

Witch Hunt Violence In India: (Concocted) Superstition And The (In)/Adequacy Of Special Laws? A Critical Analysis

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Introduction

The temporal progression stages for Homo sapiens have been quite interesting. With the development of cranial capacity, advancement of technology, the intricacies of custom and religion developed. However, there have been certain bottlenecks in this trajectory. With the passage of time belief in supernatural powers were strengthened by instances of famine, death, and other natural disasters. Accordingly, religion and magic were gradually positioned parallel. While religion was assigned to the task of pleasing the supernatural powers, magic became a key to taming them. Subjugation of supernatural powers in socially acceptable ways was termed 'white' magic and the 'evil' motive of domestication was coined 'black' magic.¹

The tales of witch-hunt induced human rights infractions have transgressed the boundaries of traditional rural India to even the cities and peri-urban regions.² Most of these alleged witches are individuals from vulnerable sections, mostly women.³ Woman proclaimed as a 'witch' is believed to possess powers to augment nature's course. Such suspected witches are presumed to be in possession of the evil spirits and to prohibit them from harming people, the ritual of 'search' and subsequent inhuman torture is perpetrated by the community often comprising of the kin of these so-called witches. Modern day witch hunting manifests itself via lynching, burning to death and even murders. These manifestations are commonplace occurrences in regions of Sub-Saharan Africa, Papua New Guinea, and mostly the Northern and Eastern rural India.⁴

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² Bipasha Saika, *Witch Hunting: The Silent form of Gender Based Violence and the Need to Bridge the Rural Urban Divide*, 2 ROSTRUM'S LAW REVIEW 2 (2015). <http://ncwapps.nic.in/pdfReports/ViolenceagainstDalitWomen.pdf>.

³ CADAM, *Research Study on Violence against Dalit Women in Different States of India by studying the Sources of Materials that are Available and Conducting Interview of the Perpetrators, Victims and Witnesses*, NCW 5, 28 (2013).

⁴ Mitch Horowitz, *The Persecution of Witches, 21st – Century Style*, NEW YORK TIMES (July 4, 2014), <https://www.nytimes.com/2014/07/05/opinion/the-persecution-of-witches-21st-century-style.html>.

The deep traditional roots of this cultural witch hunt violence in India often results in death of the accused women, while the survivors get shunned by the local community to lead a rotten inhuman life. The lack of education, poor sanitation and health facilities, political loopholes, superstitious beliefs ; all these deeply filter the superstitious influence of ojhas to heal the village of these witches. This paradigm of socio-political, economic and infrastructural inadequacies allows community acceptance of the witch hunt by ojhas for any mis-fortune that befalls on the village. For instance, in 2015 a sorcerer's prediction that a 17-old youth who died of stomachache had fallen prey to evil spirits, resulted in witch hunt and lynching of five tribal women in a village of Ranchi, Jharkhand.⁵ Sadly, the fees charged for this exorcism by the witch doctors or ojhas is so exorbitant that the naïve villagers even sell their lands and other personal belongings just to ensure that the ojha heals their mis-fortunes. Thus, the poverty induced paradox of the fastest growing populous economy lies in the fact that a humongous majority still turns to sorcery to find a key to their misfortunes, health or any other personal or financial issues.

In the absence of central legislation specifically dealing with this issue, the states have come up with their own legislations. However, the soft tone of these state legislations does not sync well with the human rights activists. They demand stricter penalization of these atrocities. But how would a stricter law alter the superstitious mindset of people? The research attempts to address this issue via a fourfold strategy, viz., traversing the historical genesis of witchcraft studies and magnitude of the issue, examining the factors which propel such witch hunt violence, the legislative safeguards and judicial approach herein, and finally concluding a plausible way forward.

Historical trajectory of witch hunts: superstition to (concocted) superstition

The word 'witchcraft' etymologically comprises 'wicca' and 'craft', meaning thereby the ability or skill possessed by witches.⁶ The negative connotation associated with the term carries a malicious intent of harm either to the body or property of the other. The geographical regions with religio-cultural structure of approbation towards the mysterious realms, frequently invite

⁵ Sanjoy Dey, *Jharkhand tops in witch-hunt murder, 523 women lynched between 2001-16: NCRB*, HINDUSTAN TIMES, (Dec. 3, 2017, 08:12 AM), <https://www.hindustantimes.com/ranchi/jharkhand-tops-in-witch-hunt-murders-523-women-lynched-between-2001-16-ncrb/story-oNIPZYiPrnzOrwGS6EKvEP.html>.

⁶ M.R..Dilts, *Power in the Name: The Origin and Meaning of the Word 'Witch'*, DILTS, (2015). https://www.academia.edu/12416396/Power_in_the_Name_The_Origin_and_Meaning_of_the_Word_Witch

such associations with witchcraft.⁷ Such witches are considered as carriers of the non-favorable events, including, famines, diseases, natural calamities, etc.⁸ Witchcraft was an accepted practice even way back in 19th century B.C.E as evidenced from the Code of Hammurabi. Later, with the rise in western philosophy and monotheism, Jewish theology made an inevitable linkage between women and witchcraft. However, the benevolent sorcery was clearly distinguished from the malicious one. Exodus 22:18 from the Old Testament of Bible propounded that no soul shall suffer as a witch. This declaration propelled several witch trials in years to come. The oldest recorded witch trial was of Hypatia, a Neoplatonist, born around 355 C.E. Her academic instructions were destroyed and she was mob lynched by a group of Christians. Because of the ghastly influences that these witches are alleged to be capable of, they are flogged, banned, lynched and undergo various other unthinkable atrocities in the name of weeding out these anti-social elements.⁹ The upheavals of Reformation and thirty years war, from 1450-1750, marked the zenith of witch trials in early modern Europe and Colonial America, with executions estimating 35,000 to 1,00,000. The last witch execution ordeal in Europe ended in the 18th century.¹⁰

Along this global trajectory, the customary practice of witchcraft was prominent in India as well.¹¹ Since the dawn of civilization references to ‘witch’ or dayan’ have been made in traditional folklore of India,¹² However, the documentation of such witchcraft studies in India is relatively low and scattered.¹³ The earliest documented evidence of witch-hunt from India dates back to 1792, in the Santhal witch trials. Matters relating to witch-craft and witch hunting were probed into by the missionaries during colonial times. The reformation attempts were made by the Britishers to transform the ‘junglerry’ of Chotanagpur¹⁴ into a ‘civilized’ tract, by hammering down the customary practices. This was received with great dissent in the form

⁷ JUDIKA ILLES, *THE WEISER FIELD GUIDE TO WITCHES: FROM HEXES TO HERMOINE GRANGER, FROM SALEM TO THE LAND OF OZ*, 8 (Red Wheel/Weiser Books 2010).

⁸ Anil Kumar Biswas, *Witch-Hunting in the 21st Century: A Serious Challenge to the Empowerment of Rural Tribal Women*, *Brolly*, 1 (2) JOURNAL OF SOCIAL SCIENCES 129,131-140 (2018).

⁹ DEVINA NEOGI, *A Study on the Practice of Witch-Hunting in Assam, An Ontology*, 5(1) PROCEEDINGS OF THE WORLD CONFERENCE ON WOMEN’S STUDIES, 1–8.
<https://doi.org/10.17501/24246743.2020.5101>

¹⁰ Anil, *supra* note 8, at 133.

