

## **CRIMINALISING WITCHCRAFT**

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### **INTRODUCTION**

Witchcraft as a term means the belief in, and practice of, magical skills and abilities that are able to be exercised by individuals and certain social groups. These are practiced by witches. Witch is an English word gender specific which is confined to women only. Witch is generally attributed to the individuals who through sheer malice, consciously or subconsciously, use magical power to inflict all type of evil on their fellow humans. They usually bring disease; destroy property and misfortune and causes death, without any provocation to satisfy their inherent craving. Some cultures in the Province of South Africa believe that all the misfortunes and deaths are either due to the punishments by ancestors or by the evil spirits or witches. It is found that majority of the people in the provinces believes in witchcraft and therefore the existence of witches.

It is considered that some people are born as witches. In some culture in the African Provinces it is believed that a baby born should be thrown against a wall and if the baby clings to the wall, he or she would become a witch afterwards. Many animals are also considered to be associated with the practice of witchcraft such as owls, cats, snakes, bats, baboons, pole-carts. Some of the material articles related with witchcraft includes mirror, blades, brown bread, whirlwinds, traditional dishes, plates, saucers, traditional horns which are blown at nights, etc.

Discussing the sex distribution women are more often accused of practising witchcraft than men, approximately at the ratio of 2:1. It is considered that as women are supposedly more prone to sexual jealousy to the relatives who poses more material wealth than they do, also as female goes through the process if pregnancy, menstruation or child-birth which are regarded as impure or the result of supernatural power, hence these are some reasons given for this sex distribution. It is considered that witches are usually older than years i.e. middle aged.

Witches are killed through a specific method that is by burning as it is believed that fire would destroy their souls, in which it would destroy all the links with the ancestors. Victim is seized during the day and is often killed by the necklace method or is slowly roasted to death while held spread- eagled over the open fire. Some of them may also be drowned, strangled, hurled from a precipice, or shot to death.

## **HISTORY**

Witchcraft has its origin since the existence of human civilization itself. In the early times, witches were considered to be as mediators between the human beings and the mysterious super power such as spirits and angels. “Witchcraft, an earth based religion, was practiced in almost all the societies and cultures across the world according to local beliefs and traditions.”<sup>1</sup> It was believed that witches used to pray to supreme powers for their guidance in solving the problem by performing certain rituals and this whole process was called witchcraft.

According to archaeological discoveries of witchcraft, it was a belief predominant in majority of all the religions on this earth. It can be traced back to 40,000 years back to Palaeolithic<sup>2</sup> period. This can even be proved by the discovery of cave paintings which are estimated to be 30,000 years old. These discoveries show that witchcraft was one of the relics in the oldest religions in the world. The present practice of witchcraft is quite different from its inception though it carried on with the same term.

In the ancient times, “Witchcraft was known as ‘Craft of the Wise’ as the wise persons were those who followed the path of nature and were in tune with its forces, had the knowledge of herbs and medicines, gave wise counsel and were held in high esteem.”<sup>3</sup> Unfortunately, in the last hundred years the image of witchcraft has been drastically changed as it is now associated with evil and unrighteousness. This is happened due to the fact that people started abusing their power for their self-interest and in the interest of maintaining their position and good-will in the society.

## **STATUTORY POSITION IN INDIA**

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<sup>1</sup> <http://www.witchcraft.com.au/origin-of-witchcraft.html>.

<sup>2</sup> It is a period of human history distinguished by the development of the most primitive stone tools. It is also known as stoneage.

<sup>3</sup> <http://www.witchcraft.com.au/origin-of-witchcraft.html>.

“The society doesn’t change without a law is the complete truth. Social awareness is strengthened when followed with stringent laws. Proper enforcement of such laws would definitely help to bring the change in society”.

Still, there is a need for central law in this respect as it is demeaning the worth of human life. Although in the major parts where such activities are frequent, state has passed certain acts criminalizing the same. With proper implementation of law, the accused automatically inherits a right of being protected.

➤ **The Prevention of Witch (DAAIN) Practices Act, 2001, Jharkhand**

This act is a step forward to prevent the practices of witches and identification of a woman as a witch and their oppression prevailing in any part of tribal area and in the state of Jharkhand in order to curb the torture against women, humiliation and killing by the society.

