

Witch Hunting in India: Violence through Superstitious Beliefs.

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Abstract : Violence against women is rife and is an undimmed violation of human rights within the realm. Existence of gender based violence is a centuries old phenomena, one such form of violence is Witch Hunting. An evil customary practice which exists in the society that questions the individuality and devours the dignity of women accused of the same. It is disguised under the mask of superstition and is boosted by fear, this practice tend to spread throughout India like wildfire. This research paper aims to explore the female gender based discrimination faced in an opulent and multifarious society like India, where customs and traditions are an integral part of this nation but in the name of conventional practices people tend to forget it is not consuetude. An emerging social stigma here is the practice of Witch Hunting.

This practice evolved from the European era and its deep roots to be commonly found among the socially and educationally backward tribes in India. It draws a thin line between superstition and religion. This makes it callous for elimination of the practice of witch hunting. Women are labelled as witches and in return the torture faced by them is in form of physical and mental violence. The fundamental concept of Human Rights is to ensure that every citizen has the right to lead a life with dignity. Thus, the universality of its application clearly states they are inalienable in nature. The Researcher is attempting to highlight upon the not so known fact about witch hunting prevailing in India and sensitize on an impeccable need for stringent laws to be placed in India.

Keywords: Superstitious, Violence, Witchcraft, Witch-hunting, Women.

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1. INTRODUCTION

Magic Spells and Incantations - Abracadabra and the witch cast her wand. History when dated back to witness the existence of witches in the world, can be traced during the European era. The *Malleus Maleficarum* (The Witch Hammer) was a book written in 1486, which deciphers the existence of witches and their practices. From an era of beliefs and superstition these wordings still leave an impact in modern contemporary world. In a country like India filled with tales and folklore, witchcraft has been hinted in various instances.

Wicca is a religion based on the perception of ancient Pre-Christian magical and spiritual practices. The name of the religion is taken from an ancient name for cunning folk or witches. Many people use the words Wicca and Witchcraft interchangeably, which makes sense etymologically but not always practically. There are many people who practice witchcraft who are not Wiccan. It was once said that every Wiccan is also a Witch, but some Wiccans do not actively practice Witchcraft beyond performing the magico-religious rituals prescribed by the religion.¹

Witchcraft was practiced by a few women to heal someone from a curse or the evil eye, practicing of witchcraft increased in order to fight against the evil witches. It is thought that through the use of spells, incantations, dark and nebulous rituals and rites evil currents can be set in motion that can be directed against a third party. Witches are also ascribed powers such as being able to see through our physical bodies, see our organs and even cause damage to them if they so wish.² Thus, it can be implied that these witches possess some supernatural powers and use it according to their whims and fancies whenever needed. In Hindu Mythology we can see the emergence of magic used by witches written in the *Atharva Veda* in form of spells, incantations, charms. In various other Mythological works such as the *Bhagavata Purana*, *Brahama Purana*, *Markandeya Purana*, & *Kathasaritsagara* it talks about the concept where god created human beings and also created some *Dayaans* (witches) who would confabulate and associate with spirits. Despite evolution of mankind and world some parts of India ardently believe in such activities.

Practicing of witchcraft led to exercising witch hunting in India, many women are tortured, ostracised by their communities, or even killed. This is a clear indication of violation ones Human Rights.

The purpose of this research is to address three questions: (1) What is Witch Hunting? (2) What are the current policy level initiatives? (3) Whether Witch Hunting to be allowed as a customary act or regard it as a violation of Human Rights?

1.1 Historical Moorings of the Indian Society

India's cultural heritage is one of the most ancient, extensive, and varied among all those which make up cultural heritage of mankind. Throughout the ages many races and peoples contributed to India's culture. Some came in contact only temporarily, others settled permanently within the borders. The keynote of the distinctive culture thus evolved was synthesis on the basis of eternal values.³ Hence, Indian cultural heritage consists of different thoughts, beliefs and practices. Customs, Cultures and Traditions are an integral part of India as they have a vitality and originality of its own and possess beliefs of people.

