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*Processual dimensions of trial of offences against women
“The law must be stable but it must not stand still.” — Roscoe
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Asmathunnisa G

Assistant Professor, Jss Law College Mysuru
Research scholar, Karnataka State Law University Hubballi

**Corresponding Author: Asmathunnisa G*

1. Introduction:

The schematic meaning of the word Processual means 'relating to a process' and likewise the term 'trial of offences' connotes the 'determination of an accused person's guilt or innocence after hearing evidence for the prosecution and for the accused and the judicial examination of the issues involved'. Together, processual dimensions of trial of offences against women signifies the implication of trial of offences which is committed against women and children. The procedure involved in various legislations, new criminal jurisprudence, mandatory minimum punishment for the offences, deviations from the settled principles of law and its relative aspects.

Crime can be defined as an act that subjects the doer to legal punishment. It may also be defined as the commission of an act specifically forbidden by law; it may be an offence against morality or social order¹. Criminal Law deals with the crimes which are modified in modern society. The existing laws are amended from time to time. The main purpose of criminal law is to make the society safe for its people. Indian Penal Code of 1890, section 40 defines the term offence. Recently Bharatiya Nyaya Sanhita Sec 2(24) defines offences in that of the same lines. Further The Code of Criminal.

Procedure 1973 in its definition clause that is under the ambit of section 2(n) defines the word offence. Now Bharatiya Nagarik Suraksha Sanhita sec 2(q) defines offence. The definition of an offence is also found in the general Clauses Act of 1897. Offences may be either cognizable or non-cognizable depending on their gravity. Cognizable offences are more serious than non-cognizable offences and police may arrest that person without warrant also can initiate investigation on its own without obtaining the order from the magistrate. In case of non-cognizable offences, the police cannot arrest or initiate investigation without the order of the magistrate having power to try the case commit the case for trial.

2. Trial of offences against women in heinous and inhuman crimes against women:

There are many legal provisions which punish the culprits committing offences against women. The Indian Penal Code though, provides provisions for women as a victim of many crimes such

¹ Dr Surinder Mediratta on 'Crimes against women and the Law' Delhi Law House, 2010, p.1.

as murder, robbery, theft, etc. but there are certain crimes which are diametrically characterized against the women known as ‘Offences against Women’. With the need of the hour, many new socio-economic offences have been enacted accompanied by various amendments in the existing laws with an objective to combat these crimes effectually. Social and legal responses to violence against women have undergone significant changes over the past three decades.

3. Acid attack-meaning and sections applied:

Offences against women is a contentious issue which is escalating at an alarming rate. Throughout the orb, women occupy a prodigious position. It is unfortunate that respect for womanhood in our country is on a decline and cases of acid attack is steadily increasing. There are certain offences against women which touch our social fabrics acid attack is one among them. Acid attacks which are also known as vitriolic or vitriol attack on women have become the most burning area and are considered to be the nastiest and the most atrocious kind of violence committed on weaker sex done with sulphuric acid /Hydrochloric acid /Hydrofluoric acid/ Phosphatic acid the repercussions of these acids if inhaled in large quantity it can also lead to pulmonary disorders. In a layman’s language, acid attack is the thoughtful attack where acid is used as a weapon in fact it is a corrosive substance thrown on someone to torment, pester and harass that person by the perpetrator.

Acid attack, also known as acid violence or vitriolage², has appeared as a spiteful and vicious act that shows the gravity and enormity of the enduring atrocities and violation of human rights³. It is the thoughtful and pre-mediated use of acid on another human being for no blunder on her part. Reasons could be easy accessibility of acid, male-domineering and male-dictating society, antagonism, scorned and disdained lovers, etc., to name a few. Cases on acid attacks are mounting, swelling and escalating like anything.

The perpetrators do not realize the consequences of such menacing, ominous and looming attacks on innocent victims and throw acids on them, distorting their face, limbs and different parts of body. The purpose of the person is to deface, injure and torture another person throughout his/her life. The attackers often target upper part of the body of the person. It often leads to long-lasting

² Parvathi Menon & Sanjay Vashishtha, *VitriolageIndia-the Modern Weapon of Revenge*, 2 *IJHSSI* 01, 01-09 (2013)

³Minakshi Goswami, *A Review of Literatures on Acid Attacks in India*, 1 *MSSV J. Human. Soc. Sci.*, 1, 1, available at <https://www.mssv.co.in/Journal/vol1no2/MSSVJHSS010201.pdf> last visited on 8-2-2023@02:09 pm.

effects which could be physical, psychological, social and economic. The aim of the committee is not to kill the victim but to make him/her endure throughout his/her life—to leave a permanent, indelible impact on the victim, physically as well psychologically. This form of violence is becoming very ubiquitous in present-day society.