This act penalizes all those who are found involved in any of the following activities as stated in this act that are –

- Identification of Witch – Under section 3 of the said act, whoever does any act towards identification either by words, actions or manners shall be punished imprisonment of a term which may extend to three months or with fine of Rs. 1000 or with both.
- Damages for causing harm – Under section 4, any person who causes any kind of physical or mental torture by identifying a person as a Witch shall be punished with imprisonment for a term which may extend to six months or fine of Rs. 2,000 or both.
- Witch Curing – Under section 6, whoever does any act of curing any woman said to be Witch shall be punished with imprisonment for a term which may extend to one year with a fine of Rs. 2,000 or both.
- Under section 7, there establish a procedure for trial which laid all offences cognizable and non-bailable.
- If the suspects are convicted of breaking the Dayan Pratha law, they will face a longer prison sentence than if they just committed murder.

Acts like these has provided a platform as an recourse for the victims to raise their voice against these atrocities, the result of which can clearly be observed in case of Jharkhand as the cases reported has increased since the enactment of this act since 2001.<sup>4</sup>

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<sup>4</sup> National Crime Records Bureau, Govt. of India.

2008	2007	2006	2005	2004	2003	2002	2001
52	50	29	26	26	19	26	21

➤ **Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013**

This is a criminal act which is meant for the purpose of criminalizing practices related to black magic and human sacrifices. This act has put a check on all such activities which in the name of magic has put the human life at stake. It includes all such activities which identify witches, sacrifice human lives in the name of reward or accusing a person to be the incarnation of a bad evil. Though human sacrifice is a crime in India, even the abetment to human sacrifice has been criminalized under this act.

This act carries a minimum sentence of six months and a maximum sentence of seven years, including a fine ranging from ₹5,000 to ₹50,000. The offences are non-bailable and cognizable.

➤ **The Chhattisgarh Tonahi Pratadna Nivaran Act, 2005<sup>5</sup>**

This act carries the same spirit as that carried by other acts and according to which people involved in identification, harassment, alleged curing or claiming to be Tonahi are made liable. The offences would be cognizable and non bailable.

The punishment prescribed by this act varies from one year to five years of rigorous imprisonment along with fine. But unlike other acts, this act has an provision which says that whole amount of fine which would be recovered by the state would be given to the victim.

➤ **Rajasthan Women (Prevention and Protection from Atrocities), 2015**

“The Rajasthan Prevention of Witch-Hunting Bill, 2015, provides for life imprisonment if witch-hunting causes death, and imprisonment up to five years and fine for practising witch-hunting and witch-craft and other similar practises. At least 60 per cent of the fine will be given to the victim for treatment and rehabilitation.”<sup>6</sup>

<sup>5</sup> <https://www.legalcrystal.com/act/134666/the-chhattisgarh-tonahi-pratadna-nivaran-act-2005-complete-act>.

<sup>6</sup> <http://www.parliament.uk/about/living-heritage/transformingsociety/privatelives/religion/overview/witchcraft/>.

Even, the proposed law levies collective fine on the inhabitants of place where such an offence is committed. The penalty received of such fine shall be used for the rehabilitation and resettlement of the victim. It is also proposed that the State government may make one or more schemes for the rehabilitation and resettlement of the victim and to conduct awareness drives on superstitions and other related matters as it may deem proper.

➤ **Odisha Prevention of Witch Hunting Bill, 2013.**

The main aim of this bill is to criminalise activities such as of witch hunting or abetment or promoting witch hunting, wherein the accused would be punished with imprisonment of a term which shall not be less than three years, but may extend to seven years in case of death of the victim and fine which shall not be less than Rs. 10,000.

**INTERNATIONAL LEGISLATIONS**

For people around the world, witchcraft is relative to magical fairy tales, fictional forms of entertainment in movies like “The Lord of The Rings”, And “Harry Potter”, etc, and TV shows like and “Once Upon a Time” and “Sabrina The Teenage Witch”. But it may be not realized that these stories have some basis. They’re derived from real events that did happened in centuries past. There still exist people in the 21st century who participate in witch hunts and persecute folks who are believed to be guilty of dabbling in the sorcery. Most of these countries are in Africa, and the Pacific. Countries like Saudi Arabia, Tanzania, Uganda, Columbia, Ghana, India and many other countries still believe in the existence of witchcraft. There are various countries which have legislation across the globe against the practice of witchcraft.