¹¹ R.N. SALETOR, *INDIAN WITCHCRAFT* 1-28 (Abhinav Publications 1981).

¹² D.S. Mohapatra, *Witch Hunting : A tool of terrorization across the World and its Legal Ramifications.*, 1(4), *INT’L J. Acad. Res.*, 81–90 (2014).

¹³ Shamsher Alam & Aditya Raj, *Academic Journey of Witchcraft Studies in India*, 97 *Man in India* 21 (2017).

¹⁴ Chotanagpur region here refers to the Chota Nagpur Plateau which is a plateau in eastern India that encompasses much of the state of Jharkhand, as well as sections of Bihar, Odisha, West Bengal, and Chhattisgarh.

of large-scale witch-hunt among tribals of Chotanagpur region during the Great Mutiny of 1857. This retaliation consciously combined gender along with anti-colonial resistance.¹⁵ Thereafter, witchcraft accusations became an easy answer for uncertainties of human existence.

However, as per Mallick, witch hunt could not be ascribed to be the sole reason for tribal uprising against the Britishers in the Chotanagpur region. As per the 'idealistic' understanding of ceremonial witch killings being supported by the entire tribal community as a mark of 'symbolic retaliation', is not imaginable. There were certain activities where local witch doctors, popularly referred to as *janguru*, *ojha*, *sokha* or *khonses*, identified the witches and killed them for their malevolent activities. But a notable section of the 'silenced minority', especially the family members of women identified as witches in the village, resisted such witch killing by other community members. The judicial records maintained that witch hunt of 1857 was leveraged by greed for materialistic gains and to settle personal enmity, where the hunger of settling scores killed not just the alleged witch but also her entire family.¹⁶ Here, the judicial records become powerful sources to extract information regarding the reasons behind such witch hunts.¹⁷

The Britishers, in fact, took advantage of the belief in witches and attributed the blame upon Dalit women, accusing her to be a witch.¹⁸ The caste-culture-gender trilogy even shaped the brahmanical patriarchy. Such patriarchy created a vicious circle of superstitions.¹⁹ The most affected victim of such double patriarchy were Dalit women, whose miseries got escalated by the lack of basic amenities, poverty and infrastructural inadequacies.²⁰

In the Singhbhum district of British ruled India not only the accused but also their peers were killed to ensure that no person avenges the death of this accused in future. The beginning of the 19th century witnessed that the number of women killed consequent to such witch hunt

¹⁵ Shashank Sinha, *1857 Witch-Hunts, Adivasis, and the Uprising in Chhotanagpur*, 42 ECONOMIC AND POLITICAL WEEKLY 1672, 1674 (2007).

¹⁶ A. Mallick, *Witch-Hunting in 1857*, 43 ECONOMIC AND POLITICAL WEEKLY 118-119 (2008).

¹⁷ S.S. Sinha, *Culture of Violence or Violence of Cultures? Adivasis and Witch-hunting in Chotanagpur*, 19(1) ANGLISTICA 105-120 (2015).

¹⁸ E.G. MAN, *SANTHALIA AND THE SANTHALS* (Mittal Publications 1983).

¹⁹ SHARMILA REGE, *AGAINST THE MADNESS OF MANU : B.R AMBEDKAR'S WRITINGS ON BRAHMANICAL PATRIARCHY* (Navayana 2013).

²⁰ Tanvi Yadav, *Witch Hunting: A Form of Violence against Dalit Women in India*, 1 CASTE: A GLOBAL JOURNAL ON SOCIAL EXCLUSION, 169-182 (2020).

victimization far exceeded those who killed themselves via sati pratha.²¹ While sati killing was recognized as a customary sacrifice, witch-killing was seen as a product of ending mala fide sorcery- with women majorly from poor, backward castes, falling prey to such victimization. Hence this went unreported or under-reported. For instance, in the Rajputana community widow immolation as witches was a commonplace occurrence.²² The structural conditions for women's subordination were framed all across history as a necessary by-product of patriarchy.²³

The gender conflict and social changes of 1990s resulted in large scale violence against women by depicting them as 'keepers of demon'.²⁴ The researchers contextualize witch-hunt among the Santhals of Jharkhand, and Dai the Naxi communities of Yunnan (China). The comparative analysis with references to moral panic resulting in witch killings in France, Iroquois and Europe showed large scale killings and social ostracization on account of gender dynamics in a series of non-isolated mishaps. The male officialdom was established among the Mundas and Santhals, which attempted ousting of female dominance in matters related to caste, gender, sexuality and other arenas of social behavior. Men, in the role of *ojhas*, *jangurus* and other forms of witch-doctors became torch bearers for curbing and its consequent deleterious effect. The gender dynamics of the male sex dominating the weaker female sex led to institutionalization of 'denunciation of women'. The systematic marginalization of women in pivotal areas of land rites, religious rites and gender-culture dynamics, resulted in concretization of androcentric dominance of men in all spheres of life, public as well as private spheres.²⁵

The modern 'witch killings' are hardly a remnant of traditional or superstitious past. They rather reek more of power play and here the role of *ojhas* or witch-doctors become pivotal. A wide range of social, legal and political deprivations accompanied such witch hunts in an attempt to suppress women's voices. The modern-day witch-hunt witnessed the concepts of

²¹ See Generally, Foreign Department, Political, *National Archives of India*, 121-123 (1853).
<http://nationalarchives.nic.in/content/national-archives-india>.

²² A. Skaria, *Women, Witchcraft and Gratuitous Violence in Colonial Western India*. 155(1) PAST & PRESENT, 109-141, (1997).

²³ 3 C. BAKER, CULTURAL STUDIES: THEORY AND PRACTICE (Sage Publication 2010).

²⁴ D. Nathan, G. Kelkar and Y. Xiaogang, *Women as Witches and Keepers of Demons: Cross-Cultural Analysis of Struggles to Change Gender Relations*, 33(44) ECONOMIC AND POLITICAL WEEKLY (1998).

²⁵ Shamsher, *supra* note 13.

‘victim-perpetrator’, ‘insider-outsider’ develop.²⁶ Also, the ‘instrumentalization of the institute of witch-hunt’ post 1990s engaged in greater instances of calculated pre planned attacks, where gender relations played vital roles.²⁷ The focus shifted more towards public humiliation of the victim as compared to eradicating the evil from the community . Thus, the manifestations of witch-hunt are not alien to other facets of violence against women. The witchcraft beliefs across the world were based on sickness, death or other misfortunes associated with evil sorcery,²⁸ while certain other practices attributed such beliefs to lower levels of trust, group participation²⁹ or sudden income shocks.³⁰ The connotation witch hunts, in contemporary era is associated with activities to intimidate the political opponents, to discover subversive activities, to punish disloyalty, where moral panic³¹ or mass hysteria becomes a crucial element. Thus, over the time period superstition gradually gave way to concocted superstition where calculated or planned attacks became more prominent carriers of witch-hunt post the 1990s.

