

Introduction:

One of the key lines of global power struggle scenario is the constant effort made by the people to rule the world, to prevent access and availability of right information at the right time. Keeping that statement in mind it is important to observe when the allegations of crimes are made against people. For example: Allegations of being a witch. Practices of such allegations are made by people with vested interests who create various labels, bringing under their fold the traditional beliefs of the people or manipulating the same as per their needs. It is crucial to understand the nature and connotation of witches and witch hunting in different societies. For, the construction of

believes any man or woman is a witch and if on this account he burns [the alleged witch], he shall be punished by capital sentence". The English Confessional of Egbert (975 A.D.) states, "If a woman works witchcraft and enchantment she shall fast for twelve months and if she kills anyone, she shall fast for seven years". The fasting in such cases involved consumption of bread and water only (Robinson N.P.).

Various international legislations have existed from those days until now. They all have probable links to addressing witch hunting phenomenon in existing times.

Witch Hunting and Rule of Law

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characteristics leads to a common consequence: violence and crimes based on allegations. These alleged crimes are not new. They are evident in the pages of human history. Famous in the case of witch-huntings, are the Salem Witch Trials. To keep the historical review brief, the diversity and intensity of such crimes has not been adequately looked into or understood to prevent the perseverance with which it operates and take the perpetrators and instigators to task.

Numerous laws have been framed to curb witch hunting. These laws have existed prior to Ninth century as well. During 775-790 A.D., one such law was drafted which said, "if anyone

Some of these legislations in the International context are as follows:

- The Universal Declaration of Human Rights (UDHR), 1948
- The International Covenant of Economic, Social and Cultural Rights (ICESCR), 1966
- The Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1975
- The Convention on the Elimination of all forms of Discrimination Against Women (CEDAW), 1979

- The Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984

Some of these laws and legislations in the national context are as follows:

- The Indian Penal Code (IPC), 1860
- The Constitution of India
- The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954
- The Code of Criminal Procedure (CrPC), 1973
- The Legal Services Authorities Act, 1987
- The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989
- The Protection of Human Rights Act, 1993; The Protection of Human Rights (Amendment) Act, 2006
- The Prevention of Witch-Hunting Bill, 2016 India

Some of the other legislations related to Witch hunting are as follows:

- Karnataka Prevention and Eradication of Inhuman Evil Practices and Black Magic Bill, 2017
- West Bengal has come up with guideline; based on this writ petition; Unknown vs State of West Bengal and Others on 2nd August, 2016

State Legislations related to witch hunting, which are already in place:

- The Prevention of Witch (Daain) Practices Act, 1999, Bihar
- The Prevention of Witch-Hunting Practices Act, 2001, Jharkhand

- The Chhattisgarh Tonahi Pratadna Nivaran Act, 2005, Chhattisgarh
- The Odisha Prevention of Witch-Hunting Act, 2013, Odisha
- The Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013, Maharashtra
- The Rajasthan Prevention of Witch-Hunting Act, 2015
- The Assam Witch-Hunting (Prohibition, Prevention and Protection) Bill, 2016.

In the context of Odisha, Prevention of Witch Hunting Act came into force in February 2014. The Odisha government and state machinery had a crucial role in enforcing this Act. According to Crime Branch Report of Odisha, a total of 210 cases were filed with the police from 2014 to July 2017. On 7th April 2017, Odisha came up with a Composite Action Plan to prevent Witch-Hunting through the home department's direction.

In the context of Assam, after the draft Bill some responses towards the Bill are as follows:

“In the draft, the police play an important role in combating witch-hunting. They are mandated to respond to information immediately. Any refusal to accept a First Information Report, says the draft, shall be considered abetment of the crime. Neglecting an investigation or withholding facts and evidence would be deemed a cognizable offence, it adds. At the same time, the draft provides immunity by proposing that no lawsuit would be entertained against the government or an officer under its authority or any person for acting in “good faith”. (source: <https://scroll.in/article/737038/witch-hunts->

in-assam-criminalising-the-practice-wont-magically-end-it.)

“THE PREVENTION OF WITCH-HUNTING BILL, 2016, India

A BILL: 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.

There is a need to highlight the main features of the National Bill so that we can educate on the required common understanding of the policy and law makers for drafting Bill to curb violence pertaining to witch hunting.

