

# INJUSTICE ON WOMEN UNDER THE GARB OF WITCH HUNTING IN CHHATTISGARH (INDIA)

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## Abstract

Witch-Hunting is heinous offence committed against woman. Witch is term used for woman who is believed to have magical powers. In belief that she will harm people she is stoned to death, raped, harmed in every possible manner. This is known as witch-hunting. When we come to India Chhattisgarh has highest number of cases (545 per year). Hon'ble HC has shown concern about inadequacy of state legislation in Chhattisgarh. There is need to reframe legislation having lacunas like absence of rehabilitation provision, meagre punishment etc. Thus, this research article aims to analyze legal framework in Chhattisgarh and provide legal solution to curb menace.

**Keywords:** Chhattisgarh, Legislation, Provisions, Witch Hunting, Women

## 1. INTRODUCTION

Witch Hunting is an act committed globally including India mostly against women. The term witch is used for women having believed to do some magic to control calamities let it be flood, disease etc which causes death of livestock. Under superstitious belief that these women may prove to be threat to society they are being murdered, raped, stoned, nude paraded, their face is blackened etc. This gender violence is known as Witch Hunting. According to provisions "*witch-hunting*" means any act identifying, accusing a woman to be witch and harassing, harming or injuring such woman<sup>1</sup>. According to NCRB reports of 2017<sup>2</sup>, 2018<sup>3</sup> and 2019<sup>4</sup> cases of witch craft are being reported in 12 major states of India including Chattisgarh. Witch hunting cases are reported in some tribal areas (Lachkhera, Raipur, Balrampur, Bilaspur, Gariyaband, Janjgir, Champa, Rajgarh and Rajnandgaon) in Chattisgarh. 1500 cases of witchcraft violence were reported in the last 14 years in Chhattisgarh. 1500 cases of witchcraft violence were reported in the last 14 years in Chhattisgarh. 90 percent of the victims were either widows, or women separated from husbands, or women with no children; and 250 of them have been killed.<sup>5</sup> The offences were treated under IPC till 2005. However, due to failure of provisions to curb the offence The Chhattisgarh Tonahi Pratadna Nivaran Act, 2005 was enacted. However, this Act has also proved to be inadequate to punish the offenders and handle the situation. As stated earlier 1500 cases are being reported in last 14 years and many of them go unreported due to various reasons. This fact itself proves the failure of the Act. In fact according to NCRB reports Chhattisgarh is the highest state in number of witch hunting cases amongst state having legislation on witch hunting. This is because of the lacunas in present legal framework. May it be the evidence part neglected, may it be the quantum of punishment, may it be the absence of rehabilitation provision etc. The research in the present paper aims to analyse The Chhattisgarh Tonahi Pratadna Nivaran Act, 2005 and provide a legal solution to curb the existing issue as she believes that the

persisting problem of witch hunting is directly related to the legal framework in Chhattisgarh.

## 2. WITCH HUNTING – THE CONCEPT

The term witch is used for women having believed to do some magic to control calamities let it be flood, disease etc which causes death of livestock. Under superstitious belief that these women may prove to be threat to society they are being murdered, raped, stoned, nude paraded, their face is blackened etc<sup>6</sup>. This gender violence is known as Witch Hunting. According to provisions witch means person indicated by any person or persons that he will harm or possesses power to harm or thereby he intends to harm any other person or persons or society or animal or living things by black magic, evil eye or by any other means, whether known as Dayan, Tonaha or by any other names<sup>7</sup>.

This concept has its origin in Europe in ancient period wherein out of superstitious belief people used to kill the person after branding him as witch. This heinous act than started to spread its roots in other countries including India. Various states in India got affected and this superstitious belief led to death of various initially women and now men as well. Various incidences are being reported committing this offence against men in various parts of India. Initially superstitious belief was the cause of Witch Hunting but with developing society the causes of witch hunting has changed. Now according to cases reported by the logical Indian in an article published on 27 Dec 2015<sup>8</sup> a woman is branded as and is murdered and the accused grabs the property of widow.

