

Witch Craft Hunting Law: An Urge of Today

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Abstract

The Constitution of India guarantees all its citizens the Fundamental Right to live with personal liberty and human dignity under Article 21 read with Article 14. So, this right also extends to protect the citizens from the evil practices i.e., witch craft hunting in which many innocent people get preyed to the ruthless and inhuman treatment and even lose their lives. This practice prevails all over the India, where the states like Bihar, M.P., Jharkhand, Haryana, West Bengal, Chhattisgarh, M.P. have their respective State Laws to control witch craft hunting. There are many National-International Agencies which try to control this evil practice. But, it is not possible to eradicate this problem completely without having proper Rules and Regulations. So, it is expected from the Central legislature to formulate rules & regulations to abolish such an inhumane practice.

Keywords: Witch Craft Hunting, Constitution, Article 21, Society, Nationalized Legislation, Ruthless, Inhuman Treatment

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INTRODUCTION

One of the most peculiar phenomena of the Indian society is their blind belief on the supernatural powers and witch craft hunting is also one of the weird practices pursued here since time immemorial. Witch craft hunting refers to the process of killing people who are believed to have supernatural powers which they will use to hamper the society, so, to protect the society from such evil, people use various tactics and means but in the real sense many use this practice to rape or murder especially a woman for her body, property or to take revenge.

There are 12 states in our country where witch craft hunting is mostly prevalent such as Haryana, Rajasthan, Gujarat, Maharashtra, Uttar Pradesh, Bihar, Jharkhand, Orissa, West Bengal, Assam, Chhattisgarh and Madhya Pradesh. To prevent this evil, these states have formulated their respective states laws. However, till date no national level legislation has been formulated to prevent this evil. Although this evil is pursued in these 12 states mostly at the rural level, it cannot be denied that these practices are not being done in other states and encompassing urban societies also. There are states which do not have properly framed State law for the same. So, there is a

need to have a nationalized legislation to prevent this evil practice of witch craft hunting.

Undoubtedly, there are agencies such as NGOs, Partner for Law in Development (PLD) in 1998 and international agencies such as UDHR 1948, ICCPR 1979 and CEDAW 1993 which work to prevent the society from the social evil of witch craft hunting and make efforts to protect the citizens against the same but there are no law-making bodies and therefore, their efforts cannot make such a great change which a nationalized legislature could make to the situation.

There are many reasons for its continuous growth in our country and the major being the lack of evidence against the wrong doer as it is conducted by many ways such as with the help of dolls, hair of the victims, saliva, lemon and by mixing certain substances in the food and drink of the people by which that person will get affected, lack of proper education and lack of national policies and rules against such practices.

So, the research was a doctrinal one conducted with an aim to ascertain the meaning of witch craft hunting, and to discuss suitable measures

for its prevention. The aim of the research is to have a nationalized legislation in order to prevent the society from this evil. There is a section in the Indian Penal Code regarding the same but that does not deal with the whole of the witch craft practices, so to protect the citizens and to prevent the society from this evil, there is an urgent need for a nationalized legislation in India.

Concept of Witch Craft Hunting

Witch craft is a term which is used to denote practice of magic, especially black magic or sorcery; the use of spells. Witch craft or witch hunting is specially practiced by both men and women nowadays, mainly to create problems in other people's life. The main reason behind witch craft hunting by one person to another is jealousy or enmity between them.

In other words, witch craft hunting can be defined as an inhuman process through which people victimize other persons by use of certain supernatural powers possessed by them which can go against the welfare of the society.

It is practiced to save the society from the evil intention of some people. However, in the real sense people use it as a tool to take undue advantage of supernatural powers either by murdering or raping or by any other means. Women are the major targets of witch craft hunting in India.

There are many ways to perform witch craft hunting which are enumerated below:

1. The women are called 'Dayan' if at all their husbands died immediately after marriage.
2. If someone disagrees to follow an immoral custom of a specific locality (typically in remote villages) then that person is said to be responsible for any calamity happening to that place.
3. It is presumed that women or men practice witch craft hunting by doing black magic in the hairs, or through doll, or lemon etc.
4. People also visit various priests and occultists (*tantrik*) for performing such practices and the major reason to do witch craft hunting is the jealousy of one person or group of persons towards other person or group of persons.

5. Witch craft hunting is also done by adding some mixtures in a food of that person to whom he/she want to take under his/her control.