1.2 Impact of the West

The term Westernization referred to the impact of British rule in Indian Society. It meant the changes brought about in Indian Society and culture as a result of over 150 years of British rule and the term subsumes changes occurring at different levels such as technology, institutions, ideology, or values.⁴ The western culture and civilisation left a great impact on Education, Legal System, Economy and Social Environment. Along with that scientific knowledge led to rationality of objects. British Imperialism paved way for restoration of dignity by removal of social practices which were flawed.

¹What is Witchcraft?, (Aug. 27, 2018, 11:08 AM), <http://www.witchipedia.com/faq:what-is-witchcraft>

²What is Witchcraft?, (Aug. 28, 2018, 11:23 AM), <http://lifeseperiencesexplained.com/what-is-witchcraft/>

³ 1 SRI RAMAKRISHNA MISSION, THE CULTURAL HERITAGE OF INDIA, xxxvii (1d. 1958).

⁴ M N SRINIVAS, SOCIAL CHANGE IN MODERN INDIA, 47 (1966).

2. WITCH HUNTING

The concept of Witch Hunting evolved from the Primitive age to Medieval Period to Modern Period. It wasn't known to all but spread like a pandemic disease. Witch craft is seen as manifestation of evil believed to come from a human source. Thus, accusations of being a 'witch' refer to the alleged possession by an evil spirit in women giving her supernatural powers to alter the course of nature. Merriam-Webster defines it as a persecution of persons accused of witch craft. Witch hunting is usually an attempt to physically or mentally harm women who practice witch craft. This is done as she is considered to be a threat to the society by the community members.

Despite tremendous scientific and technological progress, women still suffer to the prevalence of this practice. Witch hunting was in vogue in Europe but ended by the 18th century but till today it exists in few part of the developing world. In Europe women who went against the church were designated as witches, they were burnt alive in order to protect the society from evil wraith. With emergence of male dominance women were targeted for any cause such as floods and famines, epidemic diseases, or even cattle death.

India is termed as our mother land, on two sides of a coin we see people worship goddesses in temples and on the other kill women because they are considered as witches. Witch hunting is seen to be accustomed in states of Assam, Bihar, Chhattisgarh, Gujarat, Haryana, Jharkhand, Madhya Pradesh, Maharashtra, Orissa, Rajasthan, Uttar Pradesh and West Bengal.

Chudail, Dayaan, Tohni are few of the terms used to address a witch. In the course of witch hunting few women are raped, tortured, burnt, murdered, sometimes it is done to acquire their property or used as an instrument for vengeance.

2.1 Poverty Theory

Many observers have noted that poverty and violence go hand in hand. There is a strong relationship between economic growth and crime across countries, as well as across districts India, and a link between low income and the occurrence.⁵ To illustrate, the unobserved quality of local government institutions may both income growth and crime rates, and poverty could lead to violence if desperate with "nothing to lose" commit more crimes, but violence itself may in turn affect productivity.⁶

In Edward Miguels empirical research he talks about the *Income shock theory* and *Extreme scarcity theory*, in which households near subsistence consumption levels kill, expel, or starve relatively unproductive elderly house hold members to safeguard the nutritional status of other members. The elderly have the lowest future income of all household members (on average), and by the above logic most likely to be chosen for zero consumption. Reducing someone to zero consumption can be thought of as literally starving her to death, driving her out of the household, or murdering her. Infants are the other obvious target since they will remain unproductive for many years and are particularly susceptible to mortality from reduced food consumption, neglect and violence.⁷ He also stresses on the fact how male members kill the elderly women when there are bad rainfalls and the aggregate income drops due to crop failure.

With economic standards dropping vulnerable women of the low castes or widows are generally seen facing violence. As per the Hindu Marriage Act 2005, it gives a recognised status for women being a shareholder of the property and possession of *Stree Dhan*. Sometimes family members in greed take away the belongings and harass her physically and mentally for monetary benefits.

