



**“STIGMATISED AS ‘DAIYAN’ FOLLOWS ‘RAPE’ &
‘MURDER’: ‘WITCH HUNT’ IN THE TRIBAL STATES OF
INDIA”**

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ABSTRACT

The brutal practice of ‘witch hunting’ and ‘witch branding’ is mostly prevalent in twelve states of India — Jharkhand, Bihar, West Bengal, Odisha, Haryana, Gujarat, Rajasthan, Madhya Pradesh, Uttar Pradesh, Assam, Chhattisgarh and Maharashtra. According to the disclosed statistics and data compiled by National Crimes Record Bureau (NCRB) before the Supreme Court of India on crime regarding ‘witch hunting’ there have been 2391 murders or culpable homicides and extortion cases between the year 1999 and 2013 in India. The three Indian major developed states namely Andhra Pradesh, Jharkhand and Odisha are among the worst in the list, each accounting for about 400 deaths in the past 15 years. Situation is grim and horrific. Hardly there has been any change in numbers in real time soon, as per the National Crime Report Bureau investigation data.

This paper, therefore, aims to study and analyse the causes, effects and reasons behind its continued persistence in rural India. It strives to throw light upon how the prevalent State legislations on ‘Witch- Hunting’, its ineffective in alleviating the evil practices and emphasizes on the pressing need for a Central Legislation to curb the same.

Key words: *Culpable homicide, Murder, Death, Statistics, Investigation.*



1.0. INTRODUCTION

“Once a witch, always a witch” — an old saying but that’s how it is in the rural heartlands of India. Once you are labeled a ‘witch’, the tag will remain forever, no matter what. The superstition and the belief in the existence of witches still exist in many states of India. Witch hunting is considered as an infectious disease which is slowly spreading to newer areas. The concept of ‘witch hunting initially started in Europe and till date it is being continued with tragic consequences. In early Europe, the women who were against the church were considered as ‘witches’. These women were regarded as one who brings misfortune and thus to protect the society those women were burnt. Later on women were held responsible for all the calamities let it be famine, flood, and epidemic diseases which caused death of livestock.

1.1. OBJECTIVE OF THE STUDY

The study gives a comprehensive depiction of the issue. There are four types of impact on the perpetrated crime i.e. Social, psychological, moral, and economical. The social and economic effect is when the victim is exiled from society or denied their rights to the property. While the moral and psychological impact is when the victim is secluded from society or is given a silent treatment by society (Yasmin, 2018). The acts of these groups can affect the sex of the victims, age of the victim, the caste of the victim, and economic status of the victim.

Not much has been documented in this area except by way of some articles. This paper explores the reasons behind the existence of such beliefs and practices. The paper is organised into four segments and makes a humble



attempt to analyse 'Witch Hunting' and 'Witch branding' in the tribal states of India.

The first part of the paper presents the statistical reality and incidents of witch hunting of different tribal dominated states like Assam, Jharkhand, and Orissa etc. The second part discusses the causes and types of attack and the catalyst to mob lynching, sexual assault, murder etc. While the third part analyses the international instruments, national and state legislation. While the fourth part deals with judicial responses and the need for strong central legislation.

2.0. METHODOLOGY USED AND LITERATURE REVIEW

This paper is theoretical in nature and uses secondary sources by giving references to different newspaper clippings regarding the gruesome incidents. Articles pertaining to the issue have been researched by taking into account the field study carried out in selected districts of Assam, Jharkhand, Madhya Pradesh, Meghalaya and Odisha, by Action Aid Association and from many other journals. Some data's compiled by National Crimes Record Bureau have been used to substantiate the reality."

2.1. RESEARCH QUESTION

Despite the plethora of legislation why are the women the primary target of 'witch hunting' and 'witch branding'?