These are the most common presumptions by people to perform witch craft hunting [1].

Historical Background

The concept of witch craft hunting initially aroused 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 and were regarded as one who bring misfortune and thus to protect the society, those women were burnt. Later, women were held responsible for all the calamities let it be famine, flood, and epidemic diseases which caused death of livestock. And the only solution of coming out from this dismay was by killing them who were responsible for it [2].

In ancient period, witch craft hunting was practiced by occultists only. Kings also believed in the black magic done by various occultists or by women. It is believed by the people who suffer from black magic. Kings also believed in black magic and practiced for securing his state and for welfare of his people.

In India, this concept was mainly famous in the state of Assam in 1964. Most of the cases of witch craft hunting happened in tribal areas. Not only Assam, but there are many other states or cities in India where practicing of black magic by occultists or women is famous. It is presumed by the people that the women or occultists who practice witch craft hunting can make a person change his personality from normal human being to any animal and then take that person under his control and again change its form from an animal to normal human being [3].

One of the most famous incidents happened in Assam when one woman named Birubala Rabha, started a campaign against witch craft hunting through collective support by various people in her village [4]. The result was only 42 people stopped and supported the campaign and rest of them neither joined the campaign

nor supported the witch craft hunting because of fear. In a case of *Tula Devi & Ors. vs. State of Jharkhand*, [5] a case brought in Jharkhand High Court where the court dismissed the case on the basis that the victim has failed to prove that the other side accused her of being witch and harmed her and there was lack of eyewitness.

Normal people know that the hunting or practicing in witch craft is illegal and it is against the welfare of society, but they usually do not take any step to stop it. They do not want to interfere in this matter because they presume that if they will start a protest against witch craft then some occultist or any other person will hamper their family or create problems in life. Another reason behind lack of evidence is delay in reporting about the incident. Due to the geographical reason and societal pressure very few incidents are reported, and that too, after a long gap, hence it makes the witness testimony unreliable, which was a ground for not convicting the accused in *Madhu Munda v. State of Bihar* [6].

Legislature Laws on Witch Craft

There is no specific LAW(SC) 2015 2 4411 under national level legislation which penalizes witch craft hunting hence the provisions under the Indian Penal Code 1860 can be used as an alternative for the victim. The different sections invoked in such cases are Sec. 302 which charge for murder, Sec 307 attempt for murder, Sec 323 hurt, Sec 376 which penalizes for rape and Sec. 354 which deals with outraging a woman's modesty [7].

Apart from the provisions under Indian Penal Code different states have come up with different legislations to tackle the problem of witch craft hunting.

- Bihar though being most backward, was the first state in India to pass a law against witch craft hunting in the year 1999, which was named "Prevention of Witch (Dayan) Practices Act."
- Jharkhand followed it and established "Anti Witchcraft Act" in 2001 to protect women from inhuman treatment as well as to provide victim legal recourse to abuse. Basically Section 3, 4, 5 and 6 of the concerned Act talks about the punishment

which will be granted if any one identifies someone as witch, tries to cure the witch and any damages caused to them. Whereas Section 7 states the procedure for trial [8].

- Chhattisgarh government passed a bill in 2005 named "Chhattisgarh Tonhi Pratama Bill", which was established to prevent atrocities on women in name of Tonhi.
- Rajasthan government has also passed a bill "Rajasthan Women (Prevention and Protection from Atrocities)" 2006, which makes it illegal as well punishable for calling any woman as "dayan" or to accuse a woman for practicing witch craft, which extends to three years of imprisonment and Rs. 5000 as fine.
- Till now there is no specific law enacted in Maharashtra against witch craft hunting and the sole reason behind it is opposition from some religious groups who believe that the enacted law might take away their ancient rites. Now, after the incidents of witch craft hunting have increased, the state government has planned to pass a bill to eradicate the social ills and human sacrifice.
- Among the states where witch craft hunting is prevalent, some areas of West Bengal like Purulia, Bankura and Birbhum come under the ambit of those states. Still the state government has failed to establish a separate legislation to tackle it. Hence, there is a need of national legislation which will have a binding effect over all the states in prohibiting it.

All these acts not only prohibit one from directly hampering a woman but also punish the one who instigates other to harm them, to displace her from the house place and property. At the same time, it is punishable if due to torture a woman commits suicide [9]. Many states have made laws within its state legislature for controlling it, but it is not as much as beneficial to stop or control the witch craft hunting in remote areas or village or city areas.