2.2 Caste as a divisive factor

A caste is a horizontal segmental division of society spread over a district or region or the whole state and also sometimes outside it.⁸ It emerges from subjective factors like birth or affiliation, and is justified on the basis of religion or social practice.⁹ With the division of caste structure among communities leads to

⁵ FAJNZYLBER, LEDERMAN AND LOAYZA, CROSS-COUNTRY CRIME RESULT (2002).

⁶ Edward Miguel, Poverty and Witch Killing <http://www.jstor.org/stable/3700704> (Sep. 24, 2018, 05:19 PM), The Review of Economic Studies, Vol. 72, No. 4 (Oct., 2005), pp. 1153-1172 (1153)

⁷ *ibid*

⁸ IP DESAI, SHOULD 'CASTE' BE THE BASIS FOR RECOGNISING BACKWARDNESS (1985).

⁹ P ISHWARA BHAT, LAW & SOCIAL TRANSFORMATION (1d. P456) (2012).

domination over the weaker sects. The hierarchical structure is of Brahmana, Kshatriya, Vaishyas and Shudras. The lower castes usually face atrocity in the society. Instances wherein forced to eat or drink excreta, wrongfully dispossessing them of their property, insulting or humiliating them in public, assaulting or using force etc. these situations reflect a high degree of contempt and intolerance that banish civilisation standards and human rights principles in social relations.¹⁰ The lower caste women tend to be victims of violence by rich upper caste people. Here racial discrimination acts as another component to violate the rights of the down trodden.

2.3 Patriarchal Violence

As distinct from sex, which is a personal biological factor based on nature, the image of gender surpasses mere distinction between women and men and represents socio-economic, cultural psychological factors that make one class strong over the other.¹¹ Aristotle was of the view that male is more fitted to rule than female.¹² It has also been seen in various families where the husband has power and dominance over his wife. Women are objectified and are only confined to their household chores, apart from that they have no authority to take part in any decision making. The theory of unity of flesh with marriage recognised husband's power over the person and property of wife.¹³ Many oppressed women lack dynamism and self confidence. Thus, are subjugated to violence and harassment from her husband and his family.

2.4 Female Illiteracy

According to the United Nations statistics divisions - The World Women 2015 Report states that two-thirds of the world's illiterate adults are women.¹⁴ This gives us a clear indication that women are deprived of education which leads them to not being aware of their rights. Awareness about what is right and wrong also lacks among these women. They tend to believe the village head men or the elders in their family. Lack of knowledge, leads them to fall prey for such an act. When women are targeted of witch hunting, they are unaware to which competent authority to seek help from. The police stations are usually filled with male officers who are reluctant in filing a complaint and tend to harass the victim more, which sets an example for other women that there is no help or recourse to resolve their issues.

3. PERTINENT LAWS

There is no distinct axiom centrally governing that penalises witch hunting in India. However, provisions under the Indian Penal Code can be alternately used by the victim.

3.1 Domestic Laws

In few States they have their own laws governing the protection of women.

- i. **Part III of the Indian Constitution** – Deals with the Fundamental Rights, Article 14, 15, 17, 21, and 29 of the Constitution.
- ii. **Indian Penal Code, 1860** – This is used for booking offenders in cases relating to witch hunting.
- iii. **Prevention of Witch (Dayan) Practices Act of 1999** – It was the first law passed against witch hunting in Bihar.
- iv. **Anti Witchcraft Act of 2001** – This was implemented in Jharkhand it looked into the aspect of seeking recourse to the abused victims.
- v. **Chhattisgarh Tonhi Pratama Bill was passed in 2005** – It established the prevention of atrocities against women in the name of Tohni.
- vi. **Odisha Prevention of Witch hunting Act of 2013** – It defines witch hunting and lays down the procedure for punishment.

¹⁰ Ibid 479.

¹¹ ABHA AVASTHI & AK SRIVASTAVA, MODERNITY, FEMINISM AND WOMEN EMPOWERMENT (RAWAT PUBLICATION 2001) PP 131, 68-136.

