

## **Acid attack survivors: victims or victors**

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### **Abstract**

Women, it is not just a word but is an entire universe within itself. Women not only constitute half the population of the society but are also the creators of the other half. However, it is disheartening to note that we are living in a country where a female Vaishno Devi is worshiped like a goddess and offered prayers and the women in the same country are ill-treated and are in constant fear of their security as they may at any moment be “acidized” for various reasons.

Acid throwing or acid attack or vitriol attack or vitriol age is a form of violent assault defined as the act of throwing acid or a similar corrosive substance onto the body of another with the intention of disfiguring, torturing or killing the person upon whom it is thrown.<sup>1</sup>

The attack is not carried out to kill the victim but with the intention of making the victim suffer for rest of her life and such suffering is accompanied by physical and mental torture.<sup>2</sup>

The penal laws of India were specifically amended and came into force as the criminal law (amendment), act 2013 which also included the offence of acid attack.

The victims of acid attacks are not adequately compensated neither for the physical nor mental trauma they undergo. In addition to the role of the government in adopting stricter laws and compensation schemes we must not forget that the society also plays an important role as it makes it difficult for the victims to survive. It must be made aware of the heinousness of the crime and must be taught how to handle these victims as even they are human beings who already after being attacked have a low and damaged self-esteem.

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<sup>1</sup> Swanson, Jordan, *Acid attacks: Bangladesh's efforts to stop the violence*, Harvard, 2012.

<sup>2</sup> Lin J Samuel, M.D & John B. Hijjawi, M.D, “*Plastic and Reconstructive Surgery, Board Review*”, 2006McGraw-Hill Companies.

## **Introduction**

The victims of acid attacks are not adequately compensated neither for the physical nor mental trauma they undergo. Prior to amendment in 2013 there existed no provision for any kind of compensation for the victim, although post the amendment of 2013 the implementation is still at ground zero.

The main objective is to understand the concept of acid attack, to look into the causes and effect of acid attack. The main weapon for the crime of acid attack is the acid so here it is intended to see about the nature effect and kinds of acid used by the acid perpetrator. Further, it is intended to see the legislative frame work for acid attack and how far it is supporting the victims.

## **Research methodology**

This dissertation consists of extracts from various journals along with newspaper reports. The perspective of the government with regards to acid attack and its victims has also been included which were discussed in criminal law (amendment) ordinance bill, 2013. various foreign journals and newspaper have been researched for going behind the history of acid attacks. Various reports of united nations international children emergency fund (UNICEF) have been studied that define what actually acid attack means to the united nation.

Various Indian books have been referred to research on the consequences / aftermath of these attacks for example the 226<sup>th</sup> law commission report, the report of justice verma committee and the criminal (amendment) act, 2013 have been researched upon to go behind the history and reason of current laws against acid attack in India

## **Acid as a weapon**

Acid being available over the counter without being monitored by any authority and as low as rs 16-20 per liter is one of the leading causes of acid attacks. Acids and bases basically are chemical compounds having distinctive properties in water solution and having characteristic of corroding the metals and other articles with whomsoever the acid comes into contact. The acids do not need any source of heat for causing damage to the

living tissues as most of these acids tend to absorb water from the skin and therefore they react with it–

“when an acid reacts with the skin heat is released outside and this type of reaction is called exothermic reaction which results in damaging the cells instantaneously.”

### **Consequences of acid attack**

The consequences of acid attack can be categorized as-

**a. Ignorance**

**b. Physical**

**a. Ignorance**

- The victim receives ignorance not only from the society but also from their loved ones. The victims on account of being disfigured by such acids are looked upon like aliens by the society, this reaction from the society lowers the self-esteem of the victims making them feel worthless and they don't even dare to come out of their houses due to embarrassment on account of disfiguration.
- The society further adds to their woes by ill-treating them and making them feel lonely and unaccepted due to their deformities this even acts as a hindrance for them as they are unable to get a job therefore making it impossible for them to survive in the society<sup>3</sup>. Damage caused by these attacks is irreparable and it affects the victim physically, psychologically, economically and socially. It has therefore been argued that acid attack be classified as a separate offence. The CSAAAW<sup>4</sup> filed a PIL before the high court of Karnataka“seeking an order of the court directing the state government to ensure speedy trials for victims of the acid attacks and

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<sup>3</sup>M.P TANDON AND JUSTICE RAJESH TANDON, “CRIMINAL PROCEDURE CODE”, (Allahabad Law Agency 17th ed. 2012).

