



## A RESTORATIVE JUSTICE MODEL FOR REHABILITATION OF ACID ATTACK SURVIVORS

Ayush Jha\* & Simona Sahira Waheed\*\*

### Abstract

Amidst many other crimes, acid attack is one of the most heinous and has devastating and near-permanent effects. It not only causes physiological, but also psychological losses to the victims, which are long lasting. Statistics suggest that the proximity of the perpetrator and the survivor leads to self-blaming and seclusion from the society. While the new provisions under criminal justice system provide for compensation as a remedy, it appears to be insufficient to redress the losses fully. There is a need for effective and adequate remedy in cases of acid attacks involving all the stakeholders in the process. The authors in the present paper have suggested a Restorative Justice Model to provide such a remedy so as to wipe off the harmful effects of the acid-attack which will enable effective rehabilitation and reintegration of the survivors into society, in addition to the existing provision of damages. The authors also make suggestions of reforming the existing provisions to address the issues pertaining to remedies to be provided in cases of acid attacks.

### I. INTRODUCTION

*“Every citizen must remember that something which has happened to acid attack victim may also happen with his family members.”<sup>1</sup>*

The above observation by the Hon’ble High Court of Uttarakhand in a recent case paints a horrific picture of the harsh reality that pervades the Indian society currently. The necessary implication of the aforesaid is that acid attacks in our ‘mother-land’ are so rampant nowadays, that such incidents may happen to anyone. The court in its observation is appealing to the consciousness of the people of this country that there is a need to empathise with the victims and feel the plight which they are going through.

Recent judgments by the Apex Court and various High Courts have acknowledged the same and have endeavoured towards achievement of relief and rehabilitation of acid attack survivors. However, it is true that only the person (in India’s case it is mostly women) who is the victim of such a heinous offence is in a position to say what remedy could wash off the pain with which he/she is spending his/her life. The efficiency of the model on which the compensation and rehabilitation schemes are based still needs to be tested.

The authors in the present paper have made an attempt to look at rehabilitation and restoration of the victims through restorative justice model instead of merely providing for compensation and punishment. Doing so will render only half a remedy to the victims in such cases. The hidden violations of rights also need to be addressed which are rooted in the societal

\* Assistant Professor, KLE Society’s Law College, Bengaluru.

\*\* Assistant Professor, KLE Society’s Law College, Bengaluru.

<sup>1</sup>*State of Uttarakhand v. Ajam*, Govt. Appeal No. 12 of 2011.

bases. There is a need to provide justice not only for the material or physical losses but also the mental and psychological losses suffered by the acid attack survivors.

The authors have also made an endeavour to suggest the ways in which the perpetrators can be included in the justice dispensation mechanism so as to provide full and effective remedy to the victims which also include expiatory justice.

## II. EFFECTS OF ACID ATTACK

Acid attack is an act of administering acid, with intention of or with knowledge of it resulting into permanent or partial damage or deformity or disfiguration to any part of the body of victim.<sup>2</sup> Such attacks can most commonly be characterized by the fact that the acid, which is usually Sulfuric or Hydrochloric acid or the acid from vehicle batteries, is typically thrown onto face of the victim. It is disturbing that such potentially dangerous products are so easily accessible despite the Supreme Court's ruling regarding its restriction in selling acid over the counter, in *Laxmi v. Union of India*.<sup>3</sup>

The incidents of acid attacks in India have increased manifold. In 2015 close to 250 cases of acid attacks were reported. However, according to an independent agency Acid Survivors Foundation India (ASFI) the actual cases may be more than 1000 as many of them went unreported.<sup>4</sup> In an incident concerning a 23 year old married girl and her 2 little girls, belonging to slum area of Agra, whereby the husband became vindictive for not having a male offspring, poured acid on all three while they were sleeping.<sup>5</sup> The victim reported the incident initially but dropped the charges later to void the wrath of her husband.<sup>6</sup>