¹² ARISTOTLE, THE POLITICS, TA SINCLAIR (PENGUIN BOOK HOUSE LONDON 1962) P 125.

¹³ HILAIRE BARNETT, INTRODUCTION TO FEMINIST JURISPRUDENCE (CAENDISH PUBLISHING, 1998) P. 35

¹⁴ United Nation, World Women Report 2015, (Sep. 24, 2018, 10:12 PM),

<https://unstats.un.org/unsd/gender/worldswomen.html>

vii. **Rajasthan Prevention of witch hunting Act of 2015.**

The Domestic laws formed by respective States are of no use. Since no complaint is recorded under them, there are no substantial cases in any of the competent courts signifying the prevalence of this activity.

3.2 International Laws

- i. **Universal Declaration of Human Rights** – On December 10th 1948 UDHR was adopted by United Nations General Assembly. Forty eight countries came forward and were signatories to the Universal Declaration of Human Rights. India being a signatory to it to, took this as an initiative to enshrine human rights to its citizens. There are 30 Articles in the Declaration and it stresses on the human dignity, freedom, right, liberty, security, and protection. It ensures that every individual is protected and the governments power over the people is limited. *Article 2, states that “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.”* Thus, it clearly signifies through the object of the Universal Declaration of Human Rights, that women of few communities cannot be victims of witch hunting.
- ii. **The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)** – It was adopted by the UN General Assembly in the year 1979 and is also termed as the International Bill of Rights for Women. India ratified it on 9th July, 1993.¹⁵ By accepting the Convention it is the States duty to ensure that they:-
 - *incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;*
 - *to establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and*
 - *to ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.*¹⁶

However, torture, harassment, abuse are few aspects of witch hunting which are still prevailing. There is no mechanism in force to avoid the evil atrocities of witch hunting on women. Communities themselves take charge and give a decision on a particular women if they doubt she practices witch craft or have an iota of doubt that she is evil and harmful to the society.
- iii. **International Covenant on Economic, Social and Cultural Rights (ICESCR)** – It is a multilateral treaty. Its Preamble states, *“recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”*¹⁷ The important area of public policy covered by this treaty is Work, Fair and Just Conditions of Work, Social Security, Adequate Standard of Living, Health and Education. Victims of witch hunt are not bestowed with the above mentioned objectives. They are traumatised and not let to adjust themselves to a normal life. Unemployment and out casting them from the society are the usual traits followed which paves way for them to turn into criminals.
- iv. **International Convention on the Elimination of All Forms of Racial Discrimination** – The Convention defines *“racial discrimination” shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or*

¹⁵United Nations, CEDAW, (Sep. 27, 2018, 08:49 PM),

https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en

¹⁶ United Nations, CEDAW, (Sep. 27, 2018, 08:57 PM), <http://www.un.org/womenwatch/daw/cedaw/>

¹⁷ ICESCR, (Sep. 27, 2018, 09:08 PM), <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx>

effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.¹⁸ Thus, the subjugation by the upper caste on the lower caste clearly discriminates individuals. In a few instances when tribal women do not practice witch craft, yet they fall prey to witch hunting. There are motives such as acquiring of property, or hatred towards few women. This results in killing of the same.

- v. **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** – The Convention defines "*torture*" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.¹⁹ Women who are victims of witch hunt face physical and mental abuse. Taunts by local community members, isolation by family members, affect the victim psychologically too. Therefore, women are subjected to Torture, Cruelty, Inhuman or Degrading Treatment.

India despite ratifying Conventions, Treaties, Covenants the law makers have overlooked the existence of the social stigmatization on the practice of witch hunting.