"The act of violence against women has been classified as control, emotional violence, physical violence, and sexual violence (Krantz & Garcia-Moreno, 2005). In South Asia, violence against women is a particularly germane issue, also known as the 'the most gender insensitive region in the world' (Niaz, 2003). According to data of India's National



Crime Records Bureau, more than 2,500 people, mostly women, have been killed in India in between the year 2000-2016 on being accused of witchcraft, putting the number to more 150 deaths annually. Similarly, in Nepal in the year 2018-19, their police had 51 victims of witchcraft, nearly all elderly women and widows. A WHO report in 2002 states that in Tanzania nearly 500 elderly women were killed annually after being accused of witchcraft. Modern day witch hunts and killings are not only confined to South Asia and parts of Africa but are prevalent across the globe.¹ “

Women in India suffer are exploited in several ways. “To name a few: domestic violence, wife battering, rape, marital rape, incest, dowry-related violence, female infanticide, sexual harassment, human trafficking for prostitution and, last but not the least, witch-hunting (Yogesh & Kosambi, 1993)”.² In recent years, the media has reported many cases of witch-hunting incidents in the country. Most of the reporting came from a states like Jharkhand, Assam, Orissa, Himachal Pradesh, Chhattisgarh, Gujarat, Maharashtra, Rajasthan etc.

2.2. THE STATISTICAL REALITY

There are innumerable incidents of ‘witch hunting’ in India. According to National Crime Record Bureau’s data a total of 590 people, mostly women, were killed on allegations of practicing witchcraft between 2001 and 2020.

¹ ‘Witch-Hunting in Odisha: A compilation of case studies’, Action Aid Association, India and Odisha State human rights Commission, December 2021.

² Devina Neogi; ‘A Study on the Practice of Witch-Hunting in Assam, an Ontology’, Proceedings of the 6 World Conference on Women’s Studies, Vol. 5, Issue 1, 2020, pp. 1-8 TIIKM ISSN 2424-6743 ; <https://doi.org/10.17501/24246743.2020.5101>



“According to the latest NCRB data of 2020, 15 women were murdered on allegations of witchcraft. The states of Jharkhand, Chhattisgarh, Madhya Pradesh and Odisha – all with sizeable indigenous populations - together recorded 88 murders attributed to witch-hunting”.³ “Branding women as witches is particularly prevalent among tribal communities in the state. Though cases of witch-branding have been reported from 12 states in India, but are widespread in just a handful of states. About 2,300 murders of so-called witches were committed country-wide between 1999 and 2013. Murder driven by the belief in black magic is common in the state of Jharkhand. According to the latest data of 2020 of the National Crime Record Bureau (NCRB), 15 women were murdered on allegations of witchcraft”.⁴ The state of Jharkhand alone registered the highest number with 54 witch-hunting murders in 2013, 52 in 2008 and 50 in the year 2007.

2.3. HORRIFIC INCIDENTS OF WITCH-HUNTING

2.3.1. JHARKHAND

As the calendar ticked to 5th July 2022, the Times of India reported that a 70-year-old woman was beaten to death in Jharkhand's Garhwa district by villagers who claimed that

³ ‘Witch-hunting driven by class and gender discrimination in tribal areas of India’, Women in India, International, 26thFeb.2022;
<https://www.rfi.fr/en/international/20220226-witch-hunting-driven-by-class-and-gender-discrimination-in-tribal-areas-of-india>

⁴ ‘Witch-hunting driven by class and gender discrimination in tribal areas of India’; RFI International, 26th Feb.2022 .



she practiced witchcraft. In April 2022, an elderly couple was killed in the district of Gumla of Jharkhand, for allegedly been suspected by their relatives to practice 'witchcraft'. A major issue in Jharkhand is witchcraft resulting in murder on suspicion. "On 28th March 2021; a 55-year-old woman was lynched, beaten to death by locals at the Lapung area, a community development block of Ranchi, the capital city of Jharkhand. Some people suspected her of practicing witchcraft and later killed the woman mercilessly by entering her house.

On 10th March, 2021, the newspaper reported, yet another case of three persons, including a woman, being killed in an alleged 'witch-hunt' at Haatnada village under Sonua police station in West Singhbhum district of Jharkhand. In 2019, four people were lynched by a mob in Jharkhand. The victims, all over 60 years of age, were dragged out from their homes and beaten to death by masked men wielding sticks. The highest numbers of cases are from the district of Chaibasa and Seraikela. It is reported that a total of 233 women were murdered. The Jharkhand Central Bureau of Investigation (CBI) office puts the total number of such murders from 2001 to October 2013 at 414. While cases registered for witchcraft at 2,854. These are statistics which have been logged in. However, there are many unrecorded ones which are far more than the official record than this number.

