed the law applicable in England and Wales. Our review has not covered the law of Scotland and Northern Ireland.

English law derives from a number of sources including legislation made by Parliament, the common law (i.e. the decisions of the courts), as well as European Union law and the European Convention on Human Rights (the “ECHR”) as a result of the membership of the UK of the European Union and the ECHR.

Acid violence may constitute an offence under the criminal law, which is a branch of the public law that governs the relationship between the state and its citizens. Criminal law defines what society considers unacceptable conduct and breaking it is considered an offence against society as a whole. If there is sufficient evidence supporting the allegations of criminal offences, the Crown Prosecution Service may choose to charge and prosecute an alleged offender. Less serious criminal cases will be heard by a magistrate in the Magistrates Court. More serious cases, including the majority of cases reviewed during this study, are heard before a judge or judge and jury in the Crown Courts.

Our review has also included consideration of ‘extra-legal measures’ such as relevant guidelines and policies which, while not binding, provide guidance and support on the application of the law.

2. The law

A. Criminal provisions

There is no UK legislation that specifically prohibits acid violence. Alleged perpetrators of acid attacks have been most commonly charged under Section 18 or 29 of the Offences Against the Person Act 1861. Individuals could also be charged with the common law offences of murder or manslaughter where a victim has died as a result of an acid attack.

i) Offences Against the Person Act 1861 (“OAPA”)

Section 18 of the OAPA makes it an offence to unlawfully and maliciously wound or cause grievous bodily harm with the intention of causing such harm.

Section 29 makes it an offence to unlawfully and maliciously cast or throw upon or otherwise apply to any person any corrosive fluid or destructive or explosive substance with intent to burn, maim, disfigure or disable any person, or to do some grievous bodily harm to any person. It is possible for an offence to be committed under section 29 regardless of whether injury is actually

caused by the commission of the offence, provided that the offender had the requisite intent. Acid attacks may also be treated as less serious offences under either Section 20 or Section 47 of the OAPA. Section 20 makes it an offence to inflict grievous bodily harm upon another person; there is no requirement to intend to commit such harm. Charges may be brought under this provision where bystanders have been incidentally injured as the result of an attack.¹¹ Section 47 makes it an offence to assault a person, occasioning actual bodily harm to them. The bodily harm required for an offence under this section must be serious, but less serious than grievous bodily harm.

An individual may also be charged with an attempt to commit an offence if they do an act which is “more than merely preparatory” to the commission of an offence, such offences including murder, manslaughter and offences against the person.¹² The charge of conspiracy is also available where a person agrees with any other person or persons that a course of conduct shall be pursued which results in, or would have resulted in, the commission of an offence.¹³

ii) Murder and Manslaughter

Where an accused has unlawfully killed another person, either with the intention to kill or the intention to do serious harm, they may be charged with murder. Although few acid violence attacks result in death, it is possible that an intention to permanently disfigure a victim could be considered sufficiently serious to give rise to a murder charge.

An example is found in *R v Mohammed Vakas, Mohammed Adeed, Fabion Kuci* [2011] EWCA Crim 875 in which three co-defendants attempted to pour acid drain cleaner into the victim’s mouth. The victim protected his mouth and the defendants instead poured the acid over his head. Although the attack did not cause death, the Court found that the attempt at pouring the acid into the victim’s mouth demonstrated sufficient intention to do serious harm and one of the three defendants was convicted of conspiracy to murder. The two other co-defendants were convicted of conspiracy to cause grievous bodily harm with intent.

An accused who can be shown to have diminished responsibility, for example due to a recognised medical condition which substantially impairs the ability of the accused to understand the nature of his or her conduct, form a rational judgment and exercise self-control, will lack the requisite intent to sustain a murder charge. However, such an offender may be charged with the lesser offence of voluntary manslaughter. This is a partial defence to murder requiring a defendant to admit that he or she intended to kill the victim and where a murder charge would not reflect a fair exercise of justice.

iii) International and EU Legislative Instruments

The Convention on the Elimination of All Forms of Discrimination Against Women (“CEDAW”) places a number of obligations on the UK in relation to acid violence. The United Kingdom ratified the CEDAW in 1989¹⁵ and therefore the convention creates legally binding obligations. The CEDAW Committee concluded in its General Recommendation No. 19 that acid attacks are amongst the prejudices and practices forming ‘domestic violence’ which is used to control

women¹⁶ The Committee made note that private acts of family violence fall within the general category of gender-based violence against which the state has a duty to protect women. State obligations under CEDAW include: taking all appropriate measures to eliminate discrimination against women by any person, organisation or enterprise; enshrining gender equality in domestic legislation, including enacting new provisions to guard against the discrimination of women; and establishing tribunals and public institutions to guarantee effective protection against discrimination to women.¹⁷

