

WITCH HUNTING: THE CONFLICT BETWEEN TRADITIONAL LAWS AND STATE LAWS AND IMPACT ON WOMEN EMPOWERMENT

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Abstract

Witch hunting cases cause severe human rights violation including torture and deaths of the victims. Such cases are on the rise in the country despite several human rights movement and protective laws being enacted. The victims include mostly women. Witch hunting are backed by social/traditional beliefs which in many cases override state laws. The state laws are either not implemented properly or lacks the required sanction. This study is an attempt to enquire into the conflict between traditional laws and state laws, the legal aspect of superstitious beliefs of the people which override the human rights principles leading to severe violation of this rights. The study is doctrinal conducted mainly through the perusal of secondary data. Secondary data's are collected from the sources available in the various libraries. The help of large world of internet is also taken.

Keywords: *Women, witch hunting, state laws, customary laws, crimes.*

Introduction

“The *xatras* have tried their best but it is not always possible to wean people away from their traditional beliefs,” utters Leelakanta Mahanta, the president of Asom Satra Mahasabha in connection with witch hunting cases in Majuli¹. Sixteen of the twenty-nine districts of Assam reports of Witch hunting in which over 150 people have died since 2002.² Debojani Bora, a renowned athlete was accused as a witch on 15th October 2014 in Dokmoka village of Karbi Anglong district. She was tied up in a fishing net, produced before a village Namghar and beaten mercilessly until her family members rescued her in unconscious state and admitted her to the hospital. Between 2006 and 2012, 105 witch hunting cases were revealed by the government of Assam. Witch hunting is a traditional practice widely prevalent in India today. Witch or *Daain* (Indian equivalent of the word) is the execution of a person accused of the cause of some misfortune in the locality. Usually the victim is the neighbor of the sick or deceased or destroyed crop field, or owner of property or victim of sexual grudge. Once the suspect is confirmed by the *ojha*, the victim is severely criticized, defamed and even tortured to death. Most of the cases reveal a gender based violence where women have been made the victims although children's and males are also victimized sometimes. According to the *Times of India*, a National Crime Records Bureau report revealed that more than 1,700 women were murdered for witchcraft between 1991 and 2010. The National Crime Record Bureau says that 2097 murders were committed between 2000 and 2012

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¹ http://www.csicop.org/si/show/modern_witch_hunting_and_superstitiousmurder_in_india accessed on 12th July 2015

where witch hunting was the motive. At least 12 states from the country reports of witch hunting —Haryana, Chhattisgarh, Orissa, West Bengal, Madhya Pradesh, Rajasthan, Andhra Pradesh, Gujarat, Maharashtra, Assam, Bihar, and Jharkand. Witch hunting generally takes place in the rural areas where access to education, employment and medical care is very scarce. Such areas are governed by traditional beliefs with superstition gaining momentum over reality. These are places where the impact of urbanization is a distant cry. Urbanites are characterized by rationalization and life is regulated by state actors like police, law courts etc. “Modern society is rational and scientific.”²Rural areas suffer from such characteristics and life in villages is, regulated by traditional norms more than state legislations. A study by the Partners for Law in Development has analyzed 59 Supreme Court and High Court judgments pertaining to witch hunt practiced in 10 states of India and it was found that in 21 cases women and their alleged witch craft were held responsible for death in the family. In 9 cases serious illness in the family or neighborhood was attributed to them. Four cases revealed that they were blamed for death of cattles.³The root cause of witch hunting is prevalence of the concept of gender inequality in the rural corners of the country. Witch hunting is a “gender crime.”⁴Existing social and cultural values and beliefs which reinforce women’s subordination have remained unchanged.⁵Studies have revealed that witch hunting is not linked to customary practices alone, sometimes they are found to be linked with material conflicts which ripen with deaths or destruction of crops in the locality leading to accusation of the opposition as “witch”. Gita Rani Bhattacharya, state programme director of Mahila Samakhya Society in Assam states “Witch-hunts aren't just about traditional superstitious belief. It is inextricably tied to conspiracies and village politics.”⁶Shasank Sinha who is authoring a book on witch hunting in India writes that witch hunting in India has changed a lot over time. “Earlier the prevalent idea was that a woman who was a witch was born as a witch. As in, it was hereditary as opposed to an acquired art. So the woman was killed directly and her family annihilated. Later, the perception changed and it was thought of as a craft that needs training. Now the idea has dispersed and it can refer to anything,” says Sinha, publishing director at Routledge South Asia⁷.

²http://www.csicop.org/si/show/modern_witch_hunting_and_superstitious_murder_in_india accessed on 12th July 2015.

³ Witch hunts rampant despite laws: Study by Kim Arora, 2nd Dec, 2013, see also <http://timesofindia.indiatimes.com/india/Witch-hunts-rampant-despite-laws-Study/articleshow/26714979.cms>

⁴ R Kumar, S. Ram, *Status of Women in North East India*, Arpan Publications, First Publication, 2013, p.219

⁵ Supra note.5

⁶ Supra note 7.

