



Witch-Branding and Hunting in India: A Legal Approach

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I. INTRODUCTION

The biggest advancements made over the previous few decades have been in crimes against women. Any nation's criminal justice system serves as a reflection of the people's culture and civilisation. Women experience injustices, indignities, and discrimination in all facets of society. The issue arises when women are not seen as fully human and instead are viewed as having flaws, deficiencies, fragility, and even shame. As if harassment, prejudice, and violence weren't enough, society has added more intolerance by labeling them as witches. Witch branding is a phenomenon wherein women are labeled as witches. She suffers assault after being labeled a witch. Even more upsetting and sad is the fact that branded moms will also have their children labeled as witches.

Saying that only persons with little education are involved in this social evil would be wildly incorrect; the sad reality is that many people with higher education are directly involved in these societal ills. This depraved behavior is widespread not just in India but also elsewhere. Branding of witches is widespread throughout Central Europe, as well as in Germany, France, Switzerland, Belgium, and many other nations. The problem of witch branding is caused by the general public's belief in superstitions as a result of the absence of educational resources.

Witch branding especially causes female victimisation, where women are frequently subjected to bodily and psychological abuse, and it occasionally results in murder. A strange kind of female victimisation known as "witch branding" is carried out in several Indian states. From 2000 to 2013, there were about 2257 killings committed in the name of witch branding, according to a National Crime Record Bureau data from 2015.¹ It should be clear from this how horrible treatment women have experienced when they are labeled as witches. Regardless of gender, everyone has the right to life and personal freedom, but in this case, one of the most important constitutional guarantees is under attack. It may appear to be a separate concern, but it is connected to societal issues including poor knowledge and education, healthcare, women's safety, failure of law and order, etc.² A person cannot become a witch due to DNA or genes. Witchcraft and branding are abhorrent practices that need to be severely punished by the law. The residents of this nation won't flout the law once the Central Legislation is in place.

In the past, the branding of witches received little attention. Rarely were these cases documented. Any woman who failed to bear a son for the family or who brought fewer dowries or was unable to do so was attempted to be proven to be a witch. A lady could be called a witch if she is not living like her family members want her to in order to get rid of her quickly and painlessly. For the villagers, severing all ties to the women who had been brandished was commonplace.

II. Legislative Approach to Witch- Branding and Hunting in India

As there is no explicit national law that criminalises witch branding and hunting, the victim may instead rely on the provisions of the Indian Penal Code of 1860. There are both state and national laws that somehow address the issue of witch branding and hunting.

The following list of legislation includes:

- Articles 14, 15, 15, 4, 21, and 51 A (h) of the Indian Constitution;
- The Drugs and Magic Remedies Act (Objectionable Advertisements) Act of 1954;
- The Protection of Human Rights Act of 1993;
- The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989;
- Indian Penal Code - Section 299, 300, 354, 375, 323, 324, 325, 326 etc.

¹ Available at: Yourstory.com/Women Witch Branding (Visited on July 15, 2021).

² Article 21, "No person shall be deprived of his life and personal liberty except according to procedure established by law."

Explanation

a) The Constitution of India

The act of "witch-hunting," which disproportionately affects women, is prejudice based on gender. According to Part III of the Constitution, witch-hunting is a serious infringement of women's human rights. This has the effect of prosecuting prolonged harassment of a woman, violence, social exclusion, and loss of rights in the same manner as a regular assault.

Numerous rights and protections for women are outlined in our Constitution, which also grants them the right to emancipation. It is forbidden to discriminate against women in any way. It has ensured that women have the freedom to live their lives in dignity. The Indian Constitution's Articles 14, 15, 3, 4, 21, 51, 51 A(h), and 16 discuss equality before the law and the prohibition of sex-based discrimination. In India, women have equal access to improved opportunities in all areas of life. Government has the authority to enact laws pertaining to the protection of women and children under Article 15(3).

b) Drugs and Magic Remedies Act (Objectionable Advertisements) Act, 1954

This specific Act was created to regulate the promotion of medications in specific circumstances, outlaw the promotion of treatments that are purported to have magical properties, and to address various issues. This act's Section 5 forbids the promotion of magical cures for treating specific illnesses and ailments. The legislation forbids the publication of any advertisements for magic remedies that directly or indirectly assert their effectiveness for any of the goals listed in section 3 of the act. For violating this law, a six-month sentence is called for; for a second offence, the sentence may be increased to a year, along with a fine.

c) Protection of Human Rights Act, 1993

Women's human rights are violated if violence of any type is used against them. This specialised statute was created by Indian law to effectively defend human rights in that country. The act aimed to establish human rights commissions at the central and state levels to investigate violations and offer remedies. The Commission has the ability to summon the parties in civil court. The boards have the authority to take whatever action necessary to preserve national human rights. The panel may advise the government to advance human rights and reduce violent incidents in order to achieve this goal.

d) Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989

There is no doubt that various measures have been taken to improve the socio-economic condition of Scheduled Castes and Scheduled Tribes. But till now they are subjected to various offences, humiliation, indignities and harassment. This act is made to protect the rights of SC's and ST has and provided some serious punishments for the contravention of the act. The court has the authority to order a person to leave the area if they are suspected of committing an infraction under Chapter II of this Act, in response to a complaint. This statute provides a useful method to protect SC and ST members against witch hunts and other forms of violence.

e) Indian Penal Code, 1860

The Indian Penal Code specifies a number of penalties for crimes against persons and property. If a person is labeled as a witch and physical harm is done to that person, the culprit may be punished in accordance with certain articles of the Indian Penal Code, which has the effect of discouraging criminal behavior. To punish the offender for various offences, numerous sections can be employed, such as section 302 for murder, section 307 for attempted murder, section 323 for injury, section 326 for serious injury with a sharp edged weapon, section 146 for rioting, etc. Since 1860, this law has been used to punish those who engage in different acts of violence against the human body.

III. Various State Legislations for the Protection from Witch Branding

Apart from the national legislations which can be used in witch branding and hunting cases, there are specified state legislations for tackling the problems of witch-branding and hunting. These provisions are given below:

- a) The Prevention of Witch (Daain) Practices Act, 1999³ in Bihar;
- b) The Prevention of Witch (Daain) Practices Act, 2001 in Jharkhand;
- c) Chhattisgarh Tonahi Pratadna Nivaran Act, 2005⁴;
- d) The Odisha Prevention of Witch Hunting Act, 2013⁵;
- e) The Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori practices and black magic Act, 2013⁶;

³ Bihar Act No. 9, 1999

⁴ C.G. Act No. 17 of 2005

⁵ Odisha Act No. 3 of 2014

⁶ Maharashtra Act No. 30 of 2013

- f) The Karnataka Prevention and Eradication of Inhuman Evil Practices and Black Magic Act, 2017⁷;
- g) The Rajasthan Prevention of Witch Hunting Act, 2015⁸;
- h) The Assam Witch Hunting (Prohibition, Prevention and [Protection Act](#)) 2015⁹.

Explanation

a) The Prevention of Witch (Daain) Practices Act, 1999

The Act was created to address the issues of witch branding in Bihar. Identification of a witch (Daain) carries a sentence that can include up to 3 months in jail, a fine of Rs. 1000, or both. According to this law, anybody who performs any acts of "Jhadphook" or "Totka" in an effort to heal or cure a woman who has been labelled a "Witch" (Daain) while also torturing or suffering them bodily or mental pain is punishable.

b) The Prevention of Witch (Daain) Practices Act, 2001

The Jharkhand state has put this law into force in an effort to take decisive action to stop the branding and hunting of witches. Punishments for violating this Act are expressly mentioned in Sections 3 to 8 of this Act. Any individual who labels another person as a witch faces a three-month prison sentence as well as a fine. Additionally, this law lays forth penalties for inflicting damage, aiding criminal activity, and healing witches. Although the offence committed in violation of this Act is punishable and not subject to bail, the punishment set out in this Act is less severe. Unfortunately, this statute is unable to offer women who have been labeled as witches practical, preventative, therapeutic, and punitive methods to prosecute the culprit.

c) Chhattisgarh Tonahi Pratadna Nivaran Act, 2005

This Act defined "Tonahi" as a person who has the capacity to injure or has been threatened with harm by black magic or the evil eye. Other names for "Tonahi" include "Tonaha" and "Daayan." Additionally, it defined "ojha" as a person who asserts to have the ability to manage, treat, and cure "tonahi" The Act stipulates a 5-year sentence for harassment, jhaadfook, totka, or the use of any tantra-mantra, among other offences. These cases will be of a cognizable and non-bailable character. The cases may be heard by a first-class judicial magistrate.

d) The Odisha Prevention of Witch Hunting Act, 2013

This law is designed to offer practical solutions to issues relating to witch branding, hunting, crafting, and other related issues. The definitions of witch, witchcraft, witch hunting, and witch doctor are included in this Act. The practise of witchcrafting and witch hunting is forbidden under several laws. It outlines the penalties for branding and witch hunting in particular. The penalty for branding and witch hunts is three years in prison. There is provision of enhancement of punishment also for the subsequent offence. It also provides the provision for providing the cost of treatment and damages to the victim. This act is progressive towards curbing witch branding and to prevent women from harassment. Every offence under this Act shall be cognizable and non-bailable.

e) The Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori practices and black magic Act, 2013

Founder and anti-superstition campaigner Narendra Dabholkar drafted it in 2003. The law makes it illegal to engage in black magic, sacrifices of human beings, the use of magical cures for illnesses, and other practises that might be considered exploitative. This Act contains effective measures to outlaw the identification of witches (Daain), damages for inflicting injury on a person by branding him a Daain, aiding in the identification and branding of witches, and the healing of witches (Daain) or the use of jhaadfook or totka. Additionally, those involved in these actions might be punished.¹⁰ The statute specifies that certain types of violations are cognizable and not subject to bail. The fines range from rupees 1,000 to 2,000, which is quite little and not enough deterrent to stop these horrible actions. The punishments offered for the charges are insufficient.

f) The Karnataka Prevention and Eradication of Inhuman Evil Practices and Black Magic Act, 2017

The introduction of this act was prompted by an increase in the incidences of common people being exploited in society due to inhumane, evil, sinister practises, black magic, and evil spirits, as well as by a need to address public perceptions regarding the need to prevent and eradicate the practise of inhumane, evil, and sinister practises, as well as black magic, in the State.