<sup>4</sup>*Campaign and Struggle Against Acid Attacks on Women (CSAAAW) Vs. Department of Women and Child Welfare*, HRLN (April 9, 2018), <http://hrln.org/hrln/womens-justice-/pils-a-cases/242-campaign-and-struggle-against-acid-attacks-on-women-csaaaw-vs-department-of-women-and-child-welfare-.html>.

ensure better medical treatment and also demanded the production, distribution and storage of toxic acids be strictly monitored by the state”.

**b. Physical**

- When the acid reacts with the skin it eats through the two layers of the skin that is fat and muscle underneath the skin and also results in dissolving the bone. The extent of injury depends upon the strength of the acid that is the concentration of the acid and the duration of contact with the skin.
- The immediate reaction of the skin after coming in contact with the acid results in burning which doesn't cease to exist until the acid is thoroughly washed off with water. When the acid is thrown at a person's face the acid rapidly eats into eyes, ears, nose and mouth which further results in melting of the nose, closing the nostrils and shriveling up of the ears. Acid if comes in contact with the eyes of the victim has the potential to permanently blind the victim. Exposure of neck, chest, back, arms, legs, cheeks, chin or any other part of the body with the acid may result in burning or dissolving the exposed part. Inhalation of the acid vapors can create breathing problems for the victim by either causing a poisonous reaction in the lungs or by swelling the neck which results in constricting the airway and therefore the victim is strangled to death. the burns form scars which pull the skin very tight causing disfigurements and on coming in contact for example with the eyelids may result in never closing of the eye lids.
- The following information on physical consequences has been described by medecins du monde an NGO<sup>5</sup>:

**Skull:** may be partly destroyed or deformed. Hair is often lost.

**Forehead:** skin may shrink, as though stretched tightly, and be scarred.

**Ears:** shriveled up and deformed. Deafness may occur immediately or later. Cartilage in the ear is usually partly or totally destroyed, exposing the victim to future infection and hearing loss.

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<sup>5</sup>Medecins Du Monde and doctors at Calmette hospital in Phnom Penh.

**Eyes:** direct acid contact or acid vapors can damage eyes, causing blindness. Even if the eyes survive the acid attack, they remain vulnerable to other threats which can cause blindness during the victim's recovery. Eyelids may have been burned off, or may be deformed by scarring, leaving the eyes to dry up and go blind. This is very difficult to prevent.

**Nose:** shrunken and deformed. Nostrils may close completely because the cartilage is destroyed.

**Cheeks:** scarred and deformed.

**Mouth:** shrunken and narrowed, and may lose its shape. Lips may be partly or totally destroyed. Lips may be permanently flared, exposing the teeth. Movement of the lips, mouth and face may be impaired. Eating can be difficult.

**Chin:** scarred and deformed. The scars may run downward, welding the chin to the neck or chest.

**Neck:** often badly damaged. It may have a thick cord of scarred flesh running down from the chin to the upper chest, or a wide, heavily-scarred area on one side of the neck. Victim may be unable to extend the neck, or the head may constantly lean to one side.

**Chest:** often badly scarred. The chest may have narrow lines of scars or wide patches of scars from acid splashes or drips. In girls and young women, the development of their breasts may be stopped, or their breasts may be destroyed completely.

**Shoulder:** may be badly scarred, especially around the underarm, which may limit the victim's arm movement. In some cases, one or both of the victim's upper arms may be stuck like glue to the sides of their body.