The reasons for such horrendous events are manifold; jilted lovers, failed demand of dowry, family conflicts, revenge, etc. However, the results are almost similar in all the cases of acid attacks, such as burning of skin where the acid was thrown, blindness, disfigurement and even death in some cases. But there is more than what meets the eyes. The victims in all the cases face a tremendous amount of stigma, low self-esteem, Post Traumatic Stress Disorder, and similar psychological harms.<sup>7</sup> The victims need constant medical attention because of the long lasting effects of the acid administered.<sup>8</sup> Various surgeries are performed to give the victim

<sup>2</sup> Prevention of Offences (by Acids) Act 2008 (National Commission for Women - Draft Bill), available at [http://ncw.nic.in/pdffiles/offences\\_by\\_acids.pdf](http://ncw.nic.in/pdffiles/offences_by_acids.pdf), last accessed 22<sup>nd</sup> June 2019.

<sup>3</sup> *Laxmi v. Union of India* (2014) 4 SCC 427.

<sup>4</sup> Sujoy Dhar, "Acid attacks against women in India on the rise; survivors fight back", USA Today, July 27, 2017, available at: <https://www.usatoday.com/story/news/world/2017/07/27/acid-attacks-women-india-survivors-fight-back/486007001/> (last visited on June 23, 2019).

<sup>5</sup> Zacharie Rabeji, "The Stories of India's Acid Attack Survivors", The Citizen, May 22, 2016, available at: <http://www.thecitizen.in/index.php/en/NewsDetail/index/7/7761/The-Stories-Of-Indias-Acid-Attack-Survivors> (last visited on June 23, 2019).

<sup>6</sup> *Ibid.*

<sup>7</sup> Ambika R Nair, "Acid Attack -Violence Against Women 'Need of The Hour'", 1(1) *Journal of Innovative Research and Solution* (Jan-Jun, 2014), available at: <http://www.jirasindia.com/Publication/Vol-1-Iss-4/JJL-004-2014-FP.pdf> (last visited on June 24, 2019).

<sup>8</sup> *Supra* note 2.

relief from the physiological effects of the offence.<sup>9</sup> But the victimization doesn't stop at tarnishing the physical appearance of the victim, rather it has devastating effects on the inner self of him/her. In one instance, an 18 year old victim hailing from Bihar committed suicide in year 2016, by deliberately electrocuting herself, after she failed to cope with the stigma attached with the acid attack she faced two years prior to her untimely demise.

The victimisation occurs at two stages- firstly when the actual offence has taken place and secondly by the societal entities after the incident.<sup>10</sup> The secondary victimisation is a result of actions of societal entities such as police, hospitals, family, friends and colleagues.<sup>11</sup> It adds further to the agony of the victims whereby they face multitude of challenges ranging from access to justice, rehabilitation in society, regaining their identity, making their mental peace with the incident, social acceptance etc.

### III. NEED FOR AN ADEQUATE AND EFFECTIVE REMEDY IN ACID ATTACK CASES

It is pertinent to note that violence against women in general, and acid attack in particular, violates a plethora of human rights of the victims. And as a matter of law, any violation of rights requires provision of effective and adequate remedy. In law of torts there is a principle of *ubi jus ibi remedium* meaning "where there is right there is a remedy". The same principle is also applicable in the field of human rights.<sup>12</sup> In fact, Right to effective remedy is an inherent right within other basic human rights.

The UN Human Rights Committee has identified that under article 2 (3) of International Covenant on Civil and Political Rights (ICCPR) the State parties are obliged to provide reparations to the victims of violation of rights recognized in the ICCPR, without which there can't be fulfillment of State's duty to provide effective remedy under the article.<sup>13</sup>

Remedy is defined as "the means by which a right is enforced or the violation of a right is prevented, redressed or compensated."<sup>14</sup> Right to effective remedy includes right to: (a) Equal and effective access to justice; (b) Adequate, effective and prompt reparation for harm

<sup>9</sup> *Ibid.*

<sup>10</sup> Dheerendra Kumar Baisla, "Secondary Victimization Under the Criminal Justice System", available at <http://jlsr.thelawbrigade.com/wp-content/uploads/2016/06/Dheerendra-Kumar.pdf> (last visited on July 22, 2019).

