

THE POWERLESS ‘WITCHES’ OF JHARKHAND: QUESTIONING THE FAULTLINES IN LEGISLATIVE SAFEGUARDS

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ABSTRACT:

The grave violation of human rights of women is of serious concern. Of the several human rights violations, the witch hunt violence against women ranges from less serious violence of stripping, parading naked, branding to more serious physical manifestations in the form of mob lynching, gang rape, cutting off body parts and even murder. In the absence of a Center specific law to punish witch-hunts, some states have enacted their own special anti-witch hunt laws, Jharkhand being the foremost among them. And where these laws are absent, the courts invoke other central criminal legislative provisions to tackle the violence committed in the garb of witch hunt because various facets of witch-hunt violence are not alien to other forms of legislature recognized violence. Despite these safeguards in place, age old practice of witch hunt violence against women continues to thrive in Jharkhand. The present research precisely analyses the contemporary situation to comprehend nihilities in legislative safeguards in protecting the powerless ‘witches’ of Jharkhand.

Keywords: human rights, manifestations, anti-witch hunt law, legislative safeguards, Jharkhand.

INTRODUCTION:

Witch hunt existed in ancient India even in the 15th century but the documentation exists only from colonial era. The gender specific targeting existed even in this time period within the tribal communities, however, this was a result of a random or unexpected attack, either as a result of bad events or as a result of any deformity. Unlike the European witch hunts, which saw a direct link between the psyche and female subjugation, the Dakans in the Adivasi group considered such labelling as a gift of authority to help them overcome their marginal status. The dakans' fear and respect instilled in these ladies a sense of having a high social position.

HISTORICAL GENESIS:

The witch hunt craze in Chotanagpur region (among the tribals) of Jharkhand was the first documented witch killing in India. This marked a conscious resistance contour in colonial India. Thereon, every uncertainty of human existence had witch accusation as its plausible answer. Here the scapegoat theory; insider-outsider perspective and the calculated attacks became the mouth-piece of witch hunt instrumentalization post the 1990s. Because such suspected witches are said to be in possession of bad spirits, the local community (typically made up of the relatives of these so-called "witches") performs a rite of "search" and subsequent brutal torture to prevent them from harming others. Wherever post-colonial development has seen cultural revivalism, the practise of witch hunts may be seen as the pinnacle of cultural brutality. The strong historic roots of this cultural violence in India frequently result in the death of the accused women, while the survivors are ostracised by the local society and forced to live a vile and inhumane existence. The legality of the witch hunt by ojhhas for every misfortune that befalls the community is enabled by this paradigm of socio-political, economic, and infrastructure shortcomings.

Furthermore, the myopic perspective of statutory legislations, such as the over-emphasis on "intention" establishment and physical violence requirements rather than mental trauma criteria under the IPC, misses the psychological enormity of this practise. Tonsuring, social ostracization, face painting, and even branding as a witch are less physically harmful aspects of witch-hunting that induce profound psychological distress and have a life-long impact. Frequently, the post-victimization corrective actions include monetary compensation. However, such compensation will not address the underlying cause of the habit or alleviate the psychological pain.

STATE MACHINERY IN COFFERS:

Jharkhand has begun a process of gender budgeting, in which all programmes with a female component have been identified for targeted implementation or coverage. As a result, the gross budgetary allocation to women's programmes grew from INR 5908.9 crores in 2016-17 to INR 7684.5 crores in 2017-18. However, funding allocations to certain important women empowerment programmes in the state, such as the Jharkhand Women Commission and the One Stop Centre, have been significantly decreased. The State Women's Commission of Jharkhand received INR 1.8 crores in 2017-18, however there was no budget allocation for the State Women's Commission in 2018-19.

Despite the fact that Jharkhand is home to 26.2 percent of the indigenous population, the state budget stays silent on particular Adivasi women provisions. The formation of Self-Help Groups is the sole particular method that Tribal sub plan allocation employs to address VAW. Health, literacy, and infrastructure deficiencies are compounded by the transfer of tribal subplan funding to other purposes, such as the drafting of the Greater Ranchi Master Plan, which ironically disrupts tribal territory. Even the establishment and operation of the State Commission on Women are in their infancy.

Even if national statutory instruments try to implement these rights through a variety of enactments, development-induced displacement imposes an excessive price on tribals' indigeneity, and Jharkhand has had the highest rate of land alienation in independent India. Displacement initiatives cause mental anguish, physical exploitation, food insecurity, and health difficulties for women. Women from the Adivasi community, in particular, have been easy targets for neoliberal objectives and "bureaucratic governmentality," which has reduced their existence to social exclusion and harsh marginalisation.