## **Laws in India**

### **The 226<sup>th</sup> law commission report**

Justice a. R Lakshmana headed the 226<sup>th</sup> law commission wherein he proposed the need for stricter laws for protecting the interest of women and for punishing the guilty. Justice a. R Lakshmana after going through various criminal laws in the country was unable to find any specific law or section which directly dealt with the menace of acid attack or

which could provide some remedy to the victims. Although section 326 of the Indian penal code provided for voluntary causing grievous hurt by dangerous weapons or means however, justice a. R Lakshmana did not find it appropriate to club the offence of acid attack with any other law and proposed a separate law to be enacted by the government.

The following are the reasons for justice Lakshmana to not club acid attack with section 326 of the Indian penal code<sup>6</sup> –

- ❖ Firstly, the definition of grievous hurt is not broad enough to cover the various kinds of injuries which are inflicted during acid attacks.
- ❖ Secondly, the section does not cover the act of administering acid.
- ❖ Thirdly, the section gives a wide discretion to the courts as far as punishment is concerned. The cases on acid attacks in India show that normally inadequate punishment is awarded in these cases.
- ❖ Fourthly, the section in the I.P.C does not punish the intentional act of throwing of acid if no injuries occur.
- ❖ Lastly, the section also does not specify who the fine should be awarded to.
  - The commission also felt that if a person has thrown or administered acid onto another person a presumption should be raised against the person who has thrown or administered the throwing of acid deliberately. Further the commission also proposed to ban the over the counter sale of acids except for commercial purpose.

**The following are the proposals of the commission to the Indian penal code:**

- **Section 326a hurt by acid attack-** whoever burns or maims or disfigures or disables any part or parts of the body of a person or causes grievous hurt by throwing acid on or administering acid to that person, with the intention of causing or with the knowledge that he is likely to cause such injury or hurt, shall be punishable with imprisonment of either description which shall not be less than 10

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<sup>6</sup>“*The Inclusion of Acid Attacks as Specific Offences in the Indian Penal Code and a law for Compensation for Victims of Crime*”, LAWCOMMISSIONOFINDIA (April 10, 2018), <http://www.lawcommissionofindia.nic.in/reports/report226.pdf>.

years but which may extend to life and with fine which may extend to rupees ten lakhs provided that any fine levied under this section shall be given to the person on whom acid has been thrown or administered.

- **Classification of offence:** minimum imprisonment of 10 years extendable up to imprisonment for life and fine. It should be made a cognizable, non-bailable, non-compoundable offence and triable by court of session.
- **The following is the proposal of the commission to the Indian evidence act:**
  - Section 114 b: presumption as to acid attack- if a person has thrown acid on, or administered acid to, another person the court shall presume that such an act has been done with the intention of causing, or with the knowledge that such an act is likely to cause such hurt or injury as is mentioned in section 326 as of the Indian penal code.
  - The commission also recommended that the distribution of sale and acid be strictly regulated and sale of acid across shop counters be banned.
  - The commission also proposed a law known as “criminal injuries compensation act” to be enacted as a separate law by the government. This law should provide for both interim and final monetary compensation to victims of rape, sexual assault, acid attacks etc. And should also provide for the medical and other expenses relating to rehabilitation, loss of earnings etc. Of the victim.

### **The justice Verma committee**

- The committee headed by justice verma was formed as a response to wide outcry of the society where in the society witnessed a failure of the government to provide a safe and dignified environment for the women of the country. The immediate cause of the formation of the committee was the brutal gang rape of a young woman in the capital of the country by 5 people in a moving public transport vehicle in the late evening of December 16, 2012, where in the woman was not only subjected to gang rape but was also subjected inhuman behavior by the rapist as they inserted iron rods in her private part.

### **The stand of the committee<sup>7</sup> on acid attacks**

- ❖ We understand that a most heinous form of attack on women, which is commonplace in several Asian and African countries, is the throwing of acid on women for a multitude of reasons, including alleged adultery, turning down advances from men, and also as a form of domestic violence. Acids and other corrosive substances are thrown on women or administered to them, thereby causing death or physical and psychological damage with unfathomable consequences.