Gravity of witch hunt induced violence

Wherever the social paradigm broods over bestowing reverence to super natural phenomena; the ritual praxis of black magic gains omnipresence.³² The religio-cultural cult of sorcery, necromancy, shamanism, mysticism, divination and spell casting, are accouterments of black magic, which is often intertwined with witchcraft in its larger goal of maliciously provoking the supernatural powers.³³ Given the pessimistic impression of the wicked ritual, the people accused of practicing it are a misfit for the society. The socially acceptable techniques of purification of these so-called evil spirits involve flogging, banishing, hounding, raping, stone-hearted killings, etc.³⁴

²⁶ J.G. Konwar and D. Swargiari, *Conflicting Idea of ‘Victim’ and ‘Perpetrator’ in Witch Hunting: A Case Study in the State of Assam, India*, 3 INT’L J. HUMANIT. & SOC. SCI. 5, 136 (2015).

²⁷ Chaudhuri, S. (2012). *Women as Easy Scapegoats : Witchcraft Accusations and Women as Targets in Tea Plantations of India*. 18(10) VIOLENCE AGAINST WOMEN. 1213-1234 (2015).

²⁸ JEAN LA FONTAINE, *SPEAK OF THE DEVIL: TALES OF SATANIC ABUSE IN CONTEMPORARY ENGLAND*. (Cambridge University Press 1998).

²⁹ Boris Gershman, *Witch-craft Beliefs and the Erosion of Social Capital: Evidence from Sub-Saharan Africa and Beyond*, J. DEV. ECO. 120, 182–208 (2016).

³⁰ Edward Miguel, *Poverty and witch killing*, 72(4) REVIEW OF ECONOMIC STUDIES. 1153–117 (2005).

³¹ ERICH GOODE ET. AL., *MORAL PANICS: THE SOCIAL CONSTRUCTION OF DEVIANCE* (Wiley Blackwell 1994).

³² GARY R. VARNER, *THE ROOTS OF WITCHCRAFT* (OakChylde Publications 2007).

³³ MENSAH ADINKRAH, *WITCHCRAFT, WITCHES AND VIOLENCE IN GHANA* 250 (Berghahn Books 2015).

³⁴ Ryan Shaffer, *Modern Witch Hunting and Superstitious Murder in India*, 30 SKEPTICAL INQUIRER 4 (2014).

The customary witchcraft practice finds a glaring presence amongst the indigenous or tribal people in the rural-isolated precincts of India.³⁵ The liability of any crop destruction, health degradation of humans or animals, any death of children, aged or male counterparts in the surrounding environment; befalls on the accused witch in what might be termed as the most barbaric violation of human rights. This superstition overtakes rationality to weed out the evil-spirit, justifying savagery as a sacred act. In fact, the past few decades have witnessed several cases of tortures and persecutions mainly in the tribal-dominated states of Jharkhand, Assam, Odisha and Chhattisgarh.³⁶ But amongst these states, Jharkhand tops the list in witch-hunting cases. Around 173 people who were branded as witches have been killed since 2014. In fact, the National Crime Record Bureau (NCRB) report in between 2001-2016 indicates lynching of 523 women alone from the state of Jharkhand³⁷ and the number of registered cases up to 2013 itself had reached 2,854, as per the Jharkhand Central Bureau of Investigation.³⁸ Following the tradition, in between 2016-19, 123 women were lynched in Jharkhand. The poverty-stricken areas of Jharkhand, evidence poverty and health infrastructure inadequacies, as major twin-fold reasons for excessive reliance on ojhas, who find leveling allegations for the illness on someone from the village as an easy escape route for illnesses they fail to cure. While the offence of witch hunting under Jharkhand Witchcraft Prevention Act, 2001 is non-bailable, yet the number of imprisonments of ojhas and other perpetrators is sadly abysmal.³⁹ Despite a state-funded awareness campaign, the numbers of such deaths and the severity of atrocities are tragically on rise.⁴⁰

Although, several witch-craft associated acts and cleansing drive by the community go undocumented.⁴¹ Even if we go by the documented reports there were 2391 murders in between 2009-13 and the worst hit states of Andhra Pradesh, Jharkhand, Orissa, accounted for 400 deaths each over the past 15 years.⁴² On a closer look at other states, the number of

³⁵ Saletore, *supra* note 11, at 21.

³⁶ *Id.*

³⁷ Sanjoy, *supra* note 5.

³⁸ Ashwaq Masoodi, *Witch Hunting: Victims of Superstition*, LIVE MINT (Feb. 23, 2014, 11:59 PM), <https://www.livemint.com/Politics/Nnluhl4wjhiAAUklQwDtOL/Witch-hunting--Victims-of-superstition.html>.

³⁹ Shiv Sahay Singh, *The witches of Jharkhand*, THE HINDU (Dec. 24, 2016, 00:14 AM), <https://www.thehindu.com/news/national/The-%E2%80%98witches%E2%80%99-of-Jharkhand/article16933528.ece>.

⁴⁰ ASRP Mukesh, *Witch Hunt: Superstition Kills more than naxals in Jharkhand*, TIMES OF INDIA (July 23, 2019, 05:00 AM), <https://timesofindia.indiatimes.com/city/ranchi/witch-hunts-superstition-kills-more-than-naxals-in-jharkhand/articleshow/70336295.cms>.

⁴¹ *Id.*

⁴² Siddhant Asthana and Vanya Chaturvedi, *Witchcraft in India : An Alarming Reality*, 4 ROSTRUM'S LAW REVIEW 2 (2018).

registered deaths in Assam in between 2001-19 have been 161, with 45 deaths in Kokrajhar district alone.⁴³ The witch-hunting engulfed more than 250 women in 2015-17 in Bihar and the state has witnessed instances of live burning by neighbors, mutilation of body, rape and subsequent murder,⁴⁴ including even grossly inhuman acts of chopping off tongue and other body parts of old widows, in the name of witch-hunt.⁴⁵ Thus, the inadequacies in the legislation itself along with its poor implementation and lack of community awareness, create a vicious cycle where women become easy targets for this savagery.

The only available data on witch-hunt violence under NCRB relates to witch-craft motivated murders. For instance, as per the NCRB reports, the witch-craft motivated murders in Jharkhand were at 27 in 2016, 19 in 2017, 18 in 2018, at 15 in 2019 and again 15 in 2020.⁴⁶ However, the NCRB reported numbers could be deceiving- firstly, the NCRB tabulated witchcraft motivated murder is only one aspect of witch-hunt (public humiliation/ ostracization post physical harassment of various intensities often go unnoticed)⁴⁷; secondly, the NCRB report itself mentions its inbuilt limitation created by taking only most heinous police reported crimes under consideration, non-availability of city-wise crimes committed report against vulnerable groups and non-accounting for socio-economic factors and thirdly, various cases go unreported or under-reported.⁴⁸

The advancement of modernization along with health and sanitation facilities has seen a commensurate rise in instances of witch hunting since the 1980s.⁴⁹ Witches are seen as easy scapegoats for politics-induced development, in minerals rich states, for instance Jharkhand, Orissa, where the tribal lose their land without benefitting, on the contrary facing social stigma by the politics of witch-branding. Apart from this, land grabbing, personal vendetta, and property rifts, give enough reasons for the patsy attacks on the women, often widows living

⁴³ Press Trust of India, *161 witch-hunting deaths in Assam in 18 years, 133 cases registered since 2001*, FIRST POST (February 01, 2019, 04:36 PM), <https://www.firstpost.com/india/161-witch-hunting-deaths-in-assam-in-18-years-133-cases-registered-since-2001-minister-pramila-rani-brahma-to-state-assembly-6007901.html>.