Till 31st July 2020, there have been 18 cases of harassment in the name of 'Witch Bisahi's. Jharkhand, which was carved out of Bihar in 2000, but is vulnerable to such a crime".



The records are startling with three incidents of witch hunt violence per day. At least 1,000 people have been murdered in the past twenty-two years and 90 per cent victims are women. The National Crime Record Bureau data for 2019 revealed that Jharkhand was ranked third in witch-hunting cases.

2.3.2. ODISHA

“In Odisha, a tribal woman along with her two sons and two daughters were murdered. Their bodies were dumped in a well close to their house. People suspected her to be a ‘witch’. Witch-hunts are still highly prevalent in twelve of Odisha’s thirty districts — especially Mayurbhanj, Keonjhar, Sundargarh, Malkangiri, Gajapati and Ganjam .Most of them are victims of superstitious practices targeted because of “causing health issues or crop failure. No action were taken by any agency.

Neither the health department, nor police, or legal aid cell had ensured that such practices are eliminated from the village. A report on ‘Witch Hunting in Odisha’- was jointly released by the Odisha State Commission for Women and Action Aid, an international non-governmental organization on 20th December, 2021. The report is an extensive documentation of 102 case studies of witch-branding, analysed using interviews with key informants. The state of Odisha has enacted the Odisha Prevention of Witch Hunting Act, 2013 which aims to prohibit and penalise such activities in the state.”

2.3.3. ASSAM

“Hundreds of people have been the victims of witch hunting and meted with severe punishment like mob lynching, rape, sexual assaults, naked parade, public shaming and social boycott from the community. Very often,



the people targeted are held responsible for crop failures, property loss, illnesses, deaths, or even natural calamities in their area. The concept of witchcraft is also deep-rooted in tribal belts of Assam. Examples are Kokrajhar, Chirang and Udalguri districts under the Bodoland Territorial Area Districts (BTAD). Karbi Anglong and Goalpara, are reported to have the highest number of witch-hunting deaths in the state. In upper Assam, areas like Sonitpur, Lakhimpur, Sibsagar and Jorhat also report a notably high number of witch hunting cases. According to a research, in between the years of 1989-2014, 196 cases of witch hunting occurred in Assam. Around 193 people have been branded as 'witches' and killed and 202 cases were registered by the police during the period in between 2001 and 2017".

"Till date, there is no exact data on how many people have been killed, assaulted and outcast from the villages. As per the official records, the number of deaths could be hugely understated because it is difficult to file FIRs against a community which has committed the crime. Coupled with this, there is no individual attacker to lay the blame on. Since, the incidents happen in remote villages, there is less chance of being spotted by any government agency. Therefore, these cases are unlikely to be counted in the state database."

2.3.4. HIMACHAL PRADESH

In another incident, a frenzied mob attacked an 84-year-old woman, blackened her face, garlanded her with shoes and paraded her through a village in Himachal Pradesh. Reason was suspicion. She was branded as a suspected 'witch' casting evil spells on others. A scene straight out of medieval India? No, this is happening in 'Digital India even today'.



3.0. WHAT IS 'WITCH HUNTING'?

A 'witch' is described as a person (especially a woman) who is credited with having occult powers, and witchcraft is the practice of magic, labeled as 'black magic'. 'Witchcraft' has different names and very often the woman is addressed as 'Churail', 'Dayan', 'Tohni' etc in Indian languages. Etymologically, "the term 'witchcraft' is a compound of two words 'wicce' and 'craeft' wherein the word 'wicce' derives its origin from the old English word 'wicca' which refers to 'witch' and 'craeft' denotes 'skill or ability' (Dilts, 2015). In common parlance, "the definition of a witch is, one who causes harm to others by mystical means" (Needham, 1978:26) which was modified to "a person who uses non-physical means to cause misfortune or injury to other humans in 2004 (Hutton, 2004: 421)".⁵ "These definitions imply that there are people who use mystical or supernatural means to cause harm to others". "Witchcraft infers to the practice of, and belief in, magical skills and abilities which are believed to influence the mind, body, or property — of others in a malicious manner.

The rural locals believe that they possess a supernatural power that hampers other lives. It has been well depicted, documented, and believed that witchcraft has mainly been practiced mostly by females (see Richter, 1982; Karlsen, 1998)".⁶ "Witchcraft was a felony in both England and its American colonies, and therefore witches were hanged, not burned. However, witches' bodies were burned in Scotland, though they were strangled to death first. About 30,000–60,000 people were

⁵ 'Witch-Hunting in Odisha' A compilation of case studies', Action Aid Association, India and Odisha State human rights Commission, December 2021 .