There are some NGO's and International obligations which tried to make a centralized law in India for controlling the practice of witch craft and to protect the rights of women in remote areas but such efforts did not

produce fruitful results. For, abolishing such practices from the scene, the Centre has to interfere for making laws regarding witch craft practicing in India.

- Partner for Law in Development (PLD) 1998, which is a group of legal resource working for social justice and women's rights in India. It considers women's rights as an integral part of the society and hence protects women's right from getting violated through families, on basis of sexuality, culture, caste, etc.
- Other than this, many NGO's are working for preventing and protecting women from the social evil of witch-hunting. One among those is Rural Litigation and Entitlement Kendra, which had also filed a PIL in Supreme Court relating to the abuse of women in the name of witch hunting on behalf of 1000 rural women in Jharkhand who were victimized of witch hunting [10].
- Apart from these NGO's and some local bodies working against witch hunting, a bill "Prevention and Prohibition of Witch Hunting" has been drafted by members of Human Rights, Defence International, which is still pending. It aims at establishing national legislation relating to witch hunting [11].

Science and Witch Craft

There is a widespread belief throughout the country that there is such a thing as sorcery and that sorcerers have extraordinary powers that can be used sometimes for good purposes but more often for bad ones, and because of this belief, many evil things could be done, and many people are frightened or do things that otherwise they might not do.

Some kinds of sorcery are practiced not only for evil purposes but for innocent ones also and it may not be necessary for the law to interfere with them, and so it is necessary for the law to distinguish between evil sorcery and innocent sorcery [12].

Apart from the common notion of practicing witch craft, that is, to save the society, people also use it for connecting directly to the God for solving their problems and to live a happier life than before. But in practice, science also

does the same thing and that is why they are said to be similar to each other with only difference that while witch craft or witch hunting is supernatural phenomenon, science is a practical approach towards a certain situation.

For instance, while a doctor treats you in case you are not well to heal you from your sufferings, witch craft hunting, on the other hand, treats you without any of the medicines or alike but with the help of spells and by creating an atmosphere of fears in the minds of the people to solve their problem. So, it can be concluded that both have the same aim that is to solve the problems of the people, but the modes are different.

In spite of the horrifying atmosphere created by those who practice witch craft, their following is growing day by day because of the belief systems and complex culture which are hard to break. More still, man is genetically wired to have a sense of certainty and control for survival purposes. The fear of uncertainty and the fear of losing control are more unbearable than that of facing an aggressive, mantra-chatting witch who promises the gift of certainty. So, anyone who presents himself in a position to offer man these genetic, hence, inescapable needs, is poised to have a large following irrespective of how they package and present their catalogue of services [13].

Case Laws on Witch Craft in India

1. Mrs. Sashiprava Bindhani vs. Unknown on 25 April, 2012 [14]

The petitioners in their applications have described the instances of murders on the allegations that the deceased was practicing witch craft. The petitioners have pleaded about several such incidents in the State of Orissa. It is further pleaded that the persons committing the murder did so under the influence of 'Gunias'. As such, it is pleaded that the propagators of the crime are generally not in a fit state of mind while committing the crime. The person often believes that he is doing the right thing while committing murder of a person, who is alleged to be practicing witch craft. Such state of affairs is prevalent in all the tribal districts of the States.

The petitioner pleaded that India is a signatory to the Universal Declaration of Human Rights to give protection to women from discrimination and all sorts of violence against them. Besides, the United Nations' International Covenant on Civil and Political Rights prescribes that all persons are equal before law and entitled to equal protection of law. Government of India is a signatory to the same in the year 1966. The Convention on the Elimination of all forms of Discrimination against Women (CEDAW) resolved that the countries which have ratified the same should take appropriate steps to eliminate all forms of discrimination against women. Article 5(a) of CEDAW further provides that the State shall take appropriate measures to modify social and cultural patterns of conduct of men and women. Witch hunting which is prevalent in several States, leads to dispossession, torture and murder but as of date, although India is a signatory to CEDAW, no steps have been taken to enact appropriate laws to curb the menace of witch hunting, which is prevalent in this State. States like Bihar, Jharkhand and Chattisgarh have already taken steps to eradicate such practices but our State has not taken any steps with regard to eradicating such practice. Therefore, the petitioner prays that appropriate direction be given to the State to enact law in this regard.