⁴⁴ Swati Parashar, *when women are branded as Witches and Brutalized*, THE INDIAN EXPRESS, (Aug. 10, 2017, 12:32 AM), <https://indianexpress.com/article/opinion/when-women-are-branded-as-witches-and-brutalised-witchcraft-violence-against-women-4789745/>.

⁴⁵ Prasun K Mishra, *Bihar Villagers chop off 70-year-old tribal woman's tongue for practicing witchcraft*, HINDUSTAN TIMES (Oct. 22, 2018, 06:14 PM) , <https://www.hindustantimes.com/india-news/bihar-villagers-chop-off-70-year-old-tribal-woman-s-tongue-for-practising-witchcraft/story-dh24POL0B6VTcdKLuIwshN.html>.

⁴⁶ NCRB, *Crimes in India* (2020), ncrb.gov.in/sites/default/files/CII%202019%20Volume%201.pdf.

⁴⁷ See Generally, Shashank Sinha in the Public lecture series : *The idea of a Witch in Central India*, (July 16, 2019) <https://youtu.be/1BSMXQrKwJE>.

⁴⁸ Mukesh, *supra* note 40.

⁴⁹ Manasi Gopalakrishnan, *India's witches' victims of superstition and poverty*, DEUTSCHE WELLE (July 26, 2019), <https://www.dw.com/en/indias-witches-victims-of-superstition-and-poverty/a-49757742>.

alone. Women have residence rights over the property, especially unmarried widow gets right to hold the land. This becomes the direct reason for spreading rumors and tormenting the woman as a witch, by the greedy relatives.⁵⁰ Often the horror of atrocity is way beyond what documented and goes to thrashing, chopping off limbs, cutting off breasts, breaking teeth or tonsuring head, force feeding human flesh or the blood of chicken, sexual assault, penetrating sharp objects in anus/vagina, parading naked, forcible feeding of human excreta, burning, and various other ghastly forms of brutality.⁵¹

There are myriad reasons for accusing women of practicing witchcraft. In the contemporary period, several clandestine reasons over-grapple superstition. Apart from traditional roots, and long held practices, instances of witch hunting are emerging even in regions with no history of any such long held practices.⁵² Scapegoating induced by inadequate health facilities to superstitious beliefs of the vulnerable, propel human rights vindication. The inherent self-conceit pushes men to overpower women whom they regard as intimidating.⁵³ Thus, the accusation carves out an easy escape route for unscrupulous people to settle their scores, either the blood rivalries or the property disputes.

Interestingly, the rituals performed for witch-identification in certain villages cross all boundaries of rationality. One ritual establishes a woman as witch if her name written on the tree branch withers, other ritual relies on white ants to spot name emblazoned cloth of rice to identify a witch, in yet another bizarre incident poisonous potion was forcibly fed to women to prove their purity, which resulted in health deterioration for all.⁵⁴ Thus, the gruesomeness of the real scenario goes far beyond imaginable limits of human rights atrocities.

Anatomy of Legislative Safeguards

Human rights protection lies at the core of *erga omnes* obligations. Even the international treaties are not mute spectators of gender centric violence issues. Protection against gender-based discrimination and promotion of equality form core theme of various international instruments beginning with the Universal Declaration of Human Rights (UDHR), 1948 , and

⁵⁰ *Id.*

⁵¹ Shamsher, *supra* note 1, at 22.

⁵² Lekha Bora, Madhushree Das, *Witch-Hunting in Assam: Myth or Reality*, 7 SPACE AND CULTURE INDIA 3, 99-114 (2019).

⁵³ Gladson Dungdung, *The Witch hunting in Santhal, Ho,Munda, Oraon and Kharia Adivasi dominated areas*, JHARKHAND ONLINE (2009), <https://jharkhandonline.wordpress.com/2009/02/03/the-witch-hunting-in-santhal-ho-munda-oraon-and-kharia-ativasi-dominated-areas/>.

⁵⁴ Terrence McCoy, *Thousands of Women accused of Sorcery, Tortured and Executed in Indian Witch Hunts*, THE WASHINGTON POST (July 21, 2014, 02:20 PM), <https://www.washingtonpost.com/news/morning-mix/wp/2014/07/21/thousands-of-women-accused-of-sorcery-tortured-and-executed-in-indian-witch-hunts/>

its subsequent protocols⁵⁵; Convention for Elimination of all forms of Discrimination against Women (CEDAW)⁵⁶, 1993 ; and Convention against Torture (CAT) 1987.⁵⁷ The international framework of rule of law entails ‘a principle of governance in which all persons, institutions and entities, public and private, including the State itself, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards’.⁵⁸ It is essentially the *jus cogens* status which marks the segregation of human rights from all manifestations of violence. At the municipal fora, the constitutional guarantees of ‘right to life and personal liberty’⁵⁹ and ‘equality before law’⁶⁰ vocalize this protection paradigm. This paradigm emanates from the ‘self-evident directive’⁶¹ to foster respect for these international obligations⁶² and from the mandate to instrumentalize the obligations within the national legislations.⁶³ The fundamental fact that certain principles are crowned as part of international law via general consensus of nations⁶⁴ obligates nations to synchronize their laws with international laws.⁶⁵

Further, the gender-centric substantive and procedural safeguards under Indian Penal Code (IPC)⁶⁶, 1860; the Code of Criminal Procedure (Cr.P.C)⁶⁷, 1973; Dowry Prohibition Act, 1961, Domestic Violence (Prevention) Act, 2005; Immoral Traffic (Prevention) Act, 1956, Legal Services Authorities Act, 1987; the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1989 and relevant sections under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities Act), 1989, formulate a protective and preventive shield for

⁵⁵ ICCPR , a multilateral treaty adopted on 16 December 1966 commits the parties to respect civil and political rights of individuals, primarily focusing on right to life as one of its main facets. Prohibition of cruelty, inhuman or degrading treatment is the prime focus of Art. 7. India, signatory to the protocol, is mandated to imbibe it within the municipal legislation.

⁵⁶ CEDAW was adopted in 1979 by the UN General Assembly, it defines what constitutes discrimination against women and sets up an agenda for national action to end up such discrimination. Especially S.5(a) focuses on modification of cultural conduct of men and women by the state via appropriate measures

⁵⁷ UNHR, WOMEN’S RIGHTS ARE HUMAN RIGHTS, (United National Publication 2014), <https://www.ohchr.org/Documents/Events/WHRD/WomenRightsAreHR.pdf>.

⁵⁸ Secretary General, *The rule of Law and transnational justice in conflict and post conflict societies*, UNSC (Aug. 23, 2004), <https://www.un.org/ruleoflaw/files/2004%20report.pdf>

⁵⁹ The Constitution of India, 1950, art 21

⁶⁰ *Ibid*, art. 14

⁶¹ P.CHANDRASHEKHARA RAO, THE INDIAN CONSTITUTION AND INTERNATIONAL LAW 51 (Springer 1995).

⁶² INDIA CONST. art 51

⁶³ *Id.*, art. 253.