The main features of the national Bill are as follows:

Definition (h) “witch” means any woman who has been branded as witch by person or persons in belief that such woman has the power to harm anyone or that she allegedly has such intention or is having the belief that she has bad eyes or evil eyes or could do black magic or that she, by Mantras can harm people or society at large, in any manner; (source: <http://164.100.47.4/BillsTexts/LSBillTexts/AsIntroduced/4572LS.pdf>)

The punishments that have been defined under CrPC and IPC are as follows:

- Punishment for labeling a woman as witch.
- Punishment for intimidating a woman for practicing witchcraft.
- Punishment for use of criminal force against a woman and labeling as witch.
- Punishment for assault or criminal force against woman.
- Punishment for torturous or humiliating acts on pretext of performing witchcraft.
- **Duties of the Government as prescribed in the Bill are:**
- Obligation to report about the commission of offence.
- Rescue of victim.
- Free medical assistance to the victims.
- Rehabilitation grant to the victims.
- Free legal aid to the aggrieved women.
- No application of section 360 of the Code or the Probation of Offenders Act to persons guilty of an offence.
- Non-application of section 438 of the Code to persons committing an offence.
- Application of certain provisions of the Indian Penal Code. Act to override other laws.

Present day context of witch hunting: Facets

Apart from these legislations across India, there are customary laws and many such norms and dictations which are verbally communicated. They are arbitrary in nature, but very effectively followed and adhered by people in different communities and regions. Such is the state of affairs that, violence like witch hunting seems to grow more brutal over time. Exhibits of which is visible on any form of media in present day; print and electronic both. There is news related to witch hunting floating in the market and these are not only limited to remote areas but also from urban

India. Even in spaces like schools and educational institutes, kids have been alleged of crimes like “becoming a cat in the night and sucking blood of fellow mates in school hostels, using a paddy straw. There are cases of alleged crimes reported from highly educated and socially placed families of urban India, but not exactly in the name of witch hunting. These cases are more subtly put as, a woman with bad eyes or someone who is considered as “manhoos”. The mere sight of such a person’s face turns things more evil or bad, is what the allegations are about. More specifically the elders in a family are victims of such subtle allegation which not only isolates them, but also pushes them into being tortured mentally, eventually ending up in mental health institutes as patients. Many a times, young women are branded as witches because of not bringing dowry in marriage and some cases are related to landed property in the name of a woman. (Refer to the case of Kuni Sahoo of urban Berhampur, Odisha in December 2013).

It is also a fact that, the practice of witch hunting prevails in the guise of vigilance justice, where the abettor of the alleged crimes escapes from legal action or punishment. These abettors incite people against women who are further labeled as witches. The mob targets these women after branding them as witches. Further they spread violence and threat in the name of vigilance justice, by stripping these women naked, beating them, inflicting mental and physical injury, lynching and forcibly feeding them with human excreta. Such fear propagates in the minds of the victim’s kin and relatives that they hesitate to approach the law enforcement officials for help. In many cases, even if a case has been registered, they are subsequently withdrawn because of the threat that has unfurled and created more fear in the minds of people.

Witch Hunting and Rule of Law: Present day context

The Constitution of India intended for India to be a country governed by the Rule of Law. It provides that the Constitution shall be the supreme power in the land and the legislative and the executive derive their authority from the Constitution. It refers to *"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."* (Report of the Secretary-General: The rule of law and transitional justice in conflict and post-conflict societies (S/2004/616). However the system of common law justice delivery has been adopted by India and has its inception during British jurisprudence and is based on the Rule of Law.

The fundamental theory of the Rule of Law is justified by the “Access to justice”. When this principle/theory of access to justice is limited by various factors, people are rendered inept in voicing their concerns, exercising their rights and challenging discrimination or holding decision makers accountable. The justice seekers are majorly burdened by the cost (fees for legal advice, process and representation in the Court of Law) borne by them, so as to facilitate a process towards their grievance redressal.

However it is seen that, Rule of Law in India lags behind in terms of its implementation and is rather a theoretical concept. The effectiveness of Rule of Law’s procedure on ground is highly flawed pertaining to the present context. Owing to the fact that this was devised

back in British era suiting the then environment, there is a need to make amends to enhance the procedural effectiveness on ground to suit present context and need. However, the presence of ambiguity in understanding of these provisions leads to misinterpretations which further make its implementation all the more a grueling experience. Thus with these modifications, the legal system and its facilitation may provide a smoother experience to the justice seeker and thereby revamp accessibility.

India has come up with the Legal Services Authorities Act, 1987 to develop and reform the national policies and frameworks on legal aid and further support capacity building of State and non-State actors. Thus this framework incorporates the inclusion of expert human resource to provide legal aid services in civil, criminal and family matters.