⁶ Shamsher Alam* and Aditya Raj; 'The Academic Journey of Witch Craft studies in India', Man In India, 97 (21) : 123-138 The Academic.



executed in the whole of the main era of witchcraft persecutions, from the 1427–36. These figures include estimates for cases where no records exist⁷. Current scholarly estimates of the number of people who were executed for witchcraft vary from about 35,000 to 50,000. The total number of witch trials in Europe which are known to have ended in executions is around 12,000. These witch-hunts targeted women who had allegedly gained magical powers through devil worship. A bad harvest, a sick cow, or a stillborn child; were common catalysts for witch hunts. Many of those who were blamed were on the periphery of the society: the poor, the elderly or social outcasts, but anyone could be targeted, including children. The accused were often led through a series of trials and severely tortured. Torture was the easiest way to be fit for extracting confessions from the accused. Women were easier targets for the devil's influence. Witchcraft was therefore seen from a gendered lens. From folk tales to horror movies to popular culture, the label and the vicious practices associated with it are conveniently thrust upon women, especially women from the marginalised sections of society, even today.

3.1.THE HISTORY:

The practice was documented for the first time in England, when a woman named Agnes Waterhouse became the first person to be executed in England for witchcraft in the famous trial of 'The Chelmsford Witches'. The trial of 'The Chelmsford Witches' was followed by the trial of 'The Pendle Witches' in the early 1600s and the 'Trier Witch Trials', which was the largest witch trials in European history. Subsequently, Witch-hunting

⁷ <https://www.english-heritage.org.uk/learn/histories/eight-witchcraft-myths/>



became prevalent in America as well. The Salem Witch Trials, which took place in the Massachusetts settlement of Salem in 1690, marked the start of this practice in the United States.⁸

3.1.2. IN INDIA

‘Witch-hunting’ has been in practice for hundreds of years in tribal society of India. “The exact date of origin of witch-hunting in India is not known. The practice is said to have emanated hundreds of years ago in the Morigaon district of Assam which is famously called ‘the Indian capital of black magic’. ‘Witch-hunting’ is popularly known as ‘Dayan Pratha’ in the local dialect of Indian society.”

“The earliest evidence of witch-hunt in India is the ‘Santhal witch trials’ in 1792 in the district of Singhbhum of Chotonagpur division in India. The patriarchal mindset of societies is considered to be the cause of the globally common phenomenon of witch-hunting.” During the colonial times, missionaries and colonial administrators attempted to record and investigate matters related to ‘witch hunting’ and ‘witchcraft’ with the motive to control and regulate the subjugated people in the territorial domain of colonial India. Thereafter, some bits of information were collected from the ‘First War of Independence’ of 1857. This war was studied in great depth by historians. But it received little attention as ‘the first mass of witch-hunt among tribal communities’ of Chotonagpur.

⁸ Vidya Kakra ; ‘Witch Hunting in India – Need for a Central Legislation’ Journal for Applicable law & Jurisprudence, Vol.I ,Issue-I,



3.2. THE STAGES

Witch-hunting is a three-stage process viz. ‘accusation’, ‘declaration’, and ‘persecution’.

3.2.1. Accusation

Accusation means and includes “accusing women of any harm occurred in the community or to the individual, such as the death of any person, child or animal, any disease in the village, natural disaster, or crop loss⁹”.

3.2.2. Declaration

Declaration means to declare or brand the woman as a witch as she possesses some evil power and exclude her socially. The so-called witches are identified through certain rituals by traditional witch-finders or witch doctors, who are variously known as the ‘khonses’, ‘sokha’, ‘janguru’, or ‘ojha’, and then perpetrators charge them for persecution.

3.2.3. Persecution

Persecution includes mental and physical torture, ranging from social exclusion, name-calling, psychological torture, lynching, or putting to death in any way. The concept of persecution refers to strategic attempts encouraged by dominant and influential groups in society, directed at groups that threaten them. Accusing a Dalit woman of witchcraft and persecuting her is a standard weapon of patriarchal set-up in rural India. It is an acknowledged fact that most of the witch-hunting victims are widows, single, older women, and social-economic marginalized women without any. In the state of Jharkhand, tribal communities like Munda, Oraon, Ho, Majhi, Kharia, Birhor, etc., witchcraft are often practiced in cultures, where beliefs regarding paranormal powers, occultism, magical powers, supernatural forces, and black magical powers are deeply ingrained”.