⁷ Dr. S.R.Myneni, *Jurisprudence*, Asia Law House, 2nd ed. Reprint, 2015, p.140

Education and primary health centers should be made prevalent in the remote corners of the country where *ojha's* are the sole source of health cures. Given the wide prevalence of this practice it is pertinent to state that the state has failed in its duty to take measures in securing the human rights guaranteed to the victims under the Constitution. "Although equal rights are guaranteed to both men and women, family structure, social and cultural norms and the values assigned to subservient role ultimately determine how and whether women in fact are able to exercise these rights".⁸

Customary laws and state laws: the dichotomy

Prior to the emergence of states and state laws, society was governed by customs. Customs were the only source of law. But with the passage of time legislation and judicial precedents became the main sources of law. Customs are modified or abrogated as per requirement of the society. Custom when handed down from generation to generation becomes a tradition. Customary laws are always subordinate to statutes and regulations. Custom is to society what law is to state.⁹ Customs may be divided into legal and conventional. Legal customs are those which function as a binding rule of law. They also receive the recognition of the courts. Legal customs may be again divided into two: general and local. General customs prevail throughout the country, while local customs apply to a defined locality only. For a custom to be recognized as law it must be ancient, continuous, peaceful, reasonable and conform to statute law. Witch hunting is a traditional practice prevalent among many ancient societies. In the pre-Christian era, person who would cast a malevolent spell on crops would be persecuted as witches. Among those persecuted, most were women. The ancient codes such as the Code of Hammurabi (18th century) mentioning about the infliction of punishment on malevolent sorcery reveals the practice of witchcraft prevalent in societies at that time. The 18th century Code of Hammurabi states that¹⁰:

"If a man has put a spell upon another man and it is not yet justified, he upon whom the spell is laid shall go to the holy river; into the holy river shall he plunge. If the holy river overcome him and he is drowned, the man who put the spell upon him shall take possession of his house. If the holy river declares him innocent and he remains unharmed the man who laid the spell shall be put to death. He that plunged into the river shall take possession of the house of him who laid the spell upon him."

⁸<http://www.livemint.com/Politics/Nnluhl4wjhiAAUklQwDtOL/Witch-hunting--Victims-of-superstition.html>.....accessed on 12th July 2015

⁹ . Dr. B.N.Mani Tripathi, Jurisprudence: Legal theory, Allahabad Law Agency, Reprint, 2003

¹⁰ . Nandita Dutta, Sumitra Jha, Women Empowerment and Globalization; Pacific Books International, First Publication, 2014, p.170.

Practice on the ground of mass crop destruction have been reported. Religious scriptures forbid the practice of witch craft. For example, Hebrew Bible condemned sorcery¹¹. Religious scriptures forbid customs contrary to values. For eg, the Mahabharata states, “The right path is that which has been followed by virtuous men”.¹²of witch craft finds mention in the early pagan Roman law also where execution of persons leveled as witches Under Mohammedan Law, those customs which are not expressly disapproved by the Prophet are good source of law.

Hence, witch hunting is an ancient practice. But it is not a peaceful practice. To become law, a custom must be free from dispute. It must indicate the general consent of the people. But witch hunting has been facing opposition from many quarters since long time. Many states in India have enacted their own laws to curb this menace. The Prevention of Witch Hunting (Daain) Practices Act, 1999, of Bihar, “Anti Witchcraft Act, 2001” of Jharkand, Women(Prevention and Protection from Atrocities) Bill 2006, of Rajasthan and The Prevention and Protection from Witch Hunting Bill, 2015 of Assam. These laws primarily aims at preventing witch hunting. These laws punishes for inadvertently aiding, conspiring, abetting or instigating the identification of a woman as a witch leading to her physical and mental torture. These laws aims to prevent any harm to a woman caused in an attempt to cure her in the customary manner, by making such acts punishable. The government of Assam has awoken to the menace and decided to prevent its perpetration further through law. The Act published by the government of Assam to curb the menace of witch hunting is The Prevention and Protection from Witch Hunting Bill, 2015. The Bill proposes stringent measures for the offence of witch hunting. The Bill has been found to be stricter than laws of other states. The Bill proposes to make the offence of witch hunting cognizable, non-bail able and non-compoundable. It proposes to punish the offender of witch hunting with imprisonment extending to life imprisonment in extreme cases leading to the death of the victim. The Bill also makes provision for community fine. If any group of people is found to be involved in the case, the Bill seeks to impose fine on the group extending from Rs. 5000 to 30000. However, the Bill is yet to receive the assent of the President. The active role of police, judiciary and NGO’s is sought as a necessary means to implement the provisions of the Bill. Hence, the practice of witch hunting cannot be taken as peaceful practice.