Acid attack is ageless, raceless, religion less and boundary less. Acid attack makes the life of the women melancholic and forlorn⁴.

From 1995 onwards there was an increased trend in the use of acid against men and so a new law was made to prosecute cases inflicted on men. When the law was revised and in 2002, the maximum punishment was increased from 7 years under the penal code to death. There is no separate legislation but various bills are drafts are taken for consideration. There is a bill titled ‘The Prevention of Acid Attack and Rehabilitation of Acid Attack victim bill of 2017, in the year 2013 the Hon’ble Apex Court issued orders to regulate Acid Sale, Ministry of Home Affairs, issued specifications to all the states leading which ‘Model poisons possession and Sale Rules 2013’ was passed.

In 2015, Ministry of Health issued a recommendation to all the states to ensure that there is a speedy trial in acid attack cases. Further there is also a scheme promulgated in the year 2016 which ensures Legal service to the victims of acid attack. There is also a model Poisons possession and Sale Rules 2013 under The Poisons Act 1919. The said Rule empowers the sub-divisional magistrate to confiscate if any material in possession related to acids are not declared also to impose fine of Rs:50,000/-(Rupees Fifty Thousand Only/-) for the possession of such undeclared stocks.

Prior to 2013 Criminal Law Amendment, since there was no separate provision of law acid attack was dealt under section 320,322,323,324,325,326. The cases of acid attack in India are rising day by day despite the rigorous punishment provided by the Penal Code. The offence of acid attack is not something unheard of in India, daily we witness as many cases of acid attacks in our country. This kind of activity is covered under Section 326-A and 326B along with 376, 376A, 376B, 376C, 376D or section 376E of the Indian Penal Code, and shall immediately inform the police of such incident. These sections inserted after the recommendation of the Justice J.S.Verma

⁴ Nargis Yeasmeen Acid Attack in the Backdrop of India and Criminal Amendment Act,2013, 4 IJHSSI 06, 06- 13 (2015)

Committee⁵ and it was also a proposal of 226th Report of Law Commission⁶ of India which dealt particularly with acid attack. The former talks about voluntarily causing grievous hurt by use of acid and the latter talk about its attempt. Section 326A laid down the punishment as imprisonment for any described term which may increase up to ten years and also liable to pay fine. Whereas in Section 326B, for an attempt, the punishment laid down is imprisonment for a minimum period of five years which may increase up to seven years and also liable to pay fine. Section 326A⁷ laid down the eight types of injuries caused by the acid attack, permanent damage, partial damage, deformity, burns, maiming, disfigurement, disability, or grievous hurt. In a recent decision decided by Jharkhand High Court in *Dr. Ramesh Kumar Srivastava v. The State Of Jharkhand*⁸, the above stated sections were taken into consideration for providing justice for parties especially for rape victims. The accused were discharged with the charges under section 166B of IPC.

*Shivani Tyagi v. State of UP*⁹, in this recent case, stern action was taken against the perpetrators and bail was granted upon conditions.

It is essential to show that the act must have been caused by the intention or knowledge of the accused that he is likely to cause injury. All such cases where maximum punishment of life imprisonment or death sentence is possible will be categorized as 'heinous crimes' and a serious offence with stringent punishment. As per Criminal Law (Amendment) Act, 2013, trial of offences under Section 376A-D of IPC, are to be completed within 60 days. In cases of acid attack a presumption is defined in Indian Evidence Act under Section 114B¹⁰. Amendment was made to the criminal legislature Indian Penal Code and Criminal Procedure Code and insertion of section 357A, 357B and 357C was inserted for compensation to acid attack survivors.

⁵ J S Verma, Report of the Committees on The Amendments to Criminal Law, (2013)(Ind), available at https://www.thehindu.com/multimedia/archive/01340/Justice_Verma_Comm_1340438a.pdf

⁶ Law Commission of India, 226th Report on The Inclusion of Acid Attacks as Specific Offences in the Indian Penal Code and a law for Compensation for Victims of Crime, (2008)(Ind) available at <http://lawcommissionofindia.nic.in/reports/report226.pdf>

⁷ "Acid" 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.

⁸ Decided on 22nd April 2024, in Cr.M.P.No:3326/2018

⁹ Decided on 5th of April 2024, CrI App No:1957-1961/04, Arising SLP (crI)No's 3484-3488/2024

¹⁰ PRESUMPTION AS TO ACID ATTACK – If a person has thrown acid on to another person the court shall presume that and has been done with an intention or knowledge that likely to cause injury defined in Section-326A IPC.