The Council of Europe Convention on preventing and combating violence against women and domestic violence (known as the “Istanbul Convention”) came into force on 1 August 2014. Although the UK has signed the Istanbul Convention, it has not ratified it. For this reason, it can be of persuasive effect only. The Istanbul Convention provides minimum standards for the prevention, protection from and prosecution of violence against women,¹⁸ and requires all parties to the convention to establish services such as hotlines, shelters, medical services, counselling and legal aid.¹⁹

There are EU guidelines on violence against women and girls and combatting all forms of discrimination against them. These are not legally binding but are extra-legal measures aiming to prevent violence, to protect and support victims, as well as to prosecute perpetrators of violence against women and girls. The guidelines make specific reference to acid attacks as a form of violence against women and girls occurring within the family. The guidelines accept that although this type of violence is most commonly committed by private actors, this “in no way exonerates States from acting with due diligence” to prevent such violence.²⁰

B. Penalties

An individual found guilty under the OAPA can be sentenced to varying degrees of punishment depending on the offence committed. Offences committed under sections 18 and 29 carry a penalty of life imprisonment while sections 20 and 47 carry a penalty of up to 7 years imprisonment. Sentences for a murder charge range from 15 years to a whole life order, depending on the seriousness of the case.²¹

The Crown Prosecution Service Sentencing Manual provides guidelines for judges during the sentencing of convicted offenders. The manual specifically notes the use of acid which is a “weapon or weapon equivalent” as a factor which indicates a higher culpability in relation to crimes charged under section 20 of the OAPA.²² This higher level of culpability of the offender should be used to inform the severity of the punishment imposed by the judge. Furthermore, the manual notes a number of “seriousness factors” which may arise in the case of acid attacks, including the “ongoing effect on the victim” and “gratuitous degradation of the victim” as contributing to the severity of the punishment imposed.²³

The final sentence will depend on the facts of the case, and in particular, on the presence of any mitigating factors (such as a guilty plea or a lack of any permanent injury to the victim) as these may reduce the severity of the punishment imposed by the judge.

i) Mitigating factors

In *R v Ismail (Ibrahim)* (1992) 13 Cr. App. R. (S.) 395, the accused's appeal against a sentence of 14 years' imprisonment for throwing strong nitric acid onto the face of a woman who sustained facial burns and became blind in both eyes was dismissed. In deciding the appeal, the Court held that the 14-year sentence was neither excessive nor wrong in principle. Specifically, the Court dismissed a plea of guilty and past good character of the accused as weighty mitigating factors, given the accused's clear intent to cause grievous bodily harm and the resulting permanent injury to the victim.

This is in contrast to the Court's decision in *R v Paul Joseph Newton* [1999] 1 Cr. App. R. (S.) 438, where the Court made specific note of the lack of a guilty plea on the part of the offender, which could have been considered as a mitigating factor. The accused had been convicted of the offence of causing grievous bodily harm through an acid attack described as "persistent, serious and extremely dangerous" in nature.²⁴ The sentence also took into account the efforts the offender had taken to avoid detection after the crime was committed. However, the Court reduced the 15 year sentence to a 12 year sentence having regard to the fact that the victim did not sustain permanent injury and other mitigating factors including the offender's previous good character and failing health, as well as his aging parents and young children.

In *R v Bryan (Sally)* [2011] EWCA Crim 316, the Court allowed an appeal against a sentence of two and a half years' imprisonment for the offences of administering a poison or noxious substance with intent to injure, aggrieve or annoy, on the grounds that no serious or permanent injury had been suffered by the victim because the substance used was not of a strong acidic nature.

C. Source of procurement/Control of sale

The Poisons Act 1972 regulates the sale of poisons including many acids and acid products to the public, with the aim of preventing their misuse (accidentally and by criminal design) whilst allowing access to poisons for those who have a legitimate need to use them. The restrictions primarily focus on the sellers of poisons – these businesses are required to be registered pharmacies or under the supervision of a pharmacist. For certain poisons, a poisons register must be kept and details of the transaction and purchaser must be recorded.²⁵ A breach of the provisions of the Poisons Act 1972 can attract a maximum fine of £2,500 per offence.²⁶

Furthermore, the Pharmacy Order 2010 established the General Pharmaceutical Council, an independent statutory regulator of pharmacies. The General Pharmaceutical Council has the power to appoint an inspector to enter business premises for the purposes of inspection and enforcement of the law relating to the sale of poisons and any obstruction of the inspector is a criminal offence.²⁷

There are no controls on the end-users of poisons, although there are currently calls for amendments to the Poisons Act 1972 which would increase limits on end users while minimising burdens on businesses who sell these products.