⁹ <http://tehelka.com/why-women-are-branded-as-dayans/>



3.3. TYPES OF ATTACK

3.3.1. Calculated Attacks:

These are the planned attacks designed to fulfill some particular object including unlawfully grabbing property, sexual harassment and for taking revenge.

3.3.2. Surprise Attacks:

These attacks happen without any prior conflict and the victim has no knowledge of the accusation prior to these attacks. Surprise attacks are more violent than the calculated ones.

3.3. CAUSES

“Gender courting between the accuser(s) and the accused, plays an essential function in the choice of ‘goal/s.’ Such assaults are pre-planned and function the way for in search of revenge of pre-existent private conflicts. It plays a crucial element in such crimes. Because men are the selection makers; they often use such conflicts with an ulterior purpose of seizing the property, sexual harassment etc.

Conspiracy plays an important role. Though practiced secretly nowadays, sometimes the entire village conspires against a household, usually of the Dalit or tribal family — a numerically weaker section in the village. Single women, widows, and aged people are the most vulnerable people of the society. They are chosen for witchcraft and are targeted to capture their land and property. Most of these women come from backward areas. They are either ‘Adivasis’ or belong to the ‘Dalit’ community. Such women are the scapegoats in this crafted conspiracy by men. In the pretext of ‘Witch-hunting’, people kill or rape innocent women to acquire their property. It is



also used as a tool for vengeance and to target others in local politics. There are many reasons why women are declared a 'Dayan' i.e. witches and many more loaded terms. She is branded on superstitious belief including- if the cow or buffalo stops giving milk or the well dries up, if there is scarcity of water and so on. Or, at times even for reasons like child death while giving birth. They are perceived to cause misfortune, sickness, and even death by casting 'evil eye'. The suspected witch/es are then subjected to various ordeals to prove their innocence. If unsuccessful, punishments for such acts include chopping off of hands, knocking off the teeth, mouths burnt with hot oil and banishment from the village". One of the bases of the establishment of witchcraft and witch hunt is superstition.

Most of the communities settled in rural areas have a firm belief in the existence of evil spirits which are inherently trapped in women in the form of 'dains' and such women are persecuted as 'tohnis' or 'pagnahin'. This practice is also considered as a form of rebellion which is nothing but a fight against the social order of the society i.e. the reaction of a male-dominated society intolerant to the rebellion of women. Women are also deprived of possessing any ritual knowledge or even being a part of any ritual. Such knowledge can act as a hindrance in the established social order as well as a threat to the male-dominated class. Here one section of the society is striving to change the other section of society by bringing in a change in the existing social order via the support of such cultural practices.

Established 'Patriarchy' also plays a vital role in the practice of witch hunts in India. The struggle and conflict between the male-dominated and



female-dominated system make it a rebellion in itself. Such rebellion can be against an established authority as well as that of the independence era where it was a sign of non-cooperation of the British rules and regulations where the agitation started from the Chota Nagpur region. It is important to understand the aspect of gender-based control where only women of a certain category are being persecuted as witches and are further controlled by performing various forms of violence like rape, domestic violence, etc. Even then, the persecuted women as witches are mostly widows, aged, lower caste and children. This symbolizes how only the weaker class is being subjected to such practices whereas the witch doctors are always men, popularly known as 'ojhas'. The relationship between men and women shows how patriarchy is a deep-rooted social issue that does nothing but embeds this in the mind of women than men belong to the superior class and are born to suppress them.

Added to these, the role of local witch doctors is very crucial in the practice of witchcraft. Faith on his powers and skills is deeply entrenched in people's minds. Once a person has been labeled as a 'witch' and the accusation has been verified by the witch doctor, action against him/her is definite. Hence, the pivotal cause is the way in which the witch doctor is revered in rural areas.