## 3. OBJECTIVES

- 1) To understand origin of extend of witch-hunting IN Chhattisgarh.
- 2) To understand existing legal framework in Chattisgarh dealing with Witch Hunting.
- 3) To come up with a law solution curbing existing unjust and inconsistent provisions in Legal Framework in Chhattisgarh.

## 4. RESEARCH METHOD

Researcher has chosen Doctrinal method. Doctrinal method will be used for studying legal framework. This research will be analytical, explanatory and comparative in nature. Primary material would include Acts, declarations, judgements etc and secondary material would include books, articles, newspapers etc.

## 5. LITERATURE REVIEW AND GAPS IN THE FIELD OF RESEARCH

Catena of literature was studied by researcher for understanding research done on witch hunting. Amongst them few are mentioned below. Amongst primary sources International Conventions, National and State laws, judicial pronouncements, and amongst secondary sources books, journals, magazines, research papers, newspaper clippings, youtube channels, websites were referred.

*Dr Daren Oldridge*<sup>9</sup> traces origin of witch hunting way back in sixtieth century and lays down causes and legislative measures and compares same with witch hunting in modern times.

*Gaurangi Sharma and Nitya Saxena, Bulbbu*<sup>10</sup> discusses fundamental rights violation and witch Hunting at par. While discussing so she advocates that witch hunting is grave violation of Article 14 and 21.

*Viraaj Gaur and Laabhesh Thapa*<sup>11</sup> says that Jharkhand, Rajasthan and Bihar are the most affected area in terms of Witch Hunting.

*Ratnadip Choudhury*<sup>12</sup> sheds light on cases of witch hunting in Assam in 2020 and tells how women are also being blamed for death in pandemic situation.

*Krishna S*<sup>13</sup> says that idea of postcard system can be included for giving complaint of witch hunting which is being incorporated by Jharkhand so that identity of victim will not be disclosed.

Judgments of Apex court were also referred by researcher. SC had highlighted importance of special cell for witch hunting<sup>14</sup>, conviction under IPC was upheld<sup>15</sup>, grave violation of Human Rights<sup>16</sup> and need for uniform legislation<sup>17</sup>.

Books, Articles and judgements dealt with extent, origin and Legislations of Witch Hunting. However, some of areas are not covered and some literature are of partial nature. They are not complete in nature. For eg: no one analysed the situation of witch hunting in specially Chhattisgarh, separation of punishment, provisions for rehabilitation etc.

## 6. WITCH HUNTING IN CHHATTISGARH

Chhattisgarh has highest number of cases of witch hunting amongst states having laws on witch hunting<sup>18</sup>. In Chhattisgarh, the terms dayan and tonhi are used to refer to women witches whereas the corresponding male version of these terms is baigha (PLD Report 13)<sup>19</sup>. In Chhattisgarh Korba has the highest number of recorded witch hunting cases<sup>20</sup>. Other than Korba Balrampur, Bilaspur, Gariyaband, Janjgir, Champa, Raipur, Rajgarh and Rajnandgaon districts in Chhattisgarh has also reported cases of Witch Hunting. Women are being beaten to death, raped or paraded nudely, stoned etc in Chhattisgarh<sup>21</sup>. Women in different areas of Chhattisgarh face different versions of torture.