The common law authorities that have considered the control of sale of poisons and acids in the UK do not provide any restrictions on end users and consequently do not fill these gaps in the legislation. The authorities have adopted a conservative approach, which seeks to avoid imposing undue restrictions towards the sale of poisons (examples of this approach can be seen in the cases of *Pharmaceutical Society of Great Britain v Watkinson* [1931] 2 K.B 323 and *Oxford v Sangers* [1965] 1 Q.B. 491).

D. Compensation and redress

An award of damages may be made by a court in the course of sentencing offenders under the Powers of Criminal Courts (Sentencing) Act 2000. The Court may order that a person convicted of an offence that results in loss, damage or injury pay compensation. The compensation payable is of such amount that the Court considers appropriate, having regard to the convicted persons' wealth so far as it appears or is known to the Court.²⁸

The Criminal Injuries Compensation Act 1995 also provides for a statutory scheme (the Criminal Injuries Compensation Scheme 2012) to compensate victims of violent crimes, which include "physical attacks" or "any other acts or omissions of a violent nature which cause physical injury to a person",²⁹ which includes some cases of acid violence. An individual wishing to access the scheme may make an application to the Criminal Injuries Compensation Board. In contrast to compensation, which may be provided under the Powers of Criminal Courts Sentencing Act 2000, no charges or conviction of the perpetrator of an attack are required in order for the victim to be eligible for compensation under the Criminal Injuries Compensation Act 1995. The amount payable in compensation is assessed and determined by the Criminal Injuries Compensation Board.

The table below provides a summary of the damages awarded in the acid violence cases we reviewed. In some cases, damages are broken down into various categories – ‘general damages’ refer to those awarded for pain and suffering as well as for loss of ability to carry out day-to-day tasks, while ‘special damages’ refer to costs such as healthcare and future

CASE	FACTS	AWARD
Re <i>Angol</i> [1986] C.L.Y, 1005	Permanent visual impairment and scarring to eye which caused embarrassment.	Loss of eye: GBP £12,000 Other injuries: GBP £3,000 Special damages: GBP £50
Re <i>Rayner</i> [1991] C.L.Y 1461	Initial severe discomfort, inability to ride a bicycle and heat sensitivity for 18 months. Scarring completely faded within 30 months.	GBP £2,000
Re <i>Stanley</i> [1992] C.L.Y. 1626	Extensive facial burns, loss of eye, post traumatic depressive neurosis, loss of confidence, increased alcohol intake and was unlikely to work again.	General damages: GBP £40,000 Special damages: GBP £100
Re R [1996] C.L.Y 2180	Life threatening burns to face, neck, chin and chest requiring skin grafts; unable to breastfeed child born eight months after attack, became withdrawn and was rejected by potential employers.	General damages: GBP £60,000 Special damages: GBP £33,170 Compensation for future loss of earnings: GBP £100,000
Re S (<i>CIBC: Quantum: 2000</i>) (<i>Burns</i>) [2000] C.L.Y. 1644	8% full thickness burns to face, eyes, chest and upper arm; perforated eardrum and hearing loss; visual impairment, headaches and balance loss; post-traumatic stress disorder and depression.	GBP £86,250

The Code of Practice for Victims of Crime provides for the provision of services to victims of acid crime. This code includes recommendations that victims are kept informed of certain aspects of police investigations, key stages of an offender's sentence and that court hearings are held in private. If a case is reviewed they are entitled to have their views heard by the police.³⁰

3. Inadequacies in existing laws and procedure

It appears from our research that there are very few recorded instances of acid violence in the UK. For that reason, it can be difficult to detect inadequacies in the existing laws and procedure. However, we have observed two main limitations of the UK system: its position in relation to the sale of acid which may not adequately prevent the acquisition of acid for criminal use, and the inconsistent approaches taken by judges in considering mitigating factors in the sentencing of those involved in acid attacks.

A. Sale of acid

It has been suggested that the current position in relation to the sale of acid does not provide an effective barrier to the acquisition of poisons, including acids which could be used in acid violence.

The Poisons Act's poisons register requires a record of some purchases but does not prevent someone from purchasing poisons for misuse. Furthermore, the majority of controls focus on the retailer rather than the user, despite the fact that the licensing of retailers has not added significant protection from the misuse of poisons. These limitations were acknowledged in a 2013 review of the Poisons Act 1972 and in related legislation as an effective public protection measure in relation to terrorism or criminal use by the Home Office.³¹

A number of amendments have been proposed in a Home Office consultation paper, including a requirement for home users of poisons (including acids) to obtain a licence for the purchase of poisons and a requirement for businesses selling poisons to report suspicious behaviour such as persons purchasing in large volumes or cash sales.³² However, the results of the consultation are yet to be published and no further action to strengthen the requirements has been taken.