Traditional village administration in tribal areas, allows the headman (and his council) to unilaterally decide village affairs and settle disputes. The system follows a hereditary pattern of leadership wherein women are often neglected. Given the lack of education and poverty, usually women suffer silently, as most of them are unable to reach out for help. Through



accusation of females, the dominant men of the community perhaps want to send a message to the women folk that 'only docility and domesticity shall be rewarded, anything else shall be punished'.¹⁰

The impact of globalization aids the practice of witchcraft in various tribal areas. Due to increased westernization with adaptation of other religious and cultural practices, tribal groups perceive this as a threat to their ethnicity. The outcome of the effect is, they resort to continuing such practices in the garb of 'Ethnicity' and 'Culture' in order to restore and protect their beliefs. This mindset of the tribal and ethnic groups is popularly known as 'ethnic revivalism'. Numerous unjustified cultural practices have started because of this revivalism. 'Witch hunting' is one of the most prominent of all these practices resulting in mysterious deaths happening across the country. This makes most of the indigenous groups rely on their traditional knowledge systems. 'Ethnic Revivalism' is relevant to the tribes of Assam as well. Bodos community of Assam designates a woman with suspicious powers as a '*daini*' (witch). Such practices are motivated by the rebel nature of women which includes the denial of offering sexual favours to men which in turn acts as a justification for men to persecute them as witches. With over 116 deaths occurring due to witch hunts in the state of Assam, over 60 are women. This is an example of how indigenous communities still have traditional patriarchal prejudices which raises unreasonable suspicion on women. It is a matter of fact, that until and unless there is a significant change within the society that makes

¹⁰ Shamsheer Alam* and Aditya Raj; '*The Academic Journey of Witch Craft studies in India*', *Man In India*, 97 (21) : 123-138 The Academic.



women self-sustainable, no set of laws can change the current status of women in India.

3.4. ROLE OF CULTURE AND ETHNICITY OF TRIBES

Villages belonging to the various communities have different rituals which they perform with their families collectively. But what is strange in almost all indigenous communities is that there exists a complete exclusion of women in such practices. The Santhals, a community belonging to the central-eastern part of India observe such exclusion of women especially when there is collective worship of a '*abge bonga*' or '*orak bonga*', which is the family spirits. Women are generally considered an individual who is outside of the clan since the family lineage is passed on from the father to the son and not to the daughters. '*Bhitri*' which is a shrine inside the temple or the house where the rituals take place is generally cleaned by the unmarried women of the family. Neither the married women nor sisters are allowed to enter the shrine and perform rituals, nor can they perform the sacrifice of animals. This kind of exclusion of women in the family is the first and initial stage of creating a class divide by denial of rights to women. Apart from this, women are also aloof of the rituals performed in the village collectively by not allowing them entry to the sacred grove known '*asjher*' or '*saran*' as well as not making them a part of '*Lohrae*' which is the agricultural harvest festival of the Santhals. Moreover, the women are also excluded from worshipping female spirits of the grove (*Jaher-era and Gosaen-era*) and such ritual is performed by the male priest itself. Any woman who is in association with these rituals or the '*bongas*' is designated as a witch and persecuted.



Various ethnographic records and accounts state that the witches are the greatest threat to the Santhal community. It is a belief amongst the Santhali men that the women who have the evil power are mostly older and further teaches magical codes to the young women. As soon as a girl enters puberty and starts to menstruate, they are recruited by older women of the village to learn incantations and rites. When women are prohibited to learn and perform these rituals by depriving them of their rights, they perform the same secretly. This secret performance of rituals is misinterpreted as evil and labeled 'Witchcraft' rather than depicting this as a rebellion against the class divide. The witch-finders, popularly known as 'ojhas' or 'deoras' are the ones who designate women as witches in the Santhal community. These ojhas are always the men and are entitled to identify and persecute women as a witch. The identification is done via interrogation with the village people who name women suspected to be witches and should be removed from the village. The kind of threat and violence Santhali women go through because of witchcraft is pitiful and gruesome. They spend most of their lives living under the threat of being persecuted as a witch.

4.0. WHAT DOES THE 'LAW' SAY?

4.1. INTERNATIONAL LEGISLATIONS

4.1.1. "*Convention on Elimination of all forms of Discrimination against Women ("CEDAW")*"¹¹

Art. 1 of CEDAW defines "discrimination against women" as "...physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional

¹¹ was ratified by India on 25th June 1993



practices harmful to women, non- spousal violence and violence related to exploitation....”