## 7. LEGAL FRAMEWORK IN INDIA

In order to eradicate the menace of witch hunting we have various legislations in India which can be divided under following heads-

### 7.1 National Framework

- a. Constitution of India, 1950
- b. Indian Penal Code, 1860
- c. Indian Evidence Act, 1872
- d. The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954
- e. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1998
- f. The Protection of Human Rights Act, 1993
- g. The Prevention of Witch-Hunting Bill, 2016

## 7.2 State Legal Framework

- a. The Prevention of Witch (Daain) Practices Act, 1999 (Bihar)
- b. The Prevention of Witch-Hunting Practices Act, 2001 (Jharkhand)
- c. The Chattisgarh Tonahi Pratadna Nivaran Act, 2005 (Chhattisgarh)
- d. The Odisha Prevention of Witch-Hunting Act, 2013 (Odisha)
- e. The Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013 (Maharashtra)
- f. The Rajasthan Prevention of Witch-Hunting Act, 2015 (Rajasthan)
- g. The Assam Witch-Hunting (Prohibition, Prevention and Protection) Act, 2015 (Assam)
- h. The Rajasthan Women (Prevention & Protection from Atrocities) Bill, 2011 (Rajasthan)
- i. The Karnataka Prevention of Superstitious Practices Bill, 2013 (Karnataka)
- j. The Karnataka Prevention and Eradication of Evil and Inhuman Practices Bill, 2014 (Karnataka)

From the above list it is clear that we have certain national and state legal frameworks. However, after going through the national legal frameworks it is clear that there is no uniform law curbing witch hunting in India. Though a private bill was introduced in Lok Sabha in 2016 but it was not passed and it lapsed. When we come to state legal framework we come to know that these legislations of different states have various lacunas as – inadequate punishment, absence of provision of rehabilitation, stringent provisions relating to evidence, non-recognition of electronic offences etc. Thus, Hon'ble SC in various cases<sup>22</sup> has again and again reminded the central government to enact uniform law preventing witch hunting but in vain.

## 8. ANALYSIS OF LEGAL FRAMEWORK IN CHHATTISGARH

As the witch hunting cases in Chhattisgarh were rising and there was no specific law governing the issue the government of Chhattisgarh enacted Chattisgarh Tonahi Pratadna Nivaran Act in 2005. It received assent of governor on 26th September, 2005. The Act contains 16 provisions.

### 8.1 Salient features of the Act are as follows –

#### 8.1.1 Definition clause:

As in Chhattisgarh, the terms *dayan* and *tonhi* are used to refer to women witches whereas the corresponding male version of these terms is *baigha* (PLD Report 13)<sup>23</sup> hence, this Act is named as CHATTISGARH TONAHAI PRATADNA NIVARAN ACT in 2005. And it defines *tonahi* as "*Tonahi*" means person indicated by any person or persons that he will harm or possesses power to harm or thereby he intends to harm any other person or persons or society or animal or living things by black magic, evil eye or by any other means, whether known as *Dayan*, *Tonaha* or by any other names<sup>24</sup>;

### 8.1.2 Punishment clause –

The Act provides punishment to the person who identifies the other person as tonahi. The person is liable to get rigorous imprisonment upto 3 years with fine which is not mentioned<sup>25</sup>. It also provides an additional punishment of 5 years for mentally or physically harassing a person under the garb of Tonahi<sup>26</sup>. It provides a punishment of 1 year to whoever claims to have power to harm any person or animal or living things by black magic<sup>27</sup>.

### 8.1.3 Cognizable and non bailable –

The offences under the Act are made cognizable and non bailable<sup>28</sup>.

### 8.1.4 Measurement of Fine –

This Act has one additional provision for measurement of fine. The court has been given discretion for calculating fine to be imposed. Courts have to decide the amount of fine on the mental or physical damages caused<sup>29</sup>. The Act does not state any lower or upper limit in imposing fine.

## 8.2 Advantages of The Chattisgarh Tonahi Pratadna Nivaran Act, 2005

The Act has proved to be a landmark decision of the Chhattisgarh government when it comes to Witch Hunting. As prior to this law the cases of witch hunting in Chhattisgarh were dealt under IPC. This law changed the mindset of people of looking towards the cases of witch hunting. Some of the advantages of this Act are –

**8.2.1 Recognized Witch hunting as an offence:** This legislation for first time recognized witch hunting as an offence and provided separate punishment to the accused. Prior to this the witch hunting offenses were dealt under IPC which itself was not adequate to handle the cases of witch hunting.