Sadly, 984 people died in Adivasi-dominated villages across 19 Jharkhand districts in the previous decade. Surprisingly, in the majority of cases, the profile of such female victims/survivors is relatively similar. Such attacks are usually carried out by relatives on widows or women who do not have a male caregiver. The evil is divined is determined by health and infrastructure deficiencies, limited transit options, and political power struggles in mineral-rich tribal nations. Women's property rights also play important role; for example, Santhal is the only Adivasi tribe that recognises a widow's property rights, yet women are only pursued as witches in this group.

OVERVIEW OF THE 2001 ACT:

The Prevention of Witch (DAAIN) Practices Act, 2001 (the 2001 Act) Jharkhand, provides for "effective measures to prevent witch practises and the identification of women as witches, as well as their oppression, which is mostly prevalent in tribal areas and elsewhere in the state of Jharkhand, and to eliminate women's torture, humiliation, and killing by society, and for any other matter connected with or incidental thereto". However, the penalties for: witch-identification (S.3), abetment in such identification (S.5), physical or mental torture as a result of such identification (S.4), and torturing in the name of cure (S.6), range from a thousand to two thousand rupees in fines and three months to one year in prison, depending on the severity of the crime. Despite the fact that the act's offences are "cognizable and non-bailable," (S.7) the state government has the option to create guidelines for the act's successful execution (S.8). Stripping nude, gang-rape, cutting off the tongue, head shaving, blackening of face, cutting off nose, taking out teeth, forcing to consume human excreta, and even flogging to death are just some of the terrible crimes that take place in front of the entire community. As a result, the speed and barbarism perpetrated in the name of witch-hunting make a complete mockery of the official regulations in force.

Grey Areas in the 2001 Act and its implementation: The Act does not punish witch-labelling or witch branding , rather it punishes witch identification and the subsequent torture of women post such identification. There is a need for recognising witch-branding as a part of witch-hunt atrocity and granting protection to the likely/probable victims of such hunt. Although the act punishes 'identifier'(S.3) of 'witch' , it does not define these terms. The determination of liability and quantum of punishment requires clear cut definition of 'witch', 'Identifier', 'witch-hunt', 'witch-craft' and 'witch-doctor' (by whatever name they may be connoted). In the absence of this definition, it is left for interpretation to determine the victim and the perpetrator.

No consideration of economic deprivations (primarily, harm to property) of the woman subjected to witch-hunt: The act punishes physical or mental torture in the name of witch hunt, however the economic deprivations behind this torture or consequent to the torture are not incorporated in the act. Witches are seen as easy scapegoats for politics-induced development, in minerals rich state of Jharkhand, where the tribal loose their land without benefitting. Rather, they end up 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 alone. Women have residence rights over the property, especially unmarried widow gets right to have access to and sow her land. This becomes direct reason of spreading rumours and tormenting the woman as a “witch”, by the greedy relatives. Therefore, economic deprivations become pivotal while discussing the factors behind witch hunt.

Inadequate punishment for various witch hunt atrocities and no elucidation of different kinds of torture: The punishment for: witch-identification(S.3), abetment in such identification(S.5), physical or mental torture in consequence to such identification (S.4), torturing in the name of cure(S.6), entail fines ranging from 1000 to Rs. 2000 and a mere imprisonment of three months to one year, depending on the severity of crime. As discussed above, the abhorrent acts of violence committed in the name of witch-hunt are so grave that these punishments seem to be a mere mockery. Further, offering same punishment irrespective of the intensity or the nature of physical and mental torture results in injustice. Further, there is no mention of compensation for the victim, no mention of social awareness programmes by the State, absence of resettlement and rehabilitation programme by the State Government. Thus, even though Jharkhand was one of the initial states to heral a state specific ant witch hunt legislation, the 2001 Act itself, in the absence of any amendments reeks of major inadequacies.