Art. 1 is clarified by Recommendation 19 to include gender-based violence: “The definition of discrimination includes gender-based violence, i.e., violence that is directed against a woman because she is a woman or that affects woman disproportionately. It includes acts that inflict physical, mental or sexual harm or suffering, threats of such acts, coercion and other deprivations of liberty. Gender-based violence may breach specific provisions of the Convention regardless of whether those provisions expressly mention violence...”

Art 24 states that: State parties are to include in their reports information about sexual harassment, and on measures to protect women from sexual harassment and other forms of violence of/ or coercion in the workplace The UN Committee on the Elimination of Discrimination against Women (“CEDAW Committee”) has recommended that the country should “widen the definition of rape in its Penal Code to reflect the realities of sexual abuse experienced by women and to remove the exception of marital rape from the definition of rape...”

The Justice Verma Committee was of the opinion that substantive equality and women’s rights as human rights must be established both in domestic and international legal regimes: the Constitution embraces the substantive equality approach as provided in Article 15(1) and Article 15(3)¹² of the Constitution of India. “The concept of formative action under sub-article (3) of Article 15 is not merely an enabling provision but, in the context of Article 14, a mandatory obligation.

¹² Ashok Kumar Thakur v. Union of India, (2008) 6 SCC 1



The violence against women has two aspects. It is an offence under the principles of penology but, more importantly, it is a direct constitutional violation”¹³.

4.2. NATIONAL LEGISLATION

“There is no specific national level legislation that penalizes witch-hunting. The provisions under *Indian Penal Code 1860* are used as an alternative, and the other sections invoked in such cases are Sec 302 — charge for murder, Sec 307 — attempt for murder, Sec 323 — hurt, Sec 376 — rape and Sec 354 — outraging a woman’s modesty. It is also punishable if, due to torture, a woman commits suicide. *However, a large number of perpetrators are out on bail, and there is no system to re-arrest them. Due to either lack of eyewitnesses or unreliable testimonies, most cases are dismissed at the initial stage itself.*”

4.2.1. CONSTITUTION AND SPECIAL LAWS

“Witch hunting is a clear infringement of the fundamental rights that a citizen is entitled to under the Constitution of India. It violates Articles 14, 15(3), 15(4), 21, 51, 51 A (h) of the Indian Constitution and other national legislation’s including the *Protection of Human Rights Act, 1993*, *Scheduled Castes and Scheduled Tribes (prevention of atrocities) Act of 1989*, and involves acts punishable under the *Indian Penal Code, 1860*”.

4.2.2. STATE LEGISLATIONS

The practice of ‘Witch hunt’ and ‘Witch branding’ is prevalent in 12 states of India, but only 7 state laws have criminalised it.

¹³ <https://clpr.org.in/blog/gender-justice-and-indias-obligations-under-international-conventions/>



“Rajasthan passed a law banning witch-hunting in 2015. In Rajasthan it is known as *the Rajasthan Prevention of Witch-hunting Act, 2015*. In Assam, the *Assam Witch-hunting (Prohibition, Prevention and Protection) Bill* “mandates a jail term of between three and seven years for branding any person a witch, which may be extended to life imprisonment if the person is driven to commit suicide as a result of being labeled a ‘witch’.

The Bihar government passed a law in 1999 called *the Prevention of Witch (Daayan) Practices Act, 1999*. The law criminalises torture and the harm it causes to a woman branded as witch. It also prohibits committing any harm to a woman to cure her. The punishment of such an act is one year of imprisonment and/or a fine of Rs 2000. This law is lenient as far as the imposition of fine is considered”.¹⁴

Jharkhand enacted the legislation with the *Anti Witchcraft Act* in 2001. The *Chhattisgarh Tonhi Pratarna Nivaran Act 2005* (Chhattisgarh Prevention of Atrocities on Women in the name of Tonhi) was formulated in 2005. “Odisha enacted the *Prevention of Witchcraft Act* in 2013. The state of Maharashtra passed the law in 2013 i.e., *the Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori practices and black magic Act, 2013*. *The Karnataka Prevention and Eradication of Inhuman Evil Practices and Black Magic Act, 2017* was passed in 2017. All these are state legislations. Unfortunately, the existing laws have not been able to either tackle such vicious crimes or create fear in the minds of perpetrators. The threat of punishment and conviction hasn’t been a deterrent. On 8th March 2021 the Jharkhand High Court took *suo motu* cognizance of the ‘disturbing’ killings of five members of a family in the state on the basis of a report published by the Times of India, revealing

¹⁴ National Commission for Women, India



that the village council of Buruhatu-Amatoli mountain sentenced five members of a family to death by declaring them 'churail' after which they were murdered".¹⁵

5.0. THE GAPS

"The laws already in force are insufficient as they focus on punishment mechanisms but do not respond to the need of eradicating the irrational and evil superstitious beliefs.