Witch-hunting and other superstitious practices are perhaps the best example of the absence of the Rule of Law in the more remote parts of India. In the absence of enforcement authorities and with no established tradition of adherence to state enforced laws, customary laws often still hold sway. It reflects traditional hierarchies in each society and is often most cruel to women. This is reflected in the witch hunting practices in these areas. It must be remembered that witch hunting is not only a violation of several international commitments and charters but also a direct violation of a person's Fundamental Right to live with dignity under the Constitution of India. Today, some twenty states in India experience or report some form of witch hunting related crime. The victims are often women, almost always tribal or marginalized communities, and the venue of such incident being usually remote. Several states

in India have taken cognizance of the prevalence of such practices and have enacted laws to combat them. However, the actual enforcement of these laws and their impact on the ground has not been up to expectations, even as the said witch hunting traditions continue to exist. There are several reasons for this. One reason would be the absence of a culture that prioritises Rule of Law over that of customary traditions. The lack of sufficient enforcement capacity in remote areas is also a major factor. A third factor that has been mooted after analysis of the several state legislations would be the absence of clear triggers in each and the consequent difficulty of prosecution. Further, given the strong cultural factors at play, it is interesting to note that no state legislation makes an attempt to institutionalise mechanisms to bring about changes at a cultural level. For example, no state legislation defines a clear threshold after which a person can be said to have been identified as a witch. Limited understanding amongst law enforcement officials about the violence related to witch hunting and its nuances is also a factor in the lack of impact of these laws. The fact that the failure of these laws rest upon such a wide variety of reasons, means that any attempt at reform must address each of these issues individually and jointly. In that light, the first two issues that must be addressed would be the lack of a culture of Rule of Law and the limited understanding amongst law enforcement officials. These can be addressed through briefing sessions with the vulnerable groups together with law enforcement officials to encourage the formation of information and outreach networks.

Despite such situation for further improvement in implementation of laws related to violence against Witch Hunting, it is pertinent to understand the limitation in accessing justice

by such victims of alleged crime (against women, children and the marginalized).

Limitations/barriers in accessing justice

In the context of laws related to women and children and thereby of victim of witch hunting, the limitations are as follows:

- Hefty amount of fees towards filing court cases, litigation and other expenses creates a barrier in accessing justice by women and children.
- Communication barriers (or the medium of information delivery) render a justice seeker helpless and stranded when the language used to provide certain legal information (either spoken or written) isn't understood by them.
- The time taken and the distance travelled to arrive at the court of law or government offices from one's native place, creates a barrier as the official hours are stipulated. Such geographical inaccessibility also is a deterrent factor. Physical inaccessibility also creates barriers (disability or immobility of an individual due to any reason).
- The process undertaken to accomplish simple tasks are put across to the justice seeker in a complicated manner. This further demotivates them when too many referrals are made, thus making them feel defeated.
- Ambiguous method of providing instructions to undertake any official process or to complete documentation creates a major barrier in accessing justice.
- The service providers often exhibit the gate keeper mentality towards the justice seekers by not helping them in facilitating a certain legal process. Rather they restrict justice seekers and thus create a barrier for them in order to access justice. For example: The Police must help a justice seeker in filing of FIR rather than discouraging them to not file any at all.
- Law school curriculum must incorporate engagement with the stakeholders and their related issues. So that a new space maybe created for law makers and law facilitators to address this issue in their already expansive course curriculum.
- Summary advices or brief solutions maybe provided to justice seekers when in case of any conflict of interest to further alleviate the issue.
- In terms of addressing legal culture, Public interest must be top most priority further being followed by self protection.
- Access to justice can be amplified by faster justice delivery and quicker response by the legal system on the whole.
- Many intermediary service providers do not possess sound legal knowledge to guide a justice seeker in resolving an issue in an appropriate manner.
- Limited understanding about how the legal system works and what kinds of solutions and outcomes are achievable also act as a deterrent.
- The under staffed legal system, lack of apt technology to address the issues of justice seekers also acts as a barrier in their accessibility.

- Dependence on non-profits to address the issues of justice seekers makes it difficult for them to find pro-bono lawyers who are willing to fight their case in the court of law.
- Hefty law school loans are a limitation for new lawyers who acquire social justice positions to prefer a placement in rural areas or any remote locations. Thus, rendering them inept in facilitating and delivering justice to people in those disadvantaged areas.

Conclusion:

The details of the incidents stated in this document reflect that the relationship between victim and perpetrator; instigator and economic and social structure/ conditions are topics of prime importance. The presence of belief in witchcraft and deliberate constructions of the characteristics of a witch and their rituals to identify and hunt a witch isn't brought under the purview of law. These circumstances thus lead to an atmosphere of confusion as well as control; by using the existing hierarchies and to sustain the same by using the incidents as proof. The adjudication of

the cases where the victim is the witch (as alleged) thus limits justice only to sentencing the perpetrator and not understanding and analyzing the different factors that sustain and reinforce such practices.

The PIL which has brought out the "Prevention of Witch Hunting Act, Odisha, was filed with the intention of identifying these factors and to investigate how it plays in the layman's psyche and understanding their use of 'common sense'.

Awareness and reformation cannot and should not necessarily wait for literacy levels to increase to facilitate a layman's understanding of the nuances and intricacies of how belief is maneuvered for the purposes of power and control. It is here that there is an aspiration to build a body of literature and the myriad complexities and translate the same through a pedagogy that incorporates common sense. Thus, a better understanding of the people's environment and approach to their problems and issues can be achieved.