<sup>11</sup> *Ibid.*

<sup>12</sup> Dinah Shelton, "Reparations for human rights violations: how far back?", available at: [sas-space.sas.ac.uk/3525/1/1269-1326-1-SM.pdf](http://sas-space.sas.ac.uk/3525/1/1269-1326-1-SM.pdf) (last visited on June 23, 2019).

<sup>13</sup> UN Human Rights Committee (HRC), General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant, 26 May 2004, CCPR/C/21/Rev.1/Add.13. Article 2 (3) of ICCPR provides that "Each State Party to the present Covenant undertakes: (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity; (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy; (c) To ensure that the competent authorities shall enforce such remedies when granted."

<sup>14</sup> H.C. Black, *Black's Law Dictionary* 1294 (Springer, New York, 1990).

suffered; (c) Access to relevant information concerning violations and reparation mechanisms.<sup>15</sup>

Reparation as part of the term remedy connotes substantive aspect while the latter term signifies both procedural and substantive aspects.<sup>16</sup> The dictionary meaning of reparation is “the action of making amends for a wrong one has done, by providing payment or other assistance to those who have been wronged.”<sup>17</sup> It also means ‘to repair’ something.<sup>18</sup> In simple words reparation means ‘undoing any harm done or making it good’. The following words, *viz.*, ‘reparation’, ‘redress’ and ‘remedy’ may be treated as synonymous for the purposes of providing relief to acid attack survivors.

The concept of reparations, usually applied to breaches of international obligations,<sup>19</sup> can also be used as a means to redress human rights violations. Therefore, States are liable not only to repair harms against other States, but also liable to provide effective and adequate relief in cases of Human Rights violations. States are liable to repair such violations not only when they are perpetrator, but also when the wrong is committed by non-state entities, especially when a criminal wrong is committed. If a State is not able to protect such violations, then it is also partner in crime at least on a moral ground.

This has been supported by various jurists and authors, such as Buyse. He starts with three basic assumptions:<sup>20</sup>

- i. Every violation of a substantive rule of international law requires a remedy.
- ii. States are obliged to respect and ensure human rights.
- iii. Individuals are the beneficiaries of the human rights obligations.

On these assumptions he concludes that the International Law Commission (ILC) articles on State Responsibility can be applied to human rights violations analogously.<sup>21</sup> An act of reparation must be adequate and effective.<sup>22</sup> A remedy can only be adequate if it nullifies all the harm inflicted upon victims.<sup>23</sup> In order to be an effective remedy it must be efficient enough to restore the *status quo ante*.<sup>24</sup> Such a remedy must also be proportionate to the level of harm

<sup>15</sup> Para 11, Annex, UN General Assembly, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law : resolution / adopted by the General Assembly, 21 March 2006, A/RES/60/147.

<sup>16</sup> F. Lenzerini, “Reparations for Indigenous Peoples in International and comparative law: An Introduction” in F. Lenzerini, *Reparations for Indigenous Peoples: International and Comparative perspectives* 9 (Oxford University Press, New York, 2008).

<sup>17</sup> Available at: <http://www.oxforddictionaries.com/definition/english/restitution> (last visited on July 10, 2019).

<sup>18</sup> *Ibid.*

<sup>19</sup> *Supra* note 16 at 10.

<sup>20</sup> A. Buyse, “Lost and regained? Restitution as a remedy for human rights violations in the context of international law”, available at: <http://dspace.library.uu.nl/handle/1874/32809> (last visited on July 11, 2019).