The culprits are dealt with under various sections of the Indian Penal Code in states where a law to this effect has yet not been enacted. As for national laws, the Indian Penal Code under section 323 penalizes a person with imprisonment up to one year and fine of Rs 1000 for “causing grievous hurt”. “Grievous hurt” includes imputation of limb of a person and an accused of witch hunting can also be

¹¹ . B.K.Nagla, Indian Sociological Thought, Rawat Publications, Reprint, 2012.p.194

¹²Supra note 9

penalized under this section. Most of the accused in witch-hunting cases are prosecuted under this section. Under section 302, a person is penalized with death or life imprisonment and fine for causing murder. Under section 354 a person is penalized with imprisonment up to 2 years and fine for assaulting or using criminal force against a woman with an intention to outrage her modesty. Under section 382, a sentence of ten years is imposed on the accused for committing theft, making preparation for causing death or hurt or restrain or in order to retaining the property so obtained by such theft. Under section 340 a person is punished with simple imprisonment or fine of Rs 500 or with both for wrongfully confining a person. Under sec 359-369, a person is penalized with imprisonment and fine of various descriptions for kidnapping or abducting any person. Under section 375-76 a person is punished with rigorous imprisonment of either description for a term which may extend to seven years and may extend to life and also includes fine for committing the offence of rape. Under section 499-501 a person may be punished with simple imprisonment up to 2 years or with fine or both for defaming a person. Section 34 for “common intention” is also thrust. Under section 448, punishment for house trespass is also imposed. Judiciary is playing a crucial role in curbing the menace by giving exemplary sentences. However, the problem persists as the accused enjoys community support and also most of the cases go unreported. All the stake holders like police, Ngo’s and local people must join hands against this menace.

In International Law, customary laws are considered as those laws which have developed through exchanges between nations over time. There are some principles of customary laws which have gained the force of peremptory norms from universal acceptance and cannot be derogated by nation states at their will. For eg. The practice against slavery. Witch craft is a widespread practice prevalent among many societies separated by geographical boundaries and cultural traits. It is a social evil. “Social evil are a byproduct of a patriarchal mindset that believed in the subordination of women...”¹³ Customs come into existence out of necessity and continues as such. The practice of witch hunting began as a means to get rid of further propagation of evil in the society based on superstitious belief. This belief gradually turned into accepted norm of the society. Its practice has become unavoidable in some societies where education and medical facilities did not reach. Society is dynamic. Law which governs the society must also develop with the developing society. The norm today is protection of women from all sorts of atrocities so as to maximize her potential and growth. Witch hunting prevents her development and effects her empowerment.

Conclusion and Recommendations:

The crystallization of values growing out of happenings in the past gives boost to Indian tradition. India has preserved many values, some good and some bad. The

¹³ Supra note 10

tradition gets modified with using forces which are foreign to it eg; technology, democracy, bureaucracy etc. Adjustment of these factors is essential , “ living in adjustment is, in India’s blood, so to speak”.¹⁴

Witch hunting is on the rise in the country. The practice can be curtailed by: Women must be treated equally with men in all societies. Equal treatment will minimize the cause for suspicion which is meted out to women generally as she is weaker and an easy target.

The government must take steps to eliminate illiteracy from each and every section of the society. Sarbha Shiksha Abhiyan must be made a reality in the true sense. Moral lessons on human rights violation as a result of witch hunting can be inculcated in school curricula.

The government must take steps to reach medical facilities to each and every corner of the society so as to wean out the wholly blind faith of people on Ojha’s who serve as the sole source of cure in the rural areas.

The government must make stringent laws to tackle the problem of witch hunting. The laws so enacted must be implemented effectively.

Adequate awareness about the laws must be made. Police, judiciary, NGO’S and other stakeholders must play an active role in making the menace of witch hunting a History.

References

BOOKS

B.K.Nagla, Indian Sociological Thought, Rawat Publications, Reprint, 2012.

Dr. B.N.Mani Tripathi, Jurisprudence: Legal theory, Allahabad Law Agency , Reprint, 2003.

Dr. S.R.Myneni, Jurisprudence ,Asia Law House, 2nd ed. Reprint, 2015.

Nandita Dutta, Sumitra Jha, Women Empowerment and Globalization; Pacific Books International, First Publication, 2014

R Kumar ,S. Ram, Status of Women in North East India, First Publication, 2013.

Internet sources

<http://www.lawschool.cornell.edu/Clinical-Programs/international-human-rights/upload/-1-Witch-Hunt-Brief-2.pdf>, accessed on 10th July, 2015.

<http://www.indiatimes.com/news/india/witch-hunting-on-the-rise-across-several-indian-states-231133.html...> accessed on 12th July 2015.

http://www.telegraphindia.com/1141017/jsp/northeast/story_18935195.jsp#.VatdJiYVjMw... accessed on 12th July, 2015.

http://www.csicop.org/si/show/modern_witch_hunting_and_superstitious_murder_in_india accessed on 14th July 2015.

¹⁴ Supra note 13

The Legal Frontier: Research Journal of USLR, USTM

Witch hunts rampant despite laws: Study by Kim Arora, 2nd Dec, 2013, see also <http://timesofindia.indiatimes.com/india/Witch-hunts-rampant-despite-laws-Study/articleshow/26714979.cms.....> accessed on 10th July, 2015.

<http://www.livemint.com/Politics/Nnluh14wjhiAAUkIQwDtOL/Witch-hunting--Victims-of-superstition.html.....> accessed on 12th July 2015.

<https://en.wikipedia.org/wiki/Witch-hunt....> accessed on 10th July, 2015.