The 226<sup>th</sup> report of the law commission of India, dealt particular with the said offence as stated-

“though acid attack is a crime which can be committed against any man or woman, it has a specific gender dimension in India. Most of the reported acid attacks have been committed on women, particularly young women for spurning suitors, for rejecting proposals of marriage, for denying dowry etc. The attacker cannot bear the fact that he has been rejected and seeks to destroy the body of the woman who has dared to stand up to him”.<sup>8</sup>

### **The following are the proposed<sup>9</sup> amendments to the Indian penal code by the committee:**

#### **After section 166 of the Indian penal code the following sections were inserted-**

- **166a: public servant knowingly disobeying direction of law**

Whoever, being a public servant, —

(a) knowingly disobeys any direction of the law which prohibits him from requiring the attendance at any place of any person for the purpose of investigation into an offence or any other matter, or

(b) knowingly disobeys, to the prejudice of any person, any other direction of the law regulating the manner in which he shall conduct such investigation, or

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<sup>7</sup>Report of the Committee on Amendments to Criminal Law.

<sup>8</sup>*Supra Note* at 6.

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

(c) in relation to an offence punishable under section 354, section 354a, section 354b, section 354 c (2), section 376(1), section 376(2), section 376(3), section 376a, section 376b (1), section 376b (2), section 376c, section 376d or section 376f does not record information given to him under section 154(1) of the code of criminal procedure

Shall be punished with imprisonment for a term which may extend to five years' rigorous imprisonment and fine.

- **166b: punishment for non- treatment of victim**

Whoever, being in charge of a hospital, public or private, whether run by the central or state government, local bodies or any other person contravenes the provisions of section 357c of the code of criminal procedure 1973, shall be punished with imprisonment for a term which may extend to one year or with fine or both.

**After section 326 of the Indian penal code the following sections were inserted-**

- **326a: voluntarily causing grievous hurt through use of acid etc.**

Whoever causes permanent or partial damage or deformity to, or burns or maims or disfigures or disables any part, or parts of the body of a person, or causes grievous hurt, by throwing acid on, or administering acid to that person, or by using any other means to achieve a similar purpose and effect, with the intention of causing, or with the knowledge that he is likely to cause such injury, or hurt, shall be punished with rigorous imprisonment for a term which shall not be less than ten years but which may extend to life, and shall also be liable to pay compensation to the victim, adequate to meet at least the medical expenses incurred by the victim

Explanation 1: "permanent or partial damage" for the purposes of this section shall include forced circumcision of a female or mutilation of her genitalia.

Explanation 2: for the purposes of this section, permanent or partial damage or deformity shall not be required to be irreversible.

- **326b: voluntarily throwing or attempting to throw acid etc.**

Whoever throws, or attempts to throw acid on any person, or attempts to administer acid to any person, or attempts to use any other means to achieve the purpose of causing permanent or partial damage to any part or parts of the body of a person, shall be punished with rigorous imprisonment for a term which shall not be less than five years but which may extend to seven years, and shall also be liable to pay compensation to the victim adequate to meet at least the medical expenses incurred by the victim.

Explanation 1: —for the purposes of sections 326a and 326b, “acid” includes any substance which has acidic or corrosive character or burning nature, that is capable of causing bodily injury leading to scars or disfigurement or temporary or permanent disability.

Explanation 2: “permanent or partial damage” includes deformity, or maiming, or burning, or disfiguring, or disabling any part or parts of the body of a person. Irreversibility will not be a precondition for damage or deformity to be considered as permanent or partial damage.

### **Amendment<sup>10</sup> to section 357 of the CRPC**

- **A new clause to section 357 was inserted as 357(c)**

All hospitals, public or private whether run by central or state government or local bodies or another person shall immediately provide for first aid free of cost to the victim of any offence under section 326a, 376, 376(a), 376(b), 376(c), 376(d), 376(e) of IPC and shall immediately inform the police of such incident”.

