

Importance of Law in Eradication of Superstition

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Abstract

The constitution of India had been commenced in the year 1950 with the ideals in its preamble that there will be three kinds of justices available to its citizens. These are social justice, political justice and economic justice. With these specific ideals it may be referred here that in Taittiriya Upanishad, it had been mentioned that there must be happiness for all without any exception. Right to happiness of every human being was laid down as an ideal. This ideal may be understood with the following most ancient prayers.

*“Let all be happy,
Let all be free from diseases.
Let all see auspicious things,
Let no body suffer from grief.”*

The natural desire of all human being is to be happy at every stage and in every aspect of life. Witch hunting or witch branding are the social disease, which are very much prevalent in the various parts of state of Assam. The violators of witch hunting or witch branding are the people, who usually brand as woman or in few cases man also. The reasons of witch hunting cases are generally related to the issues of drought, flood, illness and death of the people of particular locality. The practice of witch crafting is basically a part of traditional belief which is based on superstition and lack of proper education among the people of the community.

Recently in Assam by a Gazette Notification dated 29th June 2018, published the codified law in the name of the “Assam Witch Hunting (Prohibition, Prevention And Protection) Act 2015 which received the assent of the President of India on 30th June 2018.

For a longtime in the State of Assam, the violation of human rights in the name of witch hunting in various form was reported; but owing to absence of any specific codified law the a better or identifier could not be apprehended and punished for their involvement.

After the above mentioned Act, the brutal human rights violation would be able to uphold social justice in rural areas of Assam.

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I. Prologue

In the evolutionary process of development of human society, various kinds of incidents of Human Rights violation are being witnessed. Accordingly, to regulate the happening of such incidents within the parameter of development of human civilization, time to time law played a vital role as an instrument of social transformation. It was experienced that all the evils of a society could not be jettisoned until and unless there is command of higher authority. Law is made by parliament, State Legislative Assemblies and other competent authorities to regulate the behaviour of a citizen in a particular society.

There are innumerable incidents of quarrel, misunderstandings; fighting, war etc. which are taking place on the basis of various reasons including superstition in our society. Since superstition is a disease which are specifically based on illiteracy and poverty. As such eradication of superstition has got relation with proper education and awareness programme to uphold good practices among the citizens of India. The outcomes of these incidents are witnessed in loss of lives and properties within the societies. The village head or leader of a clan had to interfere to resolve the issues for the betterment of their society. Since happiness is the natural right of every human being, as such there must be happiness for all without any exception. It would not be out of context to refer to some words of Taittiriya Upanishad where happiness ideally had been practiced in ancient prayers.

“Let all be happy,
Let all be free from diseases
Let all see auspicious things,
Let nobody suffer from grief”.²

²RAMA JOIS, SEEDS OF MODERN PUBLIC LAW IN ANCIENT INDIAN JURISPRUDENCE, 173, (Eastern Book Company, second edition, 2000).

There are various kinds of social evils which prevail in different societies in India. These are creating huge problems to establish social justice in India. Social, political and economic justices are guaranteed to the citizens of India in the Preamble of the constitution of India. Besides the Preamble, there are various constitutional provisions which are dealt with social cause. Article 38 of the Constitution of India provides that the state shall strive to secure a social order for the promotion of welfare of the people. Article 39 (A) deals with equal justice and free legal aid. Similarly, Articles 40-51 are directive in nature to the states to make law for all round development of Indian Societies.

In Assam, for a long time an inhuman practice of superstitions has been working in the name of witch hunting along with other parts of Indian Society. The definition of witch hunting as provided by section 2(h) of Assam Witch Hunting (Prohibition, Prevention and Protection) Act, 2015 is as follows:

“Witch hunting means the identifying, calling, stigmatising, defaming or accusing any person as witch by any other person by words, or by signs or by indications or conducts or actions or in any manner, thereby causing or a betting physical and /or mental harm or execution of a witch which may involve mass hysteria, lynching or any other activities.”