⁶⁴ Gramophone Company of India Ltd v Birendra Bahadur Pandey 1984 AIR 667

⁶⁵ Kesavananda Bharti v State of Kerala AIR 1973 SC 1461

⁶⁶ PEN. CODE, §.302, §. 307, §. 323, §. 372, §. 373, §. 375, §. 376, §. 376A-E, §. 493, §. 498, §. 498A, §. 304B, §. 312, §. 354, §. 366 and §. 366A-B.

⁶⁷ CODE CRIM. PROC.- §.46(4), §.51(2), §.53(2), §.98, §.164A, §.416

various atrocities against women. Specifically, the violence of murder⁶⁸ or its attempt⁶⁹; hurt⁷⁰; rape⁷¹; ‘outraging a women’s modesty’⁷²; kidnapping and abduction⁷³; pin down various aberrations of witch-hunt indirectly, by punishing the perpetrator from simple to rigorous imprisonment, including life imprisonment or death punishment, in extreme scenarios.

The Prevention of Witch-Hunting Bill, 2016 (the 2016 Bill) was tabled before the Lok Sabha by Shri Raghav Lakhanpal in 2016. Its preamble stated the objective ‘to provide for more effective measures to prevent and protect women from ‘witch-hunt’ practices to eliminate their torture, oppression, humiliation, and killing by providing punishment for such offences, relief and rehabilitation of women victims of such offences and for matters connected therewith or incidental thereto’.⁷⁴ It provided punishments for branding, intimidation, use of criminal force, assault, or subjugation to any other torture or humiliation of the victim, which are synchronous with the penalizations under IPC and Cr.P.C⁷⁵. However, the bill is not passed till date.

In the absence of a Central Legislation, certain states have come up with their respective state legislations. One of the initial state legislations making the offences committed in the garb of witch hunt as cognizable as well as non bailable⁷⁶ was incorporated in the Prevention of Witch (Daain) Practices Act, Bihar, 1999. The punishments for witch-branding, the subsequent savagery and the abetment of such practices Rs. 1000/- to Rs. 2000/-, along with imprisonment for three months to one year, depending on severity of the crime.⁷⁷ Subsequently,

⁶⁸ *Supra* note 66, §.302.

⁶⁹ *Supra* note 66, §.307.

⁷⁰ *Supra* note 66, §.323.

⁷¹ *Supra* note 66, §.376.

⁷² *Supra* note 66, §.354.

⁷³ *Supra* note 66, §.359-369.

⁷⁴ Shri Raghav Lakhanpal, *The Prevention of Witch Hunting Bill, 2016*, <http://164.100.47.4/billtexts/lbills/asintroduced/4572LS.pdf>. The Bill was tabled before the Lok Sabha by Shri Raghav Lakhanpal, however, its enforcement is yet to see the light of the day.

⁷⁵ *Id.*

⁷⁶ The Prevention of Witch (Daain) Practices Act, 1999, §.7, Bihar Government Gazette (Ext. Ord.) (October 10, 1999); subsequently similar provisions were included in The Prevention of Witch-Hunting Practices Act, 2001, Jharkhand.

⁷⁷ *Id.*

Chhattisgarh⁷⁸, Orissa⁷⁹, Maharashtra⁸⁰, Rajasthan⁸¹, Assam⁸² and most Karnataka⁸³ came up with their respective legislations on witch-hunt. The later state legislations have focused on comprehensive safeguards both punitively as well as in terms of rehabilitation and resettlement.⁸⁴

Under the Rajasthan Prevention of Witch-Hunting Act, 2015 imprisonment ranges from one⁸⁵ to seven⁸⁶ years depending on the magnitude of barbarity committed, and in the extreme cases of consequent unnatural death of the victim, the perpetrator is awarded life imprisonment.⁸⁷ Even the Assam legislation provides punishment extending to up to life imprisonment⁸⁸ (in case the victim is driven to commit suicide) and entails S.302 of the IPC if the atrocity of witch-hunt causes victim's death.⁸⁹ Also, the provision of relief and rehabilitation⁹⁰ is embodied under anti-witch hunt legislation of Assam. Interestingly, this legislation recognizes gender-neutral framework of this violence, while recognizing various facets of this barbarity involving "stoning, hanging, stabbing, dragging, public beating, burning of hair, pulling of teeth out, cutting of nose or other body parts, blackening of face, whipping, branding with hot objects...socially ostracized or stigmatized for life..."⁹¹. The framework provides for an imprisonment even up to 10 years in instances of blatant violations of the legislation.⁹² The Karnataka Prevention and Eradication of Inhuman Evil Practices and Black Magic Act, 2017, elucidates the aim of bringing "social awakening and awareness in the society

⁷⁸ The Chhattisgarh Tonahi Pratadna Nivaran Act, 2005, Chhattisgarh Government Gazette, No. XVII of 2005 (Sept. 30, 2005).

⁷⁹ The Odisha Prevention of Witch-Hunting Act, 2013, Odisha Government Gazette (Ext. Ord. No. 434) (April 25, 2014).

⁸⁰ The Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013, Maharashtra Government Gazette, Pt. IV, (December 20, 2013).

⁸¹ The Rajasthan Prevention of Witch-Hunting Act, 2015, Rajasthan Government Gazette No. XIV of 2015 (April, 2015).

⁸² The Assam Witch Hunting (Prohibition, Prevention and Protection) Act, 2015, Assam Government Gazette, No. XXI of 2018 (June 30, 2018).

⁸³ The Karnataka Prevention and Eradication of Inhuman Evil Practices and Black Magic Act, 2017, Karnataka Gazette (Ext. Ord.) (December 7, 2017).

⁸⁴ *Supra* note 81.

⁸⁵ *Supra* note 81, §.S.4 (1).

⁸⁶ *Supra* note 81, §.S. 4(2).

⁸⁷ *Supra* note 81, §. S.7.

⁸⁸ *Supra* note 81, §.S.6.

⁸⁹ *Supra* note 81, §.S.5.

⁹⁰ *Supra* note 82.

⁹¹ *Supra* note 82, §.S.9.

⁹² *Supra* note 82, §.S.9.

and to create a safe and healthy environment”.⁹³ In fact, the bill itself elaborated prohibition of several ceremonies, for instance, “Mata-Mantra practice of stone pelting, or piercing of jaw from one to the other side under Baigaba practice, or forcing a person to brutally kill an animal via Gaavu”.⁹⁴ The act prescribes that if torture results in death⁹⁵, or “endangering the life of the victim”⁹⁶ or results in suicide of the victim⁹⁷, the same shall be punished under the various provisions of IPC.⁹⁸

All legislative enactments have an intrinsic inclination to consider specific laws as essential and adequate solutions to curb witch hunt violence. These methods view punishment as a legitimate means to a logical objective. For example, Maharashtra and Karnataka laws rely on the prohibition of particular aspects of witch-hunting to promote a scientific temper. These normative assumptions, however, lack good empirical structural evidence, fail to examine gaps in the current research, and are insufficient responses to the horrors inflicted on victims/survivors. As a result, a socio-legal examination of this threat is extremely important. India lacks a comprehensive national statistic on witch hunts, with the exception of NCRB reports on "witch-craft motivated murders" and reports on human sacrifices from certain states.⁹⁹ The NCRB study fails to disclose the actual degree of this cruelty by focusing only on one facet of witch-hunt torture while ignoring other extremities of barbarism. It faces concerns of generalisability. As a result, genuine incidents of torture considerably surpass NCRB's statistical figures.¹⁰⁰

The conditions aimed at implementing state specific laws should take into consideration the profile of victims/survivors, the case-and-effect link of such a hunt, and the conditions that trigger existing gaps in reparative justice. Unlike the widespread idea that this search primarily catches widowed or single women in its tentacles, an empirical study conducted by PLD in

⁹³ *Supra* note 83.