• **Witchcraft Act, 1735- United Kingdom**

The **Witchcraft Act** was a law passed by the Parliament of the Kingdom of Great Britain in 1735 which criminalize a person who claims that any human being had magical powers or was guilty of practicing witchcraft. It thus ended the period Witch trials in the Early Modern period of Great Britain and the beginning of the modern legal history of witchcraft, repealing the Witchcraft Acts which were based on a widespread belief in the genuine existence of magic and witchcraft. The law was described as "a heavy-handed piece of Enlightenment rationalism", reverting to the view of the medieval Church that witchcraft and magic were illusory, treating as an offence not the supposed practice of witchcraft but the superstitious belief in its existence.

This was the first and the primary legislation against the practice of witchcraft. It gave the basis to many other countries, the South African Witchcraft Suppression Act, 1957, which is still in force, was based on similar 19th-century laws in the Cape Colony which were themselves based on the Witchcraft Act 1735, the Witchcraft Act is still in force in Israel, Palestine. Levack multiplied the number of known European witch trials by the average rate of conviction and execution, to arrive at a figure of around 60,000 deaths<sup>7</sup>.

- **Witchcraft Suppression Act, 1957- South Africa**

The *Witchcraft Suppression Act 3 of 1957* is an act of the Parliament of South Africa that prohibits various activities related to witchcraft, witch smelling or witch-hunting. It is based on the Witchcraft Suppression Act 1895 of the Cape Colony, which was in turn based on the Witchcraft Act 1735 of the United Kingdom. The legislation is so stringent that it punishes the convicted up to 20 years of imprisonment. *The Traditional Health Practitioners Act of 2007* regulates and defines traditional healing and established a national register of traditional healers in South Africa. After registration, traditional healers are able to practice legally. Hence to some extent in South Africa witchcraft practices are criminalized but in the act, didn't contain any particular legal definition to the term witchcraft.

- **The Witchcraft Act of 1925- Kenya**<sup>8</sup>

The *Witchcraft Act of 1925* makes the practices related to witchcraft offences, to claim knowledge of witchcraft, pretend to practice witchcraft, to possess charms related to the practice of witchcraft. The legislation has been carried over from the colonial era and was enacted by an administration that did not believe in the existence of witchcraft. Kenya does not regulate traditional healers or recognise them as legitimate medical practitioners. The Witchcraft Act is rarely used. None of the six cases that involved witchcraft related killings between 1983 and 2010 were brought under the Witchcraft Act, but under murder and manslaughter charges.

- **Canada- Section 365 Canadian Criminal Code**<sup>9</sup>

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<sup>7</sup> Kors, Alan Charles, Peters, Edward (2001). *Witchcraft in Europe, 400-1700: a documentary history*, University of Pennsylvania Press. p. 17.

<sup>8</sup>Helpage International Foundation, *Using the law to tackle accusations of witchcraft: Help Age International's position*, Published by HelpAge International, p.18.

<sup>9</sup> <http://laws-lois.justice.gc.ca/eng/acts/c-46/fulltext.html>.



According to the Section 365 Canadian Criminal Code, anyone who fraudulently pretends to exercise or to use any kind of witchcraft, sorcery, enchantment or conjuration; or undertakes, for a consideration, to tell fortunes; or pretends from his skill in or knowledge of an occult or crafty science to discover where or in what manner anything that is supposed to have been stolen or lost may be found, is guilty of an offence punishable on summary conviction.

### **CONSTITUTIONAL ASPECT**

Constitutionally talking about the belief and act of witchcraft, the practice is against the very nature of right to liberty under *article 21*<sup>10</sup> of Constitution which is considered to be inalienable right to an individual and right which is to be safeguarded by state in any condition whatsoever. As life is given by god, he has the exclusive right to take it, hence nobody else shall take life of other. Article 21 assures the right to live with human dignity, free from exploitation. In the practice of witchcraft usually the women are been exploited for meeting the sexual desires and if they do not comply they are termed as witches, and are treated accordingly by the society, which hampers the dignity of the individual.