Preventive Steps

In the meantime, the authorities shall take appropriate steps to prevent witch hunting and take the following steps:

- (i) Public awareness programmes should be launched in the Grama Panchayats to eradicate the superstitions of witch craft;
- (ii) Health camps should be organized at different village levels to detect cases of the psychologically disordered, which may lead to a false acquisition being possessed or being a witch;
- (iii) The Investigating Agency, in cases involving allegations of witch hunting, in order to avoid the witnesses turning hostile, should take steps to get statement of the witnesses recorded under Section 164 of the Code of Criminal Procedure, 1973.

These directions are not exhaustive. The State may, in addition to such steps, take suitable

and appropriate steps to tackle the menace of witch hunting.

Accordingly, it is directed that the guidelines should be strictly observed by the authorities till a suitable legislation is passed by the State Legislature. The State Government shall introduce an appropriate bill in the State Legislature within a period of one year.

2. Iswar Attaka And Others vs. State of Orissa on 14 September, 2015 [15]

The petitioners in these three bail applications are the accused in Kalyan Singhpur P.S. Case No. 61 of 2014 corresponding to G.R. Case No. 421 of 2014 from the file of learned S.D.J.M., Rayagada in which charge sheet has been submitted under sections 147, 148 302, 201 and 149 of Indian Penal Code.

Smt. Nandai Attaka, wife of the deceased set the criminal law into motion by presenting FIR before Inspector in charge of Kalyan Singhpur Police Station on 08.09.2014 wherein she stated that on that day in the morning at about 6 a.m., accused persons Sadananda Attaka, Binod Attaka and Purusati Attaka dragged the deceased out of the house, assaulted him by kick blows and slaps and tied him in an electric pole. Subsequently some more co-villagers namely accused Lachi Palaka, Mohan Pallaka, Ajay Attaka, Raji Attaka, Pramesh Attaka, Mahesh Attaka, Iswar Attaka, Muna Attaka, Rama Attaka, Sily Attaka, Purusati Attaka and Udara Attaka assaulted the deceased by means of stones and lathies and killed him. The accused persons packed the dead body in a gunny bag, tied it and then accused Sadananda Attaka and Binod Attaka carried the dead body by means of a lathi and threw it in the river. It is further stated that accused Baraja Attaka instigated others to kill the deceased suspecting that the deceased was practising witch craft. It is stated that Sandarao Pidisika, Chandradas Attaka and Satya Attaka are the eye witnesses to the occurrence.

On such First Information Report, Kalayan Singhpur P.S. Case No.61 dated 8.9.2014 was registered under sections 302/201/109/34 of Indian Penal Code by the Inspector-in-charge. During course of investigation, the

Investigating Officer took the assistance of the Fire Brigade officials for tracing out the dead body in Nagavali river but became unsuccessful and on 11.9.2014, getting information that a gunny bag was lying on the bank of Nagavali river at Aduguda Ghat suspected to be carrying the dead body of the deceased, the Investigating Officer reached at Aduguda Ghat, opened the gunny bag in the presence of others and found the dead body of the deceased. He conducted inquest over the dead body and seized number of stones of different sizes, one gunny bag, one plastic rope on the bank of Nagavali river in presence of the witnesses. He also sent the dead body for the post mortem examination. The post mortem report indicates that the dead body was in the process of decomposition. Multiple bruises were found on the front and backside of the neck, lacerated injuries were found on the right side of the chest, there was fracture of thyroid cartilage and tracheal rings, mandible bone was fractured and there was fracture of radius and ulna at the wrist joint and all the injuries were opined to be ante mortem in nature and the cause of death was asphyxia due to homicidal throttling. After completion of investigation, charge sheet was submitted on 8.1.2015 under sections 147, 148, 302, 201 read with section 149 of Indian Penal Code keeping the investigation open under section 173 (8) Cr.P.C.

The further contention raised by the learned counsels for the petitioners that there is no mention of the names of any of the accused persons in the inquest report and therefore, the complicity of the petitioners is doubtful, is not all acceptable.

Neither the Investigating Officer is obliged to ascertain the names of the accused persons at the stage of preparation of inquest report nor is it the requirement of law to mention the names of the accused persons in the inquest report. Absence of the names of the accused in the inquest report does not lead to the inference that such names were not disclosed till it was completed.