⁹⁴ Nagesh Prabhu, *Karnataka anti-superstition Bill: what is banned and what is not?* THE HINDU (Sept. 27, 2017, 05:24 PM), <https://www.thehindu.com/news/national/karnataka/karnataka-anti-superstition-bill-what-is-banned-and-what-is-not/article19762981.ece>.

⁹⁵ *Supra* note 83; Death under the act is seen as murder as defined under §.300 of the IPC, 1860 and is punishable under §.302 of the code.

⁹⁶ *Supra* note 83; Offender is seen as guilty of attempt to murder as defined under §.307 of IPC, 1860, and is punished accordingly.

⁹⁷ *Supra* note 83; Offender is punished under §. 306 of the IPC as having abetted suicide of the victim and is punished accordingly

⁹⁸ *Supra* note 83, §.S.3(2) Proviso

⁹⁹ PIECING TOGETHER PERSPECTIVES ON WITCH HUNTING: A REVIEW OF LITERATURE, (Partners for Law in Development 2013).

¹⁰⁰ Jyoti Sharma, *Witch Hunting in India*, 3 SUPREMO AMICUS (2018).

three states demonstrated that married women, usually in their 40s-50s, were more prone to such hunts.¹⁰¹ In addition, the offenders' profile was mostly based on family, and the target's motivation was "advertised superstition" (for example, refusal of sexual approaches, fear, envy, or hunger for property), rather than true superstition. Given the heterogeneous economic profile of the victims, the study discovered that economic stratum had no impact on the victim's vulnerability.¹⁰² Given the small sample size, the researcher does not believe the data is reliable or generalizable; however, this type of violence against married women by husbands or his relatives, even before any ojha comes into play, and regardless of their economic status, becomes a vital addition to the anecdotal normative presumption.

The recent state legislations have adopted the tone and rigor of IPC when human rights infractions cross all imaginable limits. Even the lesser manifestations of house trespass and property confiscation get penalized on the same lines as IPC under certain state legislations.¹⁰³ The recent legislations, as compared to the previous ones, have targeted certain facets of witch-hunt violence with intense velocity.¹⁰⁴ Additionally, where the state lacks a specific legislation on witch-hunt, IPC and other national statutes come to rescue. But the core question still persists that whether the explicit recognition of this violence or the explicit formulation of central legislation will sublimate the intensity of this menace? As discussed above, even in absence of legislation, there is no dearth of penalising statute. This answers the latter half of the debate. The former part of this question cannot be answered in the vacuum of the judicial perception in cases of such violence and subsequently pondering on the vacuums in reparative justice.

Nihilities in reparative justice

The Apex Court as ultimate interpreter of the Constitution, *prima facie* assumes vital importance for preservation of social order. Our constitution as a living organism promotes dynamic preservation of social order, by upholding social, economic and political aspects, by each organ of the state. In absence of several cases of witch-hunt being recorded or even reaching the courts, the Indian jurisprudence lacks adequate judicial perspective in this area.¹⁰⁵

¹⁰¹ CONTEMPORARY PRACTICES OF WITCH HUNTING: A REPORT ON SOCIAL TRENDS AND THE INTERFACE WITH LAW 53 (Partners for Law in Development 2014).

¹⁰² *Id.*

¹⁰³ Ashwaq, *supra* note 38.

¹⁰⁴ *Supra* note 82.

¹⁰⁵ *Supra* note 82.

In the instances where witch-craft motivated persecutions are proved beyond reasonable doubt, the high court has upheld conviction of the defendant¹⁰⁶. However, the Courts have acquitted the accused or reduced his sentence on grounds of failure by the prosecution to fulfill the high standard of proof¹⁰⁷, the lack of sufficient eye witnesses,¹⁰⁸ and mitigated the sentence of the defendant on pleas of his superstitious belief.¹⁰⁹ On one occasion the Supreme Court directed the formulation of special cells for dealing with witch-hunt associated issues.¹¹⁰ Also, in several recent witch-hunt instances, the Orissa High Court has been vehemently backing a Central Legislation in this regard.¹¹¹ Expressing the dominant concern in this regard, Justice Panigrahi stated “...need to generate awareness among such susceptible sections of people, therefore, assumes importance and the authorities concerned may take effective steps in this regard, to dispense with such primitive beliefs and mindsets, which defies logic”.¹¹² These judicial illustrations, however, fail to cover let alone remedy the magnitude of human right aberrations.

The tangled elements of this sex driven viciousness tragically increase cruel pleasure from brutality against women in this event. Most instances of such torment stay in dim, and the rest which do arrive before the police, are excused for need of witnesses, settlement between families, absence of confirmations, and so forth.¹¹³ The result of this chase over the long haul experiences the ill effects of protection vacuum, for example deep rooted shame, social out casting, and social ostracization. Notwithstanding explicit state enactments set up, it takes an actual savagery of lopsided lengths to summon the criminal judicial intervention. For example, while executing a writ appeal for exploitation of 1000 ladies in name of supposed black magic practice, the Apex Court considered settlement before the woman electorate forum as a better

¹⁰⁶ *Buddhu Munda & Ors. V State of Bihar* 2004 CriLJ 549; *Konde Munda & Ors. V State of Bihar* Jharkhand High Court (Mar. 23, 2003).

¹⁰⁷ In *Tulsa Devi v State of Jharkhand* 2006 (3) JCR 222 Jhr, even though the Jharkhand High Court upheld the conviction of the accused for assaulting the victim, the conviction under the Prevention of Witch (Daain) Practices Act, was quashed as the victim failed to prove beyond reasonable doubt that the accused had assaulted her on witch craft accusation.

¹⁰⁸ *Madhu Munda & Ors. V State of Bihar* 2003 (3) JCR 156 Jhr

¹⁰⁹ *Samtul Dhobi & Another v. State of Bihar*, 1993 (2) BLJR 1041; the Patna High Court found superstitious belief of the defendant as morally justifiable ground for him to commit the offense as a mitigating factor and accordingly reduced his sentence

¹¹⁰ *India needs a national law against witch hunt and other superstitious practices*, THE TELEGRAPH (June 22, 2011), <http://www.sacw.net/article2156.html>.

¹¹¹ *Orissa High Court push for Central Law to check witch-hunting*, THE INDIAN EXPRESS (August 14, 2020), 07:42 AM, <https://www.newindianexpress.com/states/odisha/2020/aug/14/orissa-high-court-push-for-central-law-to-check-witch-hunting-2183291.html>.