I have applied doctrinal method of research for my topic “constitution and social change witch hunting cases in Assam and North East States”. It is most pathetic and unacceptable human rights violation development which is often branded on woman or in few cases man also. The reason of witch hunting cases are generally related to the issues of draught, flood, illness and death of persons in the particularly locality.

The practice of witch crafting is basically a part traditional belief which is based on superstitions and lack of proper education among the people of the community. Besides, poverty, poor infrastructure i.e. lack of transport system, drainage system, electricity and other common necessities are becoming probable cause for witch craft victims. In reality, women are victims because of their position and identity in the society. It is recorded from National and International Data that thousands of women are burned or tortured to death. In India, specially in Assam and North –eastern states labelling women as a witch is a common play to grab land, settle scores and even to punish her for turning

down sexual advances. In a majority of cases it is difficult for the accused woman to reach out for help and she is forced to abandon her house or family or driven to commit suicide. Most cases are not documented properly due to the fact that the victim had to die without receiving any kinds of justice. It is urgently required to involve the Panchayat office bearers to take care of such incidents in a responsible manner so that the relatives of the victims may approach for minimum justice. Casualty of witch craft must be given their minimum dignity to register human rights in our civil society because it is very difficult for a poor and illiterate woman to travel to isolated regions to file police reports. It is a matter of great shame that such inhuman incidents are still continuing in these states.

In a majority of cases, it is difficult for the accused woman to reach out for help and she is forced to abandon her house or family or driven to commit suicide. The Supreme Court in *Maneka Gandhi's*³ case held that Article 21 cannot be understood narrowly rather the court redefined the term 'liberty' with wide meaning. It was a historical judgment where personal liberty had been given extended definition. The Court also viewed that on the basis of doubt no one can be harassed and denied justice.

The enactment made by the Assam legislature has not only provided for punishment for witch hunting but also enacted a broad provision whereby protecting her from any kind of derogatory statement affecting the status and dignity of woman, though she is illiterate and born from poverty stricken family. The section 3 provides that "no person shall identify, call, stigmatize, defame or accused any other person as witch by words or by signs or indications or by conducts or actions or any other manner or instigate, aid or abet such an act or commit witch hunting."

Section 4 provides punishment for identifying, calling etc, as witch and for abetment. Whoever, (i) identifies, calls, stigmatizes, defames or accuses either by words, signs, indications, conducts, actions or any other manner any person as witch (ii) instigates or aids or abets any such acts mentioned in clause (i) above, shall be punished with imprisonment for a term which shall not be less

³ 1978 SCR (2) 621

than 3 years but can extend up to a term of seven years and with fine, which shall not be less than Rs. 50,000/- but which may extend to Rs. 5,00,000/-.

Provision for capital punishment provided under section 5 of the Act read as follows-whoever assault or uses criminal force against a person causing him/her to be a witch, resulting in his/her death, shall be punished in accordance with section 302 of the IPC,1860.The Act has also provided for punishment for leading a person to commit suicide under section 6.

Under section 7 prohibits use of criminal force identifying, calling etc, as witch leads to punishment not less than Rs. 1,00,000/- but which may extend to 5,00,000/-.The Act also provide punishment for using criminal force to outrage modesty under section 8 of the Act. It is also provided under section 9 that whoever identifying, calling, stigmatizing, defaming or accusing any person as witchwill be punished for some forms of torture which may extend to RS. 1,00,000/-.Under section 10 it has been provided that whoever with malicious intention harasses a person to damage his/her reputation and dignity, or with intention to sexually exploit or with intent to extort money or the property , or any other ulterior motive, identifies , calls, stigmatizes, defames or accuses a person as witch shall be punished with a minimum fine of Rs. 10,000/- along with imprisonment for a term which shall not be less than 3 years but which may extend to 7 years and Rs. 50,000/-.