<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

done to the victims subject to the specific cases<sup>25</sup> which must also be accepted as an adequate and effective remedy by the victims.<sup>26</sup>

#### IV. THE RESTORATIVE JUSTICE APPROACH

Under traditional notions of criminal jurisprudence, the stakeholders involved in the criminal justice dispensation process were the State and the offender. State being the representative of the society at large tries to bring justice for an offence is deemed to be against society. However, with the changing times the need to involve victims in the process was felt. The victims required attention while a perpetrator is punished for the wrong. Giving punishment to the offender only gave a partial relief to the victim while the latter was suffering from injustice.

The restorative justice approach attempts at bringing all the aforementioned stakeholders together in the process of achieving real justice.<sup>27</sup> The other competing doctrine in this regard is corrective justice which seeks to rectify the past wrongs by providing compensation or punishment for the act of perpetrator.<sup>28</sup> The assumption under this principle is that when the victims are provided with compensation or restitution, it acts as a sanction upon the wrongdoer and creates deterring effect for future acts.<sup>29</sup>

Galaway and Hudson, in the context of restorative justice, afford three features of restorative justice with regard to criminal justice system:

- i. Crimes are conflict between individuals resulting into injuries.
- ii. The criminal justice system must proceed with reconciliation and redress for such injuries in order to achieve peace in the society.
- iii. The victims, wrong-doers and the society- all must be actors to bring about permanent solutions to conflicts.<sup>30</sup>

This model of restorative justice can also be applied to provide redress to acid attack survivors. What is required is that the policy makers and legislators should provide them to take part in the process of redress. In other words, it should not be a one sided decision.

Roy Brooks gives an “atonement model” of restorative justice, which requires acknowledgement of guilt and apology to the victims for committing the injustices in past along with compensation in money and in kind to make such an apology effective and acceptable to the communities.<sup>31</sup>

---

<sup>25</sup> *Supra* note 16 at.11.

<sup>26</sup> *Ibid.*

<sup>27</sup> *Supra* note 20.

<sup>28</sup> KD Logue, “Reparations as Redistribution” 84 *Boston L Rev* 1319 (2004).

<sup>29</sup> Dinah Shelton, *Remedies in International Human Rights Law* 291 (OUP, New York, 2005).

<sup>30</sup> B Galaway & J Hudson (eds), *Restorative Justice: International Perspectives* (Criminal Justice Press, New York, 1996). Also see, Antonio Buti, “Reparations, Justice Theories and Stolen Generations”, available at: <http://www.austlii.edu.au/au/journals/UWALawRw/2008/7.pdf> (last visited on June 23, 2019).

<sup>31</sup> RL Brooks, “Getting Reparations for Slavery Right: A Response to Posner and Vermeule”, 80 *Notre Dame L Rev* 251 (2005).

Another dimension which can be added to the restorative justice process is the role of forgiveness in effecting psychological reparations. This forgiveness may include towards victims and offenders both.<sup>32</sup> In serious offences such as acid attacks the trauma and shock faced by the survivors lead them to social isolation, embarrassment and distrust. They may often self-blame for the incident for the attacker in most of the cases is known to them. The aim of restorative justice ought to be ‘reiterative-shaming’ of the offender.<sup>33</sup> In addition to the existing compensation scheme, a ‘restorative conference’ or ‘restorative mediation’ between the victims (sometimes the family of victims too) and the offender can be arranged on a “voluntary basis” where the survivor may express their agony in front of the person who led them to the same. This will allow the survivors to get detached from the negative feelings and let them move on with their life.<sup>34</sup> This will not only give relief to the survivor but also, it will provide an opportunity to the offender to introspect and seek expiation in the process of punishment. All what is required is to distinguish the offence with offender.

However, this must be borne in mind while applying such a measure is that it is case sensitive. An impact assessment shall be made, with the help of experts, before proceeding with such a conference taking into account prior relation of survivor with perpetrator and also the psychological aspects involved in the process which shall include assessing the mental state of the survivor.

Another thing which must be kept in mind is that such a reparative measure, in no way, undermine the role of monetary and punitive reparation. It must be conducted along with providing the existing monetary compensatory schemes and the punitive sentences. (Emphasis supplied).