4. CUSTOMARY DEED

In a singular contribution of the Historical School of Jurisprudence that it conclusively established that in early societies, custom was the main vehicle of legal development.²⁰ For a group of people coming together to live a harmonious life they must conform themselves to certain patterns of human behaviour for a collective living. If a uniform and persistent usage has moulded the life and regulated the dealing of a particular class of community, it then becomes a custom.²¹ In modern law, before a custom can be enforced by a court, it is necessary to prove the existence of custom. For a custom to receive recognition it is necessary that it should be ancient and invariable, it should be established by unambiguous evidence, and it should be continuous, certain and ancient.²²

4.1 Types of Custom

There are three types of customs :-

- i. **Local Customs** – A local custom is a custom which prevails in a locality, in a geographical area, and it is binding on all persons in the area within which it prevails.
- ii. **Family Customs** – It is binding only on the members of the family. A family custom can be more easily abandoned than a local custom.
- iii. **Caste or Community Customs** – This is one of the largest areas of custom, it is binding on all the members of the caste or community.²³

Witch hunting is a kind of practice very commonly found to be practiced among the tribal's. Terming it as a customary act and allowance of such activity is a clear violation of one's human rights. Despite its characteristics being such of those it cannot be validated on reasonable grounds. Eradication of such an

¹⁸ICERD, (Sep. 27, 2018, 09:27 PM), <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>

¹⁹CAT, (Sep. 27, 2018, 09:35 PM), <https://www.ohchr.org/en/professionalinterest/pages/cat.aspx>

²⁰ PARAS DIWAN, MODERN HINDU LAW 46 (23d ed. 2016).

²¹ JOHN D MAYNE, A TREATISE ON HINDU LAW AND USAGE 63-64 (17 ed. 1878).

²² Rabindra v. State 1969 Cal 55

²³ DIWAN, *Supra* note 20, at 50.

activity is a must. The victim faces consequences such as isolation, ostracism, stigma, and violence. Police tend to measure the threshold of violence to register an FIR.

4.2 Superstitious Beliefs

Superstition is generally defined as a belief in supernatural powers which are not in conformity with the laws of nature or scientific understanding of the universe. Imaginative practices which are born out of misconceptions, such is the case of witch hunting in India. The lower caste, tribals or the illiterate members of the society tend to believe anything without questioning its rationale. In a contemporary world of grasping technological advancements there still persists to exist a vacuum of Superstition in India.

5. CONCLUSION

The practice of witch hunt in India needs to be curbed. Protection of women and effect of preventive measures is the objective. Looking at the historical evidence of violence there are innumerable cases being reported in the newspapers. Case laws from the high court and Supreme Court were scanned for cases pertaining to witch-hunting and witchcraft. Fifty-nine cases were identified which pertained to disputes which had reached the Supreme Court and 10 high courts throughout India from pre-1947 to 2012, this was found by the research conducted by Partner in Law Development.

The National Commission for Women (NCW) advocated for a nationalised legislation for prevention of witch hunting in India on a draft bill titled “The Prohibition of Atrocities on Women by Dehumanising and Stigmatising Them in Public” for the eradication of a baneful practice in the society.

Currently there is a pending Prevention of Witch Hunting Bill, 2016 in the parliament. The aim of the Bill is to eliminate torture, oppression, humiliation, and killing by providing punishment to the offenders and relief and rehabilitation to the victims. The fault found in the Bill is the value of fine which is up to Rs. 1,000 and shall not exceed more than Rs. 5,000. Punishments are usually prescribed with the ideology of deterrence mechanism. The fine can be easily paid off and witch hunting would not cease to exist. The Bill also stated the Police officers actions to anticipation of witch hunting and measures to be followed but it never mentioned about a lady constable to be there while victim reports the matter. Men are usually considered to be harsh and tend to have no sensitivity like a women, such an intricate matter should be handled with utmost care because the victim is already traumatised. The most important feature of the Bill is that it talks about the promotion of awareness programs to be conducted in schools and colleges, launch schemes in communities but it fails to direct a particular authority to perform all these functions. Mere government cannot look into all matters.

The topic of witch hunting is aberrant and the objective of this research was to generate legal redress of gendered violence in India. Witch hunting is prevalent in the rural areas where there is a lower socio – economic development reasons of the same can be that there is no access to education, legal services or health facilities. Nevertheless, despite changes in everyone’s day to day lives and approach to modern development. We can see a spark of hope for complete eradication of the practice of witch hunting in India.