- The ways of reporting cases are limited.
- The needs of the victims and survivors are not met.
- In many cases the state legislations are not invoked in many of the cases, but IPC sections were invoked.
- In some cases, the victims did not get a copy of the FIR.
- In many cases, the accused (usually powerful males of the village) are left unpunished because the attacks are portrayed as a result of mob fury and unnamed assailants.
- Present laws do not provide an effective way to help victims recover from the consequences of witch-hunting, which include forced displacement, expulsion from the village and social and economic boycotting.
- While gaps exist, with the intervention and interest of the district administrations, victims have gotten justice and being are rehabilitated properly indicating the importance of this legislation."

¹⁵ *Why women are branded as 'dayans'?* Tehelka, 8th May 2021.



6.0. JUDICIAL RESPONSES

In a recent case, *Bhim Turi v. State of Assam, 2017 SCC Online Gau 813*,¹⁶ the Gauhati High Court observed that “‘witch hunting’ is a socio-legal problem and needs to be curbed soon. The Court noted that in the North-Eastern states of India , mostly elderly women, are branded as ‘witches’ and thereafter they are subjected to severe abuse in the name of getting rid of the evil that is supposed to be in them”. In *Tula Devi & Ors. v. State of Jharkhand, 2006 (3) JCR 222 Jhr*, “the evidence was in question since it was unable to prove the guilt of the accused since there was no eyewitness present at the time of identification and persecution of the woman as a witch. Black Magic is a mystical problem. Hence, forensic evidence is not enough. Expert evidence and in rare cases Admission and Confession is possible”.

A factor that adds to the issue is the ‘delay’ in reporting the crime due to the location of the crime scene which is mostly the outskirts of an urban area where police authorities are not easily accessible. Such delay has been observed in various cases like that of *Madhu Munda v. State of Bihar, 2003 (3) JCR 156*¹⁷ which ultimately made the statement of the witness not reliable.

7.0. CONCLUDING REMARKS

“Steps must be taken for popular education campaigns and a momentum to eradicate the evil of witch-branding. Government and civil society organizations must prepare for sustained campaign against this heinous

¹⁶ *Bhim Turi v. State of Assam, 2017 SCC OnLine Gau 813*

¹⁷ *Madhu Munda v. State of Bihar, 2003 (3) JCR 156*



practice until it is eradicated from the country. The witch hunting prevalent districts need to be identified, addressed and both law enforcement agencies and awareness drives engaging popular leaders of rural areas, women groups, PRIs, ASHA, and frontline workers must be ensured in these areas. The local government i.e., Gram Panchayats must play an important leadership role in bringing such disputes to the courts.”

“We must work toward establishing a centralised law that criminalises witch hunting practitioners and mob violence against targeted families. The authorities must develop guidelines for ideal coordination between the current state laws and the Indian Penal Code that prosecutes the suspects. If such initiatives are undertaken, then only eradication of the abolition evil such as witch branding from society is possible.

REFERENCES

International instruments:

“*Convention on Elimination of all forms of Discrimination against Women* (“CEDAW”)

Legislations:

The *Anti Witchcraft Act* in 2001

The Assam Witch-hunting (Prohibition, Prevention and Protection) Bill.

The Chhattisgarh Tonahi Pratadna Nivaran Act, 2005

The Evil and Aghori practices and black magic Act, 2013.

The Karnataka Prevention and Eradication of Inhuman Evil practices and black magic Act, 2017

The Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman.

the Prevention of Witch (Daayan) Practices Act, 1999.

The Rajasthan Prevention of Witch-hunting Act, 2015.



Cases:

Bhim Turi v. State of Assam, 2017 SCC Online Gau 813

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