Section 11 and 12 deals with punishment for attributing misfortune and causing disappearance of evidence respectively.Whoever attempts to commit any offence under this Act and does any act towards such commission shall be punishable as per the provisions of section 51 1 of the Indian Penal Code, 1860.

The Section 14 of the Act provides that:

1. Whoever abets any offence under this Actshall be punished with the same punishment provided for that offence under the relevant provisions of this Act.
2. A public servant, who wilfully refuses to register the case or neglects the investigation or tries to withhold facts and evidences relating to the case with intention to minimize the gravity of the offence, shall be deemed to

have abetted the offence and shall be liable for punishment for the offence as provided under this Act.

Section 15 deals with punishment for community involvement which states as follows:

If it is established that there has been community involvement in causing such offences under this Act, everyone of the community involved may be fined as punishment which shall not be less than IRS. 5,000/to each but may extend to IRS, 30,000/- and who so ever fails to deposit the said fine shall undergo one year imprisonment in addition to the punishment imposed upon him by the court fixing specific accusations in the proceeding.

Special provisions are provided under section 22 regarding the state government involvement to issue necessary guidelines as required. These are as follows:

1. (a) issue necessary guidelines from time to time, not inconsistent with the provisions of this Act;
- (b) take measures for sensitization and training of all stakeholders including officials and public regarding the issue of witch hunting;
- (c) ensure confidentiality during testimony of victim as well as witnesses;
- (d) grant adequate relief and compensation for victims of witch hunting;
- (e) provide rehabilitation mechanisms and schemes for victims of witch hunting;
- (f) provide counseling services for victims of witch hunting;
- (g) increase public awareness through various schemes to inform communities of the Act;
- (h) take steps for launching of campaigns against witch hunting through combined efforts of government, administration, voluntary organisations, educational institutions etc. especially in regions where the menace is most rampant;
- (i) take steps for organizing Women's groups at village level and drawing up creative plans in consultation with such groups to enhance the self-

confidence and economic independence of vulnerable women in such areas;

- (j) take appropriate measures to improve education and health in such affected areas;

Section 34 provides that the state government has power to make rules which are as follows:

1. The State Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.
2. In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
 - i. procedure for payment of the compensation to the victim as provided under section 19;
 - ii. manner of maintenance of protective homes and rehabilitation centers under section 26;
 - iii. manner in which the rehabilitation grant shall be paid to victims of witch hunting under section 28;
 - iv. any other matter which may be prescribed in conformity with the Act.
3. Every rule made under this section shall be laid as soon as may be after it is made before the Assam Legislative Assembly while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, the house agrees in making any modification in the rule or that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

II. Scope of Article 21 and Witch Hunting Cases

Article 21, if read literally, is a colorless article means a law which provide a procedure which has been followed by the impugned action. But the expression procedure established by law in Article 21 has been judicially construed as a

procedure which is reasonable, fair and just. Article 39 A imply that legal aid is being made available to the indigent accused and a prisoner. The concept of “fairness”, so evolved, has been imported into Article 22(3) also so that a prison regulation which arbitrarily deprived a detainee of opportunity to interview his relative or friends or a lawyer is invalid.

Witch hunting cases are not only cases of personal liberty these are the cases of Human Rights violations, which are to be handled carefully and with separate and independent law and accordingly the Assam Witch Hunting (Inhibition, Prevention and Protection) Act, 2015 has been passed in 13th June, 2018 to punish the violators immediately. In this regard, it may be mentioned here that the following data collected from various sources identified the incidents of witch hunt in Assam from 2011.⁴

The following are examples of national witch hunt cases:

Jharkhand topped the chart of witch-hunting murders in the country with 27 women lynched after being accused of witchcraft in 2016, according to annual figures released by the National Crime Records Bureau (NCRB) on Thursday. This was followed by Odisha, with 24 witch-hunting murders. The respite for Jharkhand is that the trend for such murders has declined by more than 50% since 2013.⁵ As per the NCRB, a total of 54, 47 and 32 cases were reported under murder for witchcraft in Jharkhand during 2013, 2014 and 2015 respectively.