*Article 51-A (h)*<sup>11</sup> which talks about duty of citizen to develop scientific temper, and the practice of witchcraft is exact opposite of the same. In the 21<sup>st</sup> Century, where the world is heading towards modernization, and rationale and humanitarianism is considered to be the two driving forces of modernization, the idea and practicing of witches and witchcraft seems to be a abstract and vague debate. It is true that the spirit of inquiry and inculcation of a scientific temperament are essential for human development and is a sine qua non for progress and for social change and Article 51-A (h) of the Constitution clearly recognizes this principle. Hence witchcraft should be criminalized.

*Article 15(3)*<sup>12</sup> of the Constitution which empowers state to make special provision for the women and children. The state has already enacted various laws related to the protection of women like of section 498A in the IPC, Child Marriage Prevention Act, the Dowry Prohibition

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<sup>10</sup> Article 21 in The Constitution of India 1949, Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law.

<sup>11</sup> Article 51 A (h) of The Constitution of India, 1949, Fundamental duties It shall be the duty of every citizen of India-to develop the scientific temper, humanism and the spirit of inquiry and reform.

<sup>12</sup> Article 15 (3) of The Constitution of India, 1949, Nothing in this article (15) shall prevent the State from making any special provision for women and children.

Act, Protection of Women from Domestic Violence Act, 2005 etc. But in certain areas women are accused of performing witchcraft and unnecessarily being harassed in the name of witch hunting. Hence some of the states where the practice of witchcraft is prevalent had enacted laws to curb these practices, e.g. - The Prevention of Witch (DAAIN) Practices Act, 2001, Jharkhand, etc.

### **SOCIO-ECONOMIC ASPECT**

The main cause of violence in the cases of witchcraft lies deep-rooted in the problem of lack of education, gender and age-related issues, environmental disasters and socio-economic deprivations.

Due to the problems cited above, the main reasons which can be laid down is lack of education as people in these backward areas fails to understand the scientific reasoning behind any happenings either related to natural occurrences or spread of diseases. They live their lives in isolation and are rigid about their cultural practices and beliefs.

“Witchcraft is used as a way to explain why some misfortune happens to someone, that is, witchcraft provides the rationale as to why something happened and not the explanation of how it happened. For example, people might know that malaria was the cause of a child’s death but the use of witchcraft is the reason why that particular child and not her neighbor, for example, got malaria and died.”<sup>13</sup>

Witchcraft accusations are often made in conformity with the large group and this is the biggest challenge faced by the law makers as it becomes difficult to obtain evidences as there exists social cohesion. This is the reason that anybody found deviating from local norms are accused of witchcraft. All these conformities have somewhat lead to anti-social culture.

Many of the times, these accusations are made for personal gains as for inheritance of property, out of jealousy and sometimes out of animosity. Even local politics has a role to play in it.

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<sup>13</sup> Help Age International Foundation, Using the law to tackle accusations of witchcraft: HelpAge International’s position, Published by HelpAge International, p.11.



People in these areas are economically backward and doesn't recourse to any medical services in times of epidemics and that is why they are not able to find the logical reasons of the happenings and continues to be guided by their superstitions.

### **JUDICIAL OBSERVATION**

This part would be dealing with the current position along with the analysis and would deal with the space for reforms in this field.

Any law is just a means; its purpose is not achieved till the justice as an end is not obscured. Until and unless the person craving for justice receives it, the objective of the law is not fulfilled. Witchcraft is completely a superficial concept, have not proved its existence have caused injustice to many individuals. Still there is no evidence of legislation at national level that criminalize the practice of witchcraft or accusations of witchcraft.

#### **Fig 1<sup>14</sup> - Table on Witchcraft Murders in India**

There are legislations in various states of India including Jharkhand, Bihar, Orissa, Maharashtra, and Rajasthan. It is interesting to note that the state having a high number of practice of witchcraft still does not have legislation on witchcraft which includes states like Andhra Pradesh, Madhya Pradesh. Which stands third and fifth respectively in these killings. Still the courts of these states combat violence related to witchcraft by IPC under murder,