Further, the sophisticated process of male supremacy drives women to terrible enslavement, such as rape, genital mutilation, honour killing, and domestic abuse, among other things. According to NCRB records, the year 2019 had the largest number of crimes against the human body in terms of both statistics and occurrences (27%). In 2019, 4,05,861 incidents of crimes against women were reported, up from 3,78,236 cases in 2018 (a 7.3 percent rise). The most common offence against women under the IPC was 'cruelty by spouse or his relative,' which accounted for 30.9 percent of all instances, followed by 'Assault on women with Intent to Outrage her Modesty,' (21.8 percent), 'Kidnapping and Abduction,' (17.9%), and 'Rape,' which accounted for 17.9%. (7.9 percent). In 2019, the crime rate per lakh female population was 62.4, compared to 58.8 in 2018. The number of atrocities against Scheduled Tribes increased by 26.5 percent in 2018, with 'simple harm' cases accounting for the most (20.3%), followed by 'Rape' (13.4%), and 'attack on women with the goal to outrage her modesty' (13.4%). (10.7 percent). The total increase in crimes against women (including those committed by Scheduled tribes) indicates that either the number of offences has increased or that more women are reporting the crime. It shows flaws in the legislation or its application in either case.

The only available data on witch-hunt violence under NCRB relates to witch-craft motivated murders. As per the NCRB reports, the witch-craft motivated murders were at 27 in 2016, 19 in 2017, 18 in 2018 and at 15 (2019 and in 2020) . However, the numbers could be deceiving- firstly, these numbers are high as compared to other states (for instance, Jharkhand was ranked third in witch-hunting cases, while Madhya Pradesh topped with 17 cases in 2020) , secondly, witch-killing is only one aspect of witch-hunt (public humiliation/ ostracization post physical harassment of various intensities often go unnoticed), and thirdly, various cases go unreported or under-reported .Even, the monthly crime statement on Jharkhand Police website records witch death only within the ambit of cognizable offences- the records for January, 2021 to December 2021 record 18 total deaths. while the 2001 Act makes all the offences (including, torture and identification, cognizable). The 2001 Act makes all the offences (including, torture and identification), cognizable and non bailable but both NCRB and Jharkhand monthly police statements records only witchcraft motivated murders.

DEMYSTIFYING THE SILVER LININGS:

The stringent provisions in other state specific legislations could provide a guiding light for bringing about the requisite socio-legal reforms: for instance, the stricter penal provisions of Rajasthan Prevention of Witch-Hunting Act, 2015 (imprisonment ranged from one to seven years depending barbarity committed, and in the extreme cases of consequent “unnatural death” of the victim, the perpetrator is awarded life imprisonment), could be looked upon. Further, the provision of “relief and rehabilitation” (within Assam anti-witch hunt legislation as well) and the spirit of scientific temper imbibed in Karnataka Prevention and Eradication of Inhuman Evil Practices and Black Magic Act, 2017, could prove of great significance from the socio-legal reform angle. Thus, more recent legislations provide stringent punishments in terms in lines of IPC and clearer operational definitions. The aspects of victim compensation , resettlement and rehabilitation (including creation of a rehabilitation fund under the act), social awareness programme- a multi-layered, integrative approach focusing on these aspects is the need of the hour.

The modern witch-hunt has expanded beyond the realms of occult activity to include targeted persecution for a variety of causes. The borders of witch hunt violence are not well defined, and public denigration is not restricted to this violence; it resonates with honour killings, inter-community conflict dynamics, and so on. Despite the broad scope of the IPC, less physically-harmful but more mentally and psychologically harmful violence such as face blackening, naked parades, and tonsuring of the head deserve closer examination in terms of intent and overall consequences, rather than being dismissed as hurt simpliciter. Social exclusion and life-long stigma are not to be taken lightly. Overemphasis on special law not only raises the bar for showing "intention" behind the violence as being motivated by witchcraft, but it also puts at risk the possibility of redressing atrocities committed for other reasons.

The historical background of superstition in India has extended beyond caste dynamics to include socio-economic and sexual issues. With proper awareness for related types of violence, this modern practise deserves specific acknowledgement under the current legal

system. The need of the hour is for a three-pronged approach of institutional protections, police sensitization, and grass-roots knowledge of the crime, as well as effective evaluation of policy execution. Only the three Rs of relocation, restitution, and rehabilitation can save the reparative system from becoming meaningless. In certain cases, displacement is unavoidable; nevertheless, local governments, all women's organisations, and non-governmental organisations (NGOs) should be required to work for successful relocation while keeping the victim's or survivor's socio-demographic profile in mind. Questioning the normative assumptions that lead to particular legislation being framed as appropriate rectification of the issue, while disregarding the structural commonality of social, infrastructural, economic, and financial deficits in which this barbarism thrives, is also vital. To guarantee successful application of currently existing legislation, this structural association must be closely examined. Without a structural transformation, propagating reason through awareness programmers will not be possible in the long run. As a result, only a good policy framework that addresses education, transportation, and health care, as well as structural scarcities, can secure the long-awaited reparative justice.

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