Other measures under restorative justice, which are there under the Indian legal system, are rehabilitative homes for the survivors. In order to provide effective and long lasting rehabilitation in rape and other cases the Department of Women and Child Development in 2001 have come up with ‘Swadhar–A Scheme for Women in Difficult Circumstances’. This scheme was revived in 2015 to remove the existing lacunas. This scheme encapsulates the objectives of providing primary needs of the women who do not have any social and economic support, regain emotional strength, legal aid and guidance, economic and emotional rehabilitation and support system for various requirements.

Therefore, it also has the basis in principles of morality. It not only seeks to redress material harm but also non-material or psychological harm. This makes the restorative theory much wider in its approach and application. This theory takes note of the fact that, merely providing the monetary compensation may be insulting to acid attack survivors by ignoring the aspects of respect and concern.<sup>35</sup> The most significant feature of restorative justice is that it

---

<sup>32</sup> Joanna Shapland, “Forgiveness and Restorative Justice: Is It Necessary? Is It Helpful?”, 5(1) *Oxford Journal of Law and Religion* 1 (February, 2016), available at: <https://academic.oup.com/ojlr/article/5/1/94/1752338> (last visited on July 23, 2019).

<sup>33</sup> John Braithwaite, *Crime, Shame and Reintegration* (Cambridge University Press, Cambridge, 1989).

<sup>34</sup> *Supra* note 32.

<sup>35</sup> M Urban Walker, “Restorative Justice and Reparations”, 37 *J Social Philosophy* 377 (2006).



seeks to create a direct dialogue between victims and perpetrators so that the injustices and their effects can be discussed by giving the opportunity to victims to explain their case.<sup>36</sup>

Because restorative justice seeks to harmonise the future social relationships, it becomes the responsibility of the community as a whole and not only of the direct perpetrators to correct the injustices.<sup>37</sup>

## V. CONCLUSION AND SUGGESTIONS

An overall perusal at the aforementioned schemes and guidelines and the judgments rendered by Apex Court gives a comprehensive idea about the ‘on paper’ arsenal to safeguard rights of acid attack survivors. It looks attractive and lustrous. However, the efficacy of laws are always in question due to the indifference of the society in general towards such people.

The doubts still persist on implementation aspect. In words of Trupti Panchal, a member of special cell formed under Tata Institute of Social Sciences (TISS), “the scheme rings a bell, but in the absence of substantial groundwork, it is currently just on papers”.

The victimization of acid attack survivors doesn’t stop at the offence, rather is prolonged till the summation of the proceedings. The insensitivity of media and society in general leads to further victimization. Mere legal framework cannot provide effective relief and rehabilitation to these unfortunate souls. They need support and assistance from the friends, family, counsellors, government and its agents including the most abrupt and vile police. There is a need to educate these so called protectors of the rights of the individuals and rest of the ‘responsible’ members of the society so that they can become sensitive to a like issue such as acid attack. And top of all, there is a need to create a dialogue between the perpetrator and the survivor so as to effect and adequate and full remedy. Mediation houses, anonymous groups, support groups and relief centres should be established which must involve all the stakeholders. The administration should be overseen by the statutory bodies such as National Commission for Women in collaboration with the governmental and non-governmental agencies. Awareness campaigns and sensitization programs shall be frequently conducted so as to prevent future offences. Last, but not the least, social inclusion by the society is the need of the hour for these survivors who can only stand again with the love and support of their family members, friends, colleagues and the members of society.

---

<sup>36</sup> *Ibid.*

<sup>37</sup> H Zehr, *The Little Book of Restorative Justice* (Intercourse, PA: Good Books, 2002). Also see, Antonio Buti, “Reparations, Justice Theories and Stolen Generations”, available at: <http://www.austlii.edu.au/au/journals/UWALawRw/2008/7.pdf> (last visited on June 23, 2019).