<b>'WITCHCRAFT' MURDERS IN INDIA</b>							
	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>TOTAL(Avg)</b>
<b>All India</b>	<b>175</b>	<b>174</b>	<b>178</b>	<b>239</b>	<b>119</b>	<b>160</b>	
<b>Jharkhand</b>	<b>52</b>	<b>37</b>	<b>15</b>	<b>36</b>	<b>26</b>	<b>54</b>	<b>220(37)</b>
<b>Haryana</b>	<b>25</b>	<b>30</b>	<b>57</b>	<b>5</b>	<b>0</b>	<b>0</b>	<b>117(19)</b>
<b>Chhattisgarh</b>	<b>15</b>	<b>6</b>	<b>8</b>	<b>17</b>	<b>8</b>	<b>7</b>	<b>61(10)</b>
<b>Madhya Pradesh</b>	<b>17</b>	<b>23</b>	<b>18</b>	<b>15</b>	<b>10</b>	<b>11</b>	<b>94(15)</b>
<b>Odisha</b>	<b>23</b>	<b>28</b>	<b>31</b>	<b>39</b>	<b>32</b>	<b>24</b>	<b>177(29)</b>
<b>Andhra</b>	<b>23</b>	<b>27</b>	<b>26</b>	<b>28</b>	<b>24</b>	<b>15</b>	<b>143(24)</b>
<b>Rajasthan</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>4(0.6)</b>

<sup>14</sup> National Crime Records Bureau, Govt. of India.

grievous hurt, theft, etc. therefore there a need for central legislation for prevention of the practice of witch-hunting.

There are many limitations to that of the legislation in India over witchcraft as-

- The legislation in Jharkhand only covers women, even though there are cases in which men are also accused of witchcraft. Hence there is a need to include men in the provision so as to provide complete justice to each and every individual irrespective of the sex or gender.
- Witch hunting, is a crime which is considered as socially manifested hence out of either fear or acceptance of the practice people remain silent, which becomes huddle in collecting evidences. As observe in the case of *Tula Devi & Ors. v. State of Jharkhand*<sup>15</sup>, the court dismissed the case on the basis that the victim has failed to prove that the accused her of being witch and harmed her and there was lack of eyewitness. Hence there should be leniency on the part of victim.
- Another reason behind lack of evidence is delay in reporting 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*<sup>16</sup>.
- Inconsistency with the punishment or penalties under Indian Penal Code and the Prevention of Witch (Daiin) Practices Act in Jharkhand. IPC prescribes 1 year punishment for voluntarily causing harm<sup>17</sup>, whereas the other one prescribes 6-month imprisonment for torture of individual accused of Witchcraft. Therefore, there should be a consistency of the national laws with local laws.

## **CONCLUSION**

“Witch-hunting is essentially a legacy of violence against women in our society.”<sup>18</sup> Still this is not the true picture for the very reason that witch-hunting though majorly targets women but never fails to bring into any individual who is found deviating from the social norm be it

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<sup>15</sup> W.P.(C) No.7504 of 2011.

<sup>16</sup> 2003 (3) JCR 156.

<sup>17</sup> Section 323, Indian Penal Code, 1860.

<sup>18</sup> <https://www.washingtonpost.com/>.

men or children. Women are found to be the targets in many cases, as there are many reasons for which they can be blamed either for the death of their husband, refusal for sexual course and many such reasons.

This is why, many scholars have said that Superstitions as that of witchcraft are only an excuse to hide the true motive behind the killings. Even superstitions are birth of our religion, as religion is completely a superficial concept wherein it talks about good or evil but at the same time fails to prove them. This is for the reason that such theories of good or evil are left on the conscience of the people and they follow what suits them. This is what has given them rights to tag a person as a saint or as a witch. Somewhere in the name of religion they realize that it is their duty to curb the evil. In this realization, they forget that there are certain limits to their action and they cannot do what according to them is right completely negating the rights of the other person and inviting for themselves criminal liability.

The reason behind the continuance of the practice of witchcraft in India lies deep in the fact that there is lack of national legislation. Even though there are state acts but they implementation as there is lack of evidence and issues reported are less. So, in order to curb these issues sensitization became a very important issue for both the police and the citizens.

According to us, the most appropriate step that can be taken in order to prevent accusation of witchcraft is first through non-legal and community based intervention where people first need to be informed that if they continue to do such activities they will be penalized under stringent laws and the people must then be made assured that in case they report any such happening against them or their relative's proper protection will be given wherein restoration needs to be assured.

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