There is a separate procedure pertaining to trial of offences against women in Acid attack cases, there is a settled principle of Law which cannot be deviated. There is a procedure established by Law which establishes a clear instinct that whenever a crime is committed the accused persons has to undergo the procedure which is established under the Law, to uphold his constitutional rights enshrined under Article 21 of Indian Constitution. The right to life and liberty is the most important rights among the human rights because existence and protection of life is precedent condition for the enjoyment of rest of human rights. Due process phrase is to guarantee a fair trial both in procedure as well as in substance. The procedure should be in accordance with law and should be appealable to the civilized conscience of the community. It also ensures a fair trial in substance, that is to say, that substantive law itself should be just and appealable to the civilized conscience of the community. The various decisions of the American Supreme Court when analyzed, will stress the four fundamental principles: First, that a fair trial must be given; second, the court or agency which takes jurisdiction in the case must be duly authorized by law to such prerogative; third that the defendant must be allowed an opportunity to present his side of the case; and fourth that certain assistance including counsel and the confronting of witnesses must be extended.

These four fundamental points guarantee a fair trial in substance the result is that Article 21 gave 'a carte balance to make and provide for the arrest of any person under any circumstances as Parliament may think fit'. Article 22 was introduced with a view to imposing some limitations upon the legislature¹¹. The expression 'procedure established by law' means procedure laid down by statute or procedure prescribed by the law of the state¹². There shall be a fair trial which is the cardinal principle of criminal justice system. Law should not work on assumptions and presumptions. In case of Acid Attack there is always a presumption drawn against the accused person establishing his intention. Even an attempt to throw acid punishes the convict with an imprisonment of 5 years which may extend up to 7 years which is a made of minimum punishment in consonance with section 114B of Indian Evidence Act. The Court was recommended to take up the offence sou motto

Liabilities for dereliction of the duties of public servants, doctors in case of failure to furnish information/records etc was slapped with rigorous imprisonment of 1 year along with fine.

¹¹ DURGA DAS BASU, COMENTRORY ON THE CONSTITUTION OF INDIA 3159 (New Delhi: Lexis Nexis Butterworths Wadhwa, 8th ed. 2008).

¹² . V.N. SHUKLA, CONSTITUTION OF INDIA 215 (Lucknow: Eastern Book Company, 12th ed. 2013)

Mandatory minimum punishment was prescribed for Acid Attack and attempt to do so as 10 years and 5 years with fine which is reasonable to meet the medical expenses of the survivor respectively. In case of abatement 10 years of Life imprisonment with fine which is reasonable to meet the medical expenses. Further if a police officer refuses to register and FIR, punishment is 10 years of Life imprisonment with fine which is reasonable to meet the medical expenses. The notification emphasizes on Victim compensation scheme. Treatment for the acid attack survivor shall be of free of cost in both private and government hospitals and hospitals are ordered to reserve beds exclusively for the victims of acid attack. Compensation is normal and ex-gratia.

The law addresses the problem of delay in prosecuting cases by providing a fixed time for investigations. The investigating police officer must complete the investigation within 30 days following the reported attack or the Magistrate's order for an investigation. Two extensions of 15 days each can be granted on application to the court. If after 60 days, the officer is unable to complete the investigation, a new officer must be assigned and action will be taken against the first officer the new officer has 15 days to complete the investigation. Medical Examination of the victim of acid attack victim is to be conducted immediately and a certificate has to be issued without undue delay regarding the examination. All offences pertaining to Acid attack are cognizable, non-compoundable and non-bailable. Monetary compensation and Ad-hoc relief to the victims of acid attack has been ensured. The total time for investigations is 90 days. There are instances in which in order to conduct speedy investigation, police authorities have detained in custody the family members of the accused person.

There are separate trial processes in acid attack cases related to presumption, burden of proof, duties of the court with court's involvement. Demystifying the threshold in dowry harassment against women there is also a skeptical judicial approach. There is a provision of Law, Onus/Burden and standard of proof, mandatory minimum punishment and benefit of doubt in dowry harassment cases as well. Rape and judicial pronouncement is north worthy.

Justice Malimath committee report quest for truth is also the determining factor. Justice Verma committee report also throws light on the criminal justice system. The Criminal Law Amendment Act and the present changes done to the statutes Bharatiya Nagarik Suraksha Sanhita ,Bharatiya Nyaya Sanhita also inculcates the aspects of evidence and burden especially pertaining to the fact related to women. The Disha Act which is the implicative aspect of the state government post nirbhaya implications. The vishaka guidelines. Cyberstalking and women victimization. Rules of

evidence to combat cyber stalking are all the determining factors for the processual dimensions of trial of offences against women.