After bestowing anxious, painstaking and careful consideration to the submissions raised at the Bar and going through the materials

available on record, it is a considered view that the collected oral and documentary evidence prima facie shows the involvement of the petitioners in the crime. The nature and gravity of the accusations, the severity of punishment in case of conviction, the manner in which the crime was committed and an innocent person was killed due to superstition that he was a practitioner of witch craft, the role played by the petitioners at the time of occurrence and taking into account the reasonable apprehension of tampering with the evidence, at this stage when the further investigation is under progress, it would not be proper to grant bail to the petitioners.

Accordingly, the prayer for bail of all the petitioners in the three bail applications stood rejected.

3. Unknown vs State of West Bengal And Others on 2 August, 2016 [16]

Mr. Nilanjan Bhattacharjee, a learned advocate, appears on behalf of the writ petitioner in both the writ petitions and submits that the writ petitioners who had been driven out of their villages on suspicion of practicing witch craft have been restored to their home and hearth and adequate police assistance has also been given to them. It appears that the guidelines were laid down by the Orissa High Court in the authority of *Sashiprava Bindhani vs. State of Orissa* reported in 2012 (117) AIC 883 with regard to the witch hunting.

The State Government shall form a Committee comprising of experts from the field of public administration, sociologists, etc. to look into the prevalence of the practice of witch hunting in various districts in the State of West Bengal with special emphasis in tribal areas and the Committee shall submit its report to the State Government within six months from date of the order;

The Committee shall specify in its report the areas in the State of West Bengal, if any, where there is substantial prevalence of the practice of witch hunting and based on such report the Government shall form special cells in the concerned districts to deal with the issue of witch hunting in the said districts. The Government shall also post intelligence and

police officers in such special cells who would carry on surveillance activity, collection of information and/or intelligence in the matter and, if necessary, take preventive measures to ensure that such unlawful practices are not carried on.

Officers of the special cell would also, in the event a witch hunting activity is indulged, promptly register criminal cases against the offenders and take necessary remedial measures in the matter.

The victims of witch hunting shall be given District legal assistance through the Legal Services Authority as aggrieved persons who are entitled to legal aid under The Legal Services Authorities Act, 1987 and they shall also be extended necessary medical and psychological help and/or protection as they are the vulnerable witnesses of the crime by the State.

The State Government may also explore the possibility of formulating a Comprehensive Victim Compensation Scheme under Section 357A of the Code of Criminal Procedure for victims of witch hunting. With the aforesaid directions, the writ applications are disposed off without any order as to costs.

Registry is directed to send copy of the order to the Chief Secretary, State of West Bengal, Director General of Police, West Bengal and Member Secretary, State Legal Services Authority for necessary compliance.

CONCLUSION AND SUGGESTION

It is rightly said that with time everything needs to be changed as changes provide us with the better picture of the reality. So, it is the time now to frame a Centralized Law to eradicate the problem of witch craft hunting [17]. Laws should be made against those people who practice black magic for disturbing another people's life.

Undoubtedly, the names of some states have been mentioned where the practice of witch craft hunting prevails, but the fact cannot be denied that the states whose names were not mentioned, did not ever practice it [18]. So, to protect every innocent person from the evil of

witch craft hunting, there is an urgent need to have a nationwide legislation.

Moreover, when the Constitution of India provides for every citizen the Fundamental Right to live with human dignity and personal liberty, it is the duty of the Parliament of the country to provide dignity to its citizens and to protect their lives from the evil of witch craft hunting [19].

So, in order to make this country a better place to live in, there is need that each and every one should have a sense of security from the evils of the society and in case of witch craft hunting, only a nationalized legislation can help us achieve this goal [20].

To make a big change, we need to work from the grass root level, similarly, to eradicate the evil of witch craft hunting, we need to work intensively by making the people aware of such evils of the society and making efforts to eradicate the ignorance they possess by spreading the light of education towards them [21].

It is only through education that the people will get a better picture of what is right and what is wrong and they will be able to distinguish what is good or evil [22]. So, education must be provided even in the remotest of the village of the country and various workshops and schemes to be developed to promote awareness among the citizens.

Lastly, a nationalized law for the same will prove to be very helpful in eradicating this evil from the society and to make the society a better to place to live.

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