It is possible that the proposed changes to the Poisons Act 1972 would strengthen the law and prevent the acquisition of acid to be used in attacks. However, these regulations do not address the use of acid products which are available outside of a pharmaceutical context, such as those used in commercial manufacturing. Acid used other than in a pharmaceutical context is also vulnerable to theft or misuse. Regulations that control business-to-business acid sales and require companies in possession of acids to adopt proper safekeeping procedures could also contribute to a decrease in the use of acid for criminal purposes.

None of the cases reviewed revealed whether an investigation had been undertaken or whether charges were laid in relation to the provision of acid used in attacks. A commitment to the investigation of potential offences in relation to the sale of acid connected with acid

attacks may both encourage compliance with the legislation and also provide further insight into the acquisition of acid for criminal purposes, which could lead to the tightening of protective measures in the UK.

B. Penalties

In the cases reviewed for the purposes of this report, judges took varying and occasionally inconsistent approaches to the sentencing of offenders. While the legislation provides maximum sentences and judges are generally expected to have regard to sentencing guidelines, there is a wide discretion afforded to judges during the sentencing process which can lead to the same mitigating factors being accorded different weight in different cases. In particular, the cases cited above show differing discretionary approaches having been taken to mitigating factors such as the entering of a guilty plea and previous good behaviour.

This lack of consistency means that there may be difficulty in predicting what sentence will be imposed for someone convicted of an offence relating to an acid attack and therefore a more consistent approach to considering mitigating factors in sentencing crimes related to acid violence may help to strengthen the effectiveness of such punishment ensuring that it acts as a deterrent.

A COMPARATIVE NOTE:

The study of the laws across the four jurisdictions allows for certain interesting comparisons and learning regarding different legal aspects:

i. Special law versus General law:

Cambodia has a special Acid Law under which acid violence is a separate and specific criminal offence. This has been considered as a step in the right direction but it remains to be seen whether having a specific offence spelt out will increase the success of the prosecution. In Colombia, while prosecutions are still conducted under the provisions of the general criminal law, the punishment varies to a great extent if the injury is caused pursuant to an acid attack, which gives it a special status. In India and in the United Kingdom, there is no special legislation to deal with acid violence. Instead there are provisions in the penal code that make injury through the use of a corrosive substance a penal offence and provide for severe punishments for such injuries. It is found that the presence of specific provisions attaches a degree of seriousness to the crime and makes it easy for the prosecution to frame charges for prosecution.

In Colombia, some controversy regarding whether acid crimes should be categorised as an attempt to murder or as personal injuries still exists. This brings forth the importance of ascertaining the intention of the perpetrator i.e. whether the intention is to commit murder or to cause bodily harm. The Colombian study points to a lot of indecision and differing results from the courts in determining this. The analysis of cases from India also indicates how, in some instances, cases where the charge is for murder get reduced to convictions for culpable homicide not amounting to murder, and cases where the charge is for attempt to murder get reduced to that of hurt.

ii. Intention to attack:

In prosecutions for criminal offences, intention to commit the offence – the *mens rea* – and the actual act constituting the offence – the *actus reus* – are both essential components. It is only when both are present that a crime is said to be completed. However, there are certain instances where the liability is made absolute i.e. the mere occurrence of the incident is sufficient to constitute an offence irrespective of the presence or absence of intention. Section 20 of the Offences Against the Person Act (“OAPA”) makes it an offence to inflict grievous bodily harm upon another person without any requirement to intend to commit such harm. Charges may be brought under this provision where bystanders have been incidentally injured as the result of an attack. On the other hand, under Section 29 of the OAPA, an offence is said to be committed regardless of whether injury is actually caused by the commission of the offence, provided that the offender had the requisite intent. These provisions available in the United Kingdom ensure that no wrongdoer is allowed to go scot-free, and to ensure justice to both direct and indirect victims of acid attacks. Other jurisdictions can consider including these offences as part of their criminal codes.