¹¹² *Id.*, Quoting J. Panigrahi on the need for a Central law to check witch-hunting

¹¹³ Archana Datta, *Witch Hunting: Victims of Superstition?* THE TRIBUNE (March 7, 2020, 11:07 AM), <https://www.tribuneindia.com/news/features/witch-hunting-victims-of-superstition-51378>.

alternative than adjudging the issue.¹¹⁴ Also, most Apex court decisions emerge from physical injury covered under provisions of IPC (especially those related to death, suicide or grievous hurt). This overlooks the provisions of state specific laws which foundation upon the nexus between witch labeling and the subsequent manifestations (including psychological manifestation) of torture.¹¹⁵

Further, preliminary intervention in such cases stands abysmal. The ‘non cognizable’ nature of these state specific laws is rarely enforced because less atrocious facets of witch-hunt violence for example, theft, house-trespass, hurt, are covered under bailable heads of IPC. Consequently, bailable IPC provisions come to the rescue of perpetrators in these witch-hunt cases. These provisions classify the witch-hunt savagery under various heads of IPC, by totally diverting them from their underlying roots, i.e., manifestations emerging from “witch” allegations itself. This deviation nullifies the effect of specific state legislations. In this sense the state specific laws apparently contribute no more to preventive activity than IPC.

Yet, the graver issue lies in institutional inactivity and sluggishness of implementation machinery. The impunity for prolonged phases of barbarism garners shields from setting witch-hunt violence standards, for promoting sensitivity of the enforcement machinery, extremely high. Combined with insensitive machinery, high acquittal rates present a horrid situation. This is crucially connected to poor investigation standards by virtue of reasons stated above. The dream of effective prosecution needs sound institutional set up of witness protection, to become a reality. Indeed, even the 2013 Amendment which formulated robust IPC paradigm for violence against women overlooks the socio-political complexities associated with a witch-hunt, where monstrous aspects like tonsuring, darkening face, parading naked, are pointed more at decimating societal and psychological stance of victimised women than executing actual physical brutality.

Thus, the combined effect of these nihilities in reparative justice need to be balanced against implementation, awareness, and institutionalization issues as well along with addressing the adequacy issue of state specific legislations. Because of structural flaws and

¹¹⁴ *Supra* note 110; however in the case of *Ashok Laxman Sohoni v State of Maharashtra* AIR 1977 SC 1319, THE Supreme Court upheld the death conviction of the perpetrator.

¹¹⁵ *Supra* note 101, at 59.

enforcement machinery's indifference, minor motives behind witch-hunting instances amass abnormal proportions of attack. Hence, the reparative justice demands a broader outlook.

Policy alternatives via comparative lens

The 'certainty' and 'dynamism' parameters govern transformative competence of social reforms. The efficacy of law formulated on sensitive issues, such as witch-hunt, depends on- the crime definition, victim protection (especially of the vulnerable groups), stringency of perpetrator's punishment, prevention and implementation-based supervision mechanisms, local authority or civil society participation, etc. A comparative analysis of the prevailing legislative framework touches upon these issues- for instance, the legislations lack a universal definition of 'witchcraft'. While a specific definition of this practice is incorporated in state laws of Rajasthan and Odisha, on the contrary, Maharashtra and Karnataka are silent in this end. Victim compensation is dealt with elaborately under the Chattisgarh¹¹⁶, Odisha¹¹⁷ and Rajasthan¹¹⁸ acts. 60 percent of the fine collected under the Rajasthan act is mandated to go towards the victim's treatment cost and for compensating her property damage.¹¹⁹ However, it is majorly the 'rehabilitation and resettlement'¹²⁰ angle of the more recent laws that has drawn attention. The gender centric nature of witch hunt violence and the urgency of providing special safeguard to women gets reflected under S.7 of the Rajasthan Act, provided that the penultimate cause of woman's death can be traced back to witch hunt victimization, where the offender can be subjected to rigorous imprisonment extending even upto life imprisonment of the offender. This state act also reflects sensitive rebuking of derogatory acts like stripping of the woman, or parading her naked or force feeding her obnoxious contents gets a maximum of seven years punishment to the offender.¹²¹

A more comprehensive gender specific protection to women is crafted under S.4, 5 and 6 of the Odisha Act, which lists and imprisons individuals guilty of the illustrated derogatory human behavior.¹²² From the punishment perspective, the prescribed punishment for witch hunt atrocity must carry the deterrence fear with it, however the Bihar and Jharkhand laws

¹¹⁶ *Supra* note 78, §.12.

¹¹⁷ *Supra* note 79, §.S.9.

¹¹⁸ *Supra* note 81, §.S.8.

¹¹⁹ *Supra* note 81, §.S.9.

¹²⁰ The legislative safeguards under Karnataka and Assam special laws provide for this resettlement and rehabilitation provisions.

¹²¹ *Supra* note 81, §.4.

¹²² Even the pending 2016 Bill and the Karnataka Act of 2017 list down certain derogatory practices involved in witch hunt and the consequent imprisonment prescribed for the same.

terribly fail in this regard.¹²³ Contrastingly, the Assam law carries a maximum imprisonment of 7 years coupled with Rs. 5 lakhs as maximum fine. Another significant welcome provision of punishing repeat offenders is adorned by the Odisha Act.¹²⁴ This corrective deterrence to the potential offenders is a highly applaudable provision, yet no other state law incorporates such provision.

Surprisingly, with regards to preventive provisions, the state specific laws are either mute spectators towards preventive measures or undertake practically questionable preventive steps. For example, the state government is conferred discretionary powers to formulate awareness and educational schemes for combatting blind faith.¹²⁵ The Rajasthan¹²⁶ and Maharashtra¹²⁷ act also provide such practicably questionable preventive measures. The implementation aspect of special legislations should ardently follow Heydon's rule and the implementation must cure the alleged mischief that the legislation targets. Social legislations of this kind, which center around curbing the violence of witch hunts, must focus on- the problem, its genesis, how the superstition concedes, the social perspective of the problem and the plausible solutions to curb this violence. These factors need ground level interactions with the actual stakeholders. The over-emphasis on the punitive provisions do not cater completely to the preventive demands. Demand for a superstition free society advocates the need for robust preventive safeguards.

Although the provision of victim's free legal aid is provided under the 2016 Bill, the bill is yet to be enforced.¹²⁸ However, momentum to measures of free legal aid and community awareness creation within the need sufficient state-funding. Additionally, except for the 2016 Bill¹²⁹, state specific laws are silent on combating witch hunt via grassroot machinery involvement, i.e., at the village panchayat level.¹³⁰ Dawning these panchayats with the cloak of legal mechanisms shall go a long way in ensuring rationalistic promotion of scientific temper towards the cause of social justice. Also, furtherance of scientific temper may be consolidated

¹²³ Both laws provide for 3 months to 1 year imprisonment along with fine which extends to 2000 at maximum, irrespective of the magnitude of atrocity committed in the name of witch hunt

¹²⁴ *Supra* note 79, the Act punishes repeat offenders with 3 to 7 years imprisonment and a minimum fine of 10,000 Rs.

¹²⁵ *Supra* note 78, §.11.

¹²⁶ Rajasthan, S.11.

¹²⁷ *Supra* note 80, §.4 and §.6.

¹²⁸ *Supra* note 74, §.24.

¹²⁹ *Supra* note 74, §.20.