A violation of this act's provisions includes the commission of any inhuman, evil, or magical acts, as well as the advertisement, practise, or promotion of such acts by any person, whether directly or indirectly through another person. A violation of this act's provisions is punishable by a term of imprisonment of at least one year and up to seven years, as well as a fine of up to 50,000 rupees.

⁷ Karnatka Act No. 46 OF 2017

⁸Rajasthan Act No. 2 of 2015

⁹ Assam Act No. 21 of 2018

¹⁰ Available at: <https://frontline.thehindu.com › static › html › stories>, Bold but fuzzy, *Frontline* (Visited at August 15, 2019).

The vigilance officer designated by the act is responsible for identifying and stopping any contravention or violation of the provisions, gathering information for the effective prosecution of those who do so, reporting such incidents to the local police station, and performing any other duties that may occasionally be delegated to him by the State government.¹¹

g) The Rajasthan Prevention of Witch Hunting Act, 2015¹²

The purpose of this legislation is to "provide effective measures" to combat the problem of witch branding and hunts as well as to stop the practise of witchcraft. Although the statute has been in effect for more than six years, few convictions have been obtained so far. The act's Section 3 forbids the branding and hunting of witches and lays forth penalties that can last up to five years as well as a fine that must be at least 50000.

In order to "provide effective measures" to address the issue of witch branding and hunts as well as to put an end to the practise of witchcraft, this legislation was created. Despite the statute's more than six-year existence, few convictions have thus far been achieved. The act's Section 3 prohibits the branding and hunting of witches and stipulates fines of at least or rupees 50,000 as well as punishments that can last up to five years.¹³

h) The Assam Witch Hunting (Prohibition, Prevention

And Protection Act) 2015

This Act is made in the State of Assam to provide more effective measures to prohibit witch hunting. It specifically contained the provisions to eliminate torture, harassment, killing of people by using that evil practices. It also provides punishment for offenders and rehabilitation for the victims. The punishment in this Act is stringent which may be extend to seven years and fine may be extended up to rupees 5, 00,000.

If someone violates someone else's reputation or dignity with the goal to sexually exploit a woman, they can be sentenced to seven years in prison and/or fined up to ten thousand rupees. Section 511 of the Indian Penal Code, 1860, additionally imposes penalties for attempts to commit crimes covered by this statute. The State Government has the authority to enact regulations governing how the state's laws should be applied.

IV. The Prevention of Witch Hunting Bill, 2016

Raghav Lakhnarpal, a member of parliament, presents the bill against witch hunting before the Lok Sabha in 2016. But sadly, Lok Sabha did not approve the Bill. The penalty for witch hunting and branding has been included in this bill. There have also been arrangements made for the relief and rehabilitation of female victims. Anyone who accuses women of being witches or blames any woman for bad luck will be penalised, and the sentence may last up to three years.

Evidence disappearance, attempts to conduct offences under this act, and aiding in such attempts will all be punished in accordance with the Indian Penal Code's guidelines. Not only that, but by levying a fee of Rs. 500 on each participant, the community engagement in these events is also discouraged. In incidents involving violence against women, the bill requires public employees to write an F.I.R. as soon as possible and to begin an inquiry. Any public officer, who willfully refuses to register a case, neglects the investigation, or tries to hide facts and evidence in an effort to downplay the seriousness of the offence is deemed to have aided the offence and is subject to the punishment specified in this bill for doing so.

V. Conclusion

Any woman's social and financial situation is greatly impacted when she is labeled as a witch. Along with her, her loved ones, such as her children and other family members, suffer, so it's not only the women who are in pain. She also experiences hardships and societal indifference. Due to the notion that she could possess supernatural abilities that could destroy the environment, she is not frequently granted employment. The labels she receives ruin her social life. These women are tortured, poisoned, paraded in the open, and even made to consume human waste. Occasionally, widows or women with possessions are specifically targeted to take advantage of them.

After rejecting male approaches for sexual purposes, women are frequently the target of charges of witchcraft. The easiest victims are women who are widowed, infertile, elderly, physically unattractive, destitute, and socially isolated. Elderly single women and middle-aged women are falsely accused of being witches in the tribal areas and villages, which results in social humiliation, economic boycotts, torture, and even murder. In order to safeguard the lives of innocent women who have been labeled as witches, national legislation is required and should be adopted as soon as feasible.

¹¹ Section 6 of The Karnataka Prevention and Eradication of Inhuman Evil Practices and Black Magic Act, 2017

¹²Rajasthan Act No. 2 of 2015

¹³ Section 5 of The Rajasthan Prevention of Witch Hunting Act, 2015.