### **The criminal law (amendment) act 2013**

Due to increasing cases on acid attack, the government of India decided to amend the old legislation and bring in some new ones. Even the Indian supreme court strongly criticized the government for failing to formulate a policy to reduce acid attack on women. Hence, this gave way to the formation of the criminal amendment act, which was brought in force on the 3<sup>rd</sup> of august 2013 and has been gazette on 2nd April, 2013, which has some specific provisions on acid attack. The law commission, headed by justice A.RLakshmana,

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<sup>10</sup>*Supra Note* at 6.

proposed that a new section 326a and section 326b is to be added to the IPC and section 114b has also been added in the Indian evidence act, 1872.

### **Compensation and legal services for the victim of acid attack**

An examination of the acid attack cases underlines the urgent need for a scheme of compensation for the victims. The victims often have to undergo multiple surgeries costing lakhs of rupees. Often these victims have to face rejection not only from the society but also from their family therefore a need arises for rehabilitation of these victims. They may also be in urgent need to financial help to exist as acceptance of a disfigured face or body by an employer is very unlikely to exist.

### **357A of the code of criminal procedure<sup>11</sup>**

#### **Victim compensation scheme**

1. Every state government in co-ordination with the central government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents, who have suffered loss or injury as a result of the crime and who, require rehabilitation.
2. Whenever a recommendation is made by the court for compensation, the district legal service authority or the state legal service authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1)
3. If the trial court, at the conclusion of the trial, is satisfied, that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make recommendation for compensation.
4. Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the state or the district legal services authority for award of compensation.
5. On receipt of such recommendations or on the application under sub-section (4), the state or the district legal services authority shall, after due enquiry award adequate compensation by completing the enquiry within two months.

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<sup>11</sup>Section 357A of The Code of Criminal Procedure, 1973, No. 5, Acts of Parliament, 1973.

6. The state or the district legal services authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer in charge of the police station or a magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.

### **Proposed compensation law by the national commission for women**

The national commission for women proposed to the central government to establish a national acid attack victim's assistance board. The function of the board will be to provide assistance to the acid attack victims by way of ensuring medical treatment and other services such as psychological counseling to the victims'. the board shall also recommend to the government strategies to regulate the production and sale of acids. The board has been suggested to administer a fund called the national acid attack victims assistance fund to which the central and state governments can give grants. The board would be powered to give interim financial relief up to rs 1 lakh within a period of 30 days directly to the hospital.

The national commission for women presented before the central government the compensation schemes under the Canadian legislation which is "compensation for victims of crime act". The above mentioned act deals with claims arising from an injury or death resulting from offences like-

- Sexual assault
- Murder
- Acid attack
- Kidnapping etc.

The act also allows for setting up a criminal injuries compensation board which, would award compensation under the following heads-

- A) expenses actually and reasonably incurred or to be incurred as a result of the victim's injury or death
- B) pecuniary loss or damages incurred by the victim as a result of total or partial disability affecting the victim's capacity for work

- a) Pecuniary loss or damages incurred by the dependents as a result of the victim's death
- b) Pain and suffering
- c) Maintenance of a child born as a result of sexual assault
- d) Other pecuniary loss or damages resulting from the victims' injury and any expense that in the opinion of the board it is reasonable to incur.

### **The supreme court on criminal injuries compensation board**

The supreme court in *Laxmi v UOI*<sup>12</sup> unanimously held that it is not necessary to set up a separate criminal injuries compensation board as their already exist legal service authority in every district therefore creation of a separate criminal injuries compensation board will lead to multiplicity of the authorities. The court held that-

“therefore, in case of any compensation claim made by any acid attack victim, the matter will be taken up by the district legal services authority, which will include the district judge and such other co-opted persons who the district judge feels will be of assistance, particularly the district magistrate, the superintendent of police and the civil surgeon or the chief medical officer of that district or their nominee. This body will function as the criminal injuries compensation board for all purposes”

### **Manodhariya**<sup>13</sup>

The Maharashtra cabinet has approved a scheme called manodhariya for providing financial assistance and support to victims of sexual violence and acid attacks.

### **Salient features of the scheme: -**

- The scheme provides for an amount of Rs 2, 00,000(rupees two lakh only) which can be extended to Rs. 3, 00,000(rupees three lakhs only) to the victims.
- The victim is entitled to access 50% of the amount once the victims file the fir and the remaining amount once the charges sheet is filed.