In West Bengal, dubbing of women as Witch and lynching are common shows. In a particular incidence, 51-year-old Adarmani Hansda, was accused of practicing black magic that was allegedly making people in the village fall ill.⁶ The woman was lynched after a kangaroo court declared her and four other women witches.

An analysis of the data since 2001 for Jharkhand shows a total of 523 women lynched after branding them witches till 2016. The state showed the most witch-hunting murders in 2013, when 54 persons were killed.

⁴WINGS NGO in Assam

⁵. Source: *Hindustan Times, Ranchi*

⁶. Source: *Hindustan Times, Midnapore*

Tribal-dominated Jharkhand, Odisha, Chattisgarh and Telangana are the worst affected states. Hundreds of women have been persecuted, tortured and killed in the garb of witchcraft in past few decades in these four states.

In August 2015, people of a Ranchi village lynched five tribal women for allegedly practicing witchcraft. The villagers killed her after a 17-year-old youth died of stomach ache. A sorcerer from an adjoining village had blamed his death on witchcraft.

MS Bhatia, principal secretary, State Women and Child Welfare Department, said, “We are happy with the declining trend of such incidents but we have to work hard to eliminate it.” He said the state’s social milieu was the one of the major reasons for witch-hunting. “A combined effort with partnership of community, civil societies and others required for a social behavioral change. We have given much emphasis on awareness, communication and behavioral change programmes,” he said, adding that the government has increased the budget from Rs1 crore to Rs4 crore this fiscal for social development. According to Bhatia, the Tejaswini scheme, which targets girls between the age group of 14 and 24 years, would also help deal with social issues like witchcraft, early marriage, anemia and others. “Besides education and vocation training, life skill training is also an important part of the scheme,” he said.

After the state of Jharkhand was carved out of Bihar in November 2000, the new state adopted the Prevention of Witch-hunting (Dayan Pratha) Act 2001, based on the Prevention of Witch (Dayan) Practices Act 1999 enacted in Bihar. Despite the law, as per data from the NCRB and state records, 591 women were lynched between 2001 and 2018 after being branded witches. The state showed the most witch-hunting murders in 2013, when 54 women were killed.

According to data from the state police, most of the witch-hunt murders occurred in the districts of Palamu, Santhal Pragana, West Singhbhum, and rural pockets of Ranchi.

Arun Kumar Singh, inspector general (CID), said that witchcraft was still prevalent in rural pockets that were bereft of education and remained largely impoverished. These were also the districts where issues of land ownership were

of paramount importance. “Widows were frequently labeled witches to deny them ownership of land,” said Singh.

The officer said that the reason for the decline in witch-hunt murders could be attributed to the prompt action by police against the ojhas (village shamans or oracles). “Along with the ojhas, other people involved in labeling women witches are being booked for abetting the crime. This has been a deterrent effect,” he said.

Again, Assam is one of the states which have earned condemnation for its rising incidents of witch-craft and witch-hunting.

III. Suggestion and Opinion

From the above critical study on the subject ‘Constitution and Social Justice’ in relation to development of witchcraft concept in our Indian society for a long time specially in Assam and North East had become socio-legal issue directly violating human rights in its all form compelled the legal researcher, socio culture activists and the stakeholders particularly Home Department of central and state were busy to find out the solution. We are passing 21st century with the order of Information Technological era. These developments thus not match the modern society like India. The researcher of various faculties tried their best level to get the result of a research in a systematic and scientific manner to uphold the credibility of India’s society’s cause. Under these situationswitchcraft does not match the problem at the time when the present government is busy with the call of Make in India, Digital India and Cashless India. It is the practical experience of our age that with the help of qualified law social menace cannot be uprooted totally; rather it demands full-fledged development of infrastructure particularly in the area of awareness and education. It is only possible with the participation of all sections of people and honest will of stakeholder parties. Introduction of education into the category of fundamental rights will definitely help to eradicate superstition from our Indian society.