¹³⁰ This void in state laws gets filled by the Criminal Procedure Code which mandates members of village administrative machinery, including the village panchayats, to provide information pertaining to criminal mishaps, related to unnatural or suspicious deaths or sudden disappearances from the village, to the nearest police stations

by creation of separate machinery in this regard, like a vigilance committee to oversee the magnitude of such practices and the legal administration towards this end.

The wide cultural diversity and state specific problems within the Indian subcontinent vocalise different methodological approaches which in turn keep the need for state specific law quite intact and live, yet an enforcement of the law alone is insufficient to handle this social menace unless it is armed with practical weapons to combat the situation.

Conclusion

In the light of afore-mentioned analysis, the authors would like to propose certain concerted actions to curb the witch-hunt violence. Since the roots of witch-hunt lie embedded in a complex cobweb of factors- historical, political, socio-economic, personal, infrastructural, psychological and gender centric; state specific long term developmental solutions are needed for creating community's safeguard mechanism against erratic emotional upheavals. Also, the historical trajectory of witch hunt has slowly built from superstition to concocted superstition, the constitutional mandate of promotion of scientific temper creates a powerful antidote to this superstitious venom.

Death penalty cannot cure the superstitious beliefs, rather affirmative judicial approach is call out for victim centric reparation. The quintessential wheels of reparative justice consist of three facets, i.e., reparation, resettlement and rehabilitation. Instead of carving out further legislation, a victim centric robust revival mechanism in the form of comprehensive restorative schemes (including their relief as well as compensation) need to be worked out for the victim/survivor and their relatives. The parameters of such restoration should be just and equitable. Since the victim/ survivor and her immediate relatives are driven out of the community, their restoration effort should not put them in any further disadvantageous situation, apart from the atrocity they already face in the name of this occult praxis.

Given the complexity imbibed in the tenets of modern witch-hunt, simple normative assumptions devoid of realities of advertised superstition cannot curb the culture of "divining evil".¹³¹ The contemporary boundaries of witch-hunt have refused to be region or caste or community specific. A broader regime of social awakening and awareness campaigns is called for. Also, holistic understanding of how the tentacles of an illusionary practice gain disproportionate community support is equally vital. The legislation can only punish the

¹³¹ N. Sundar, *Divining Evil: The State and Witchcraft in Bastar*, 5 GENDER TECH. & DEV. 3, 425-48(2001)

aftermath, curbing the evil requires proactive strategy by the government and other stakeholders to change the mindset, including the prejudice of the educated. Here the “why” of a witch hunt gains more significance than its “how”. Hence a constructive positive role even from the fourth pillar, that is, media becomes crucial. Police sensitization, especially at the grassroots level, along with proper monitoring and follow up mechanism at each stage, for instance via creation of helpline numbers, is sine qua non for dealing with this atrocity.

A myopic view of linking witch-hunt with infrastructural inadequacies in villages overlooks instances where this practice subsumes women from even well to do backgrounds¹³². “In villages, women whose spouses treat them well, as equal partners, have been called witches. In cities, if a woman is loved and respected by her partner, she is asked what magic she had to do to keep the man in her control”.¹³³ Also the myopic view of statutory legislations, for instance the IPC focus more on the “intention” establishment and physical violence criteria rather than the mental trauma. The less physically harming facets of witch-hunt, e.g., tonsuring, social ostracisation, painting the face black or even branding as a witch, cause intense psychological trauma and leave a life-long impact on the victim. Thus, the remedial measures post the victimization need to essentially take this psychological factor into consideration.

Coupled with this, the cultural revivalism in tribal groups finds witch hunt as easy escape route for negating efforts towards imposed homogeneity by the higher class.¹³⁴ The infrastructural inadequacies promoting superstition definitely hold a strong root in this issue, but the peripheral concoctions articulated by political intricacies, property greed, sexual inclinations, patriarchal mind-set, family vendetta, among others, which leverage these roots, prove pivotal. Apart from sensitization and awareness campaigns, the ordeals of these survivors of witch hunt need scrutinized exhumation. “Due to stigma and resignation to the fact that the survivors have to continue to live amongst their attackers, many of these stories never come to the fore, leading to not just a denial of justice but also a never-articulated demand for it”.¹³⁵

State specific anti-witch hunt legislations are often criticised as positing an inequality threat; however, the counter argument sees these legislations in the light of these legislations being a necessary outcome of a federalist set up. The diverse laws, with varied punitive

¹³² Ankita Anand, *Doctoring Evil: The making and hunting of witches in Assam*, RAIOT, (April 26, 2017), <http://www.raiot.in/doctoring-evil-the-making-and-hunting-of-witches-in-assam/>

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

measures and policy consequences seem to undermine the spirit of equality, but the cultural and regional differences across various communities cannot be ignored. The later scenario carries the risk of unequally treating the local variations if a central uniform law gets enacted. Hence, state specific laws cannot be discarded assuming vital importance especially because they account for the regional and cultural differences in witch-hunt instances.

Further, the comparative analysis of state laws posits more dissimilarities than similarities. The later state laws have adopted a more rigorous tone to combat evil. However, the missing definitions of witchcraft, nihilations in reparative justice and silence of the state laws in establishment of the superstition induced criminal element either de jure or de facto, all quest the adequacy of state laws in combating the violence. Thus, given the social impact of this issue, the engine of legislative measures needs constant fueling from informed public opinion and robust administrative machinery. Positive public opinion can be formulated if the consensus model gets successfully balanced against the conflict model.¹³⁶ A strong medium to mold positive public opinion can be media sensitisation. Cinemas¹³⁷ on this issue can have a huge societal impact and help build scientific temper. Although a complete ban on superstition depicting television serials as not upheld by the apex court¹³⁸, the court did not shy away from upholding the powerful impact which documentary films can create upon the minds of the public.¹³⁹ Development of scientific temper via education and increased awareness is the only way out from the concoction evil.

Further, a very proactive restructuring from various women groups, the NGOs, local authorities and people in general is needed to tackle the inevitable consequence of dislocation in such circumstances. A normative assumption that more laws shall curb the violence does not hold well in practicality. So a change in focus is needed towards analyzing the structural dis/similarities, in/adequacies and patterns of this gender-centric violence. The contemporary anti-witch hunt drive based on an awareness programme void of such analysis, will prove ineffective in the long run. Thus, a functional paradigm, focusing on ground realities shall

¹³⁶ The vulnerable need to be emboldened and the oppressor needs to be convinced against the oppression to serve the foundations of social transformation under the Gandhian model.

¹³⁷ *Ae Maatite* was a documentary film portraying the atrocities and grounds of atrocity committed under witch hunt. The film was enacted by students of Cotton College, Assam, in collaboration with civil administrative authorities to sensitise the public on the magnitude of witch hunt barbarity and simultaneously to promote scientific temper.

¹³⁸ *Odyssey Communications Pvt Ltd v. Lokvidayan Sanghatana and Ors.* AIR 1988 SC 1642

¹³⁹ *Voluntary Health Association of Punjab v Union of India and Ors.* AIR 2013 SC 1571

ensure a silver lining in the dark clouds of this evil. “It is time to lay the ghosts of Salem to rest”.¹⁴⁰

¹⁴⁰Mitch, *supra* note 4.