<sup>12</sup>Laxmi v UOI,(2014) 4 S.C.C. 427.

<sup>13</sup>Manodhairya, a scheme for providing financial assistance and support services to victims of sexual violence and acid attack, MAJISLAW (April 16, 2018), <http://majislaw.com/en/top/our-programmes/campaigns/compensation-for-rape-and-acid-attack-victims-survivors/>.

- The victim is entitled to the amount irrespective of the outcome of the trial.

In *Satyendra Kumar Mehra vs State of Jharkhand*<sup>14</sup> the hon'ble supreme court of India observed that subsection (2) of section 357 of the CRPC never contemplates the stay of fine imposed on the accused. The accused has to abide by the order of fine and the maximum what can happen is it that the amount of fine can be withheld until disposal of the appeal.

### **Legal services to the victims of acid attack scheme, 2016**<sup>15</sup>

#### **The main objectives of the scheme are-**

- To strengthen legal aid and representation at the national, state, district and taluka levels for victims of acid attacks in availing the benefits of the various legal provisions and schemes for compensation.
- to enable the victims of acid attacks to get access to medical facilities and rehabilitative services.
- To create and spread awareness about the entitlements of the victims of acid attacks through the district legal services authorities, taluka legal services committees, panel lawyers, para-legal volunteers and legal services clinics.
- To enhance capacities at all levels of panel lawyers, para-legal volunteers, volunteers in legal services clinics, government officers tasked with the implementation of the various schemes, service providers, police personnel, non-governmental organizations by organizing training, orientation and sensitization programmes.
- To undertake research and documentation to study the various schemes, laws etc. To find out the gaps, the needs and to make suggestions to the appropriate authorities.

#### **The implementation of the scheme-**

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<sup>14</sup>Satyendra Kumar Mehra vs State of Jharkhand, Criminal Appeal no. 406 of 2018.

<sup>15</sup>FAQ on NALSA (Legal Services to Victims of Acid Attacks) Scheme, 2016, JHALSA (April 16, 2018), [https://jhalsa.org/Jhalsa\\_Booklets\\_Web/2016/faq\\_acid\\_attacks\\_scheme\\_2016.pdf](https://jhalsa.org/Jhalsa_Booklets_Web/2016/faq_acid_attacks_scheme_2016.pdf).

- All victims of acid attacks and where the acid attack results in death, the heirs of victims of acid attacks shall be provided legal aid on a priority basis in order to enable them to get the benefit of the victim compensation scheme.
- State legal service authorities (SLSA) and district legal service authorities (DLSA) shall ensure that the victims of acid attacks do not have to face any kind of delay in procedural wrangles and the interim compensation is awarded at the earliest.
- Support persons and legal representation shall be provided to victims of acid attacks during the recording of their statement under section 164 CRPC, giving evidence etc.
- every district legal services authority and taluka legal services committee shall designate at least one panel lawyer as legal services officer for the purpose of this scheme.
- The district legal services authorities shall also depute sufficient number of plus for the implementation of this scheme.

## **Conclusion**

“violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women.”<sup>16</sup>

The society must be made aware of the heinousness of the crime and must be taught how to handle these victims as even they are human beings who already after being attacked have a low and damaged self-esteem and the victims need the support of the society to stand up.

Recently steps have been taken by individuals and the government to be welcoming to these victims who must be applauded and repeated. For example –

- Alok Dixit the founder of “stop acid attacks” (SAA) campaign based in new Delhi has established a café called sheroeshangoutin the northern city of Agra that is run by acid attack survivors.
- Viva n diva an Indian sari retailer roped in Laxmisaa as a model for their brand.

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<sup>16</sup>The United Nations Declaration on the Elimination of Violence against Women, General Assembly Resolution, December 1993.

- The Delhi State Legal Service Authority (DSLISA) recently opened up jobs post for acid attack survivors offering 12 clerical positions with salaries from Rs. 19,900 to rs 63,200 depending upon their qualifications.