**8.2.2 Definition:** The definition clause of the Act defines witch hunting in a very exhaustive manner. When we come to interpretation of the clause the scope of the term witch hunting becomes very wider. As it says by “black magic, evil eye or by any other means” it covers all similar other means in which a person can be harmed.

**8.2.3 No upper limit of fine:** The Act provides no upper limit of imposing fine. It is the discretion of court which depends on the mental and/or physical damages caused. This again helps in compensating the victim as per damages caused to her. As there is no upper limit of fine it creates deterrence in society.

**8.2.4 Deterrence:** This Act provides punishment to offenders which creates deterrence in society. People who covered this offence under the garb of superstition will not do this anymore.

**8.2.5 Awareness amongst people:** Prior to this Act people never knew that such act can be offence. They committed this act under superstitious beliefs and even victims were unaware of their rights. However, after enacting this Act the victims also came to know that such heinous acts can be reported and they can get justice.

**8.2.6 Applicable to both man and woman:** The Act is applicable to both men and women. It recognizes both man and woman as a victim and grants justice to both.

### 8.3 Lacunas in the The Chattisgarh Tonahi Pratadna Nivaran Act, 2005

Though this Act has proven to be a landmark Act in the legal history of offences against woman it has not been a successful Act due to some following reason:

- a. It fails to properly define the concept. It simply says that any person who harms or intends to harm. But it fails to define the details of harm. What kind of harm is kept as the question of fact. Which again creates a loophole for interpretation.
- b. The punishment imposed is also very meagre and is kept same for every harm. The upper limit set is 3 years. Means same kind of punishment is made applicable to the person who is offender of rape, who is offender of death, who causes simple hurt under the garb of witch hunting which is not justifiable.
- c. The Act has no provision of rehabilitation just like is made in uniform bill which is not passed in the lok sabha.
- d. The Act fails to punish electronic offenders. With the development of science and technology the cases of witch hunting are also reported to have committed using electronic medium. But this Act fails to punish the same.
- e. The Act also fails to liberalize stringent provisions of evidence Act. Because of stringent provisions of Evidence Act it is very difficult to prove the offence as this offence depends on superstition.
- f. The Act provides no protection to the victims or witnesses and hence, woman doesn't report the offence under fear.

### 9. CONCLUSION AND RECOMMENDATIONS

It is the undisputed fact that witch hunting is still prevalent in India including Chhattisgarh. In fact Chhattisgarh is the highest ranked state amongst states having laws on witch hunting. This is because of lacunas in the present legal framework. Thus, this paper analyses the legal framework of Chhattisgarh on Witch Hunting i.e. The Chhattisgarh Tonahi Pratadna Nivaran Act, 2005. To that end, this paper offers a stylized framework for thinking through the underlying drivers incidences of witchcraft and witch hunting in Chhattisgarh, focuses on present legal framework in Chhattisgarh, and discusses broad strategies for eradicating the menace in Chhattisgarh. The research provides following suggestions that would guide future reform efforts:

1. The present definition of witch hunting is very vague one. The witch hunting shall be defined and harm shall be defined in a very lucid manner.
2. The punishment for different offences shall be stated individually. Eg Rape under the garb of witch hunting and slight harm shall offer different punishments.
3. There is a need to inverse the inconsistency brought by *Tulsa Devi vs. State of Jharkhand*, with regard to the burden of proof. The finding that the victim must prove that the accused identified her as witch frustrates the purpose of the Act.
4. The Act shall contain provision of punishing the offender who commits offence with an intention to grab the property of victims or grabs the property of victim.

5. The Act shall contain the provision relating to rehabilitation, protection of victims and witnesses and electronic offences.

#### Statements And Declarations

Competing Interests: There are no financial or non-financial interests that are directly or indirectly related to the work submitted for publication. The researcher is a student of research and has written this article as a part of her research.

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