In India, much has happened in the aftermath of the Supreme Court's recent directives in Laxmi Vs. Union of India which stated that the different state governments had to frame rules under 1919's Poisons Act.

iii. Penalties:

Penalties are comprised of a component of imprisonment and that of a fine. The laws usually provide for a spectrum of punishment and the judges decide on the punishment within the spectrum, based on a variety of factors using their discretion. In India, the considerations for increased or decreased punishments are very erratic and there are no clear sentencing guidelines. In comparison, the sentencing manual of the Crown Prosecution Service notes the use of acid as a factor that points to higher culpability of the offender thereby affecting the severity of the punishment. The manual also specifically addresses the different kind of impact of the attacks on the victim to determine the severity of the punishment. Considering the large volume of cases being prosecuted in India, it would help if a similar kind of sentencing manual were enacted there. Presently, there is no sentencing consistency in India and different judges weigh factors differently when deciding cases. In Colombia, the sentence is also dependent on the part of the body that is affected, and a deformity of the face is considered to be more severe. It is recommended that this provision should change and that the severity of the punishment should depend on the intent of the victim, not the injured area.

iv. Regulation of the sale/access to acid:

All four jurisdictions analysed as part of this study have specific laws and guidelines to regulate the sale of acid. Nonetheless, the attempt to control acid violence by regulating its source has proven to be the most ineffective legislation. In Cambodia, the study reveals that the implementation of these regulations faces major hurdles owing to a lack of awareness, a lack of judicial autonomy and the presence of corruption. An interesting component of the regulation is that it includes guidelines on the transport of acid in large quantities. However, the regulations do not address issues of labelling and acid waste disposal. In comparison, in Colombia, there is a detailed system in place to create specific records of the sale and the distribution of acid. There is, nevertheless, no clear prohibition on sales, and a need to extend the regulations beyond mere recordkeeping is evident. An interesting side to the Colombian system is that the regulation provides norms for companies that require acid for business purposes. It also provides for the liability of the company in case an employee causes any acid damage owing to a lack of caution or surveillance.

In India, much has happened in the aftermath of the Supreme Court's recent directives in *Laxmi Vs. Union of India* which stated that the different state governments had to frame rules under 1919's Poisons Act. Despite many states doing so, there are no reported instances of action being taken under the rules. It is startling to note that none of the cases analysed as part of the study addressed the issue of the source of acid procurement.

The study of the UK also points to the fact that, even though the 1972 Poisons Act regulates the sale of acid, the regulations are only conservatively implemented and there is no action or liability imposed on the end-user of the acid.

Thus, the primary and most important reason for the attacks, the easy availability of acids, can be tackled across the jurisdictions in a systematic manner if the regulations are tightened

and strictly implemented. Provisions should be made to link the criminal prosecution to this process, whereby the prosecuting agency is also obligated to investigate the source of procurement of the acid.

v. Compensation schemes:

These schemes play a major role in ensuring justice for acid attack victims since the treatment for acid burns is expensive and involves extended medical care. In addition to this, victims of acid attacks go through a lot of trauma and suffering. The Cambodian situation points to the lack of a developed scheme to support victims.

In contrast, the Colombian government has set up a hotline for female victims of violence, a system that could be emulated across the jurisdictions. The Colombian system also exemplifies adequate principles of victim reparations. The Government has protocols in place for emergency services that extend to interdisciplinary medical handling of the injuries, including assistance from mental health specialists and the physical rehabilitation of the victim. This system appears well developed and sensitive to victims.

In India, compensation schemes have been framed by the States pursuant to the directives in *Laxmi*. Analysis of the case law shows that the directives have had an impact, and at least a minimum amount of compensation is being provided to the victims. However, the amounts are still very meagre and it remains to be seen whether the directive of the Home Ministry regarding compensation is being implemented properly.

An interesting aspect of the study of the UK is that there are two systems of compensation in place; one where the court provides for compensation in cases where the prosecution for offences results in a conviction based on the loss suffered and the wealth of the convicted person. The second system enables victims of a physical attack to apply for compensation even in cases where there is no charge against the accused or no conviction. Other jurisdictions could also consider setting up such a system of victim compensation independent of the criminal prosecution system. This is especially important in a jurisdiction like India, as there are several obstacles to successful prosecutions including delays, uncertainties and successive appeal options. Moreover, the standard of proof required for a successful criminal prosecution is extremely high, and therefore a system of provision of monetary assistance that is not linked to criminal prosecutions would be of great value in ensuring that real justice served.

This study has helped us understand that efforts have been made in all four jurisdictions in the last decade to address acid violence and bring justice to its victims. In India, the Supreme Court has played a major role in introducing systems of regulating the sale of acid, as well as for the compensation of victims. Colombia and Cambodia have both enacted exhaustive laws to deal with the different aspects of such crimes but an evaluation of whether these translate to reduced instances of violence needs to be sustained in coming years, since some are as recent as 2014. Though there has been fewer instances of this form of violence in the United Kingdom, other jurisdictions could consider mimicking the UK

END NOTES

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