

THE PREVENTION OF WITCH-HUNTING BILL, 2016

By

SHRI RAGHAV LAKHANPAL, M.P.

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Bill No. 66 of 2016

THE PREVENTION OF WITCH-HUNTING BILL, 2016

By

SHRI RAGHAV LAKHANPAL, M.P.

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.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

5 **1.** (1) This Act may be called the Prevention of Witch-Hunting Act, 2016.

Short title and
commence-
ment.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires,—

Definitions.

10 (a) "abettor or identifier" means any person who brands or identifies any woman as a witch;

(b) "Code" means the Code of Criminal Procedure, 1973;

2 of 1974.

(c) "court" means a court of Metropolitan Magistrate or Judicial Magistrate of the first class exercising jurisdiction in the area where offence is alleged to have taken place or of any other Judicial Magistrate of the first class or the Court of Sessions specified as a Special Court by sub-section (1) of section 11 of the Code;

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(d) "Government" means the Central Government or the State Government, as the case may be;

(e) "*ojha*" means a person who claims that he has got power or knowledge to identify witches and to have a capacity to attain control over them or who uses *Jhad Phoonk*, either to cure or protect from evil spirit or who causes damage, suffering or harm for the purposes of healing any disease by giving *Tabij*, *Mantra* or any substance claiming to have the power to heal from witchcraft sufferings and includes persons known as *Guni*, *Shekha* or *Jan* or by any other name;

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(f) "Police Station" includes police outposts;

(g) "spell" means a form of words used as magical charm or incantation used by *ojha*;

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(h) "witch" means any woman who has been branded as witch by person or persons in belief that such women has the power to harm anyone or that she allegedly have such intention or 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;

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(i) "witchcraft" means the supposed power of a person to harm the other by—

(a) occult or supernatural means secret use of *Tabij* or any water or water mixture pretending it to be sacred; or

(b) any other substance or things like spell, spirits or magic power with the purpose of causing harm, damage or sickness to other person or harm or damage to the properties;

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(j) "witch-hunting" includes branding of a woman as witch, mostly after an '*ojha*' confirms that a woman is a witch the process of prosecution and execution of that woman, often involving mass hysteria and lynching; and

(k) "words and expressions" used but not defined in this Act and defined in the Code of Criminal Procedure, 1973 or the Indian Penal Code, 1860 shall have the same meanings has assigned to them in the Code or Indian Penal Code.

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2 of 1974.
45 of 1860.

CHAPTER II

PUNISHMENT FOR OFFENCES

3. Whoever,

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(i) accuses or identifies or defames a woman, either by words or actions by claiming that she is a *Daain* or *Dayan* or *Dakan* or *Dakin* or *Chudail* or *Bhootni* or *Bhootdi* or *Chilavan* or *Opri* or *Ranndkadi* or *Tonahi* or *Tonaha* or *Banamati* or *Chetabadi* or *Chillangi* or *Hawa* or *Evil Eye* or *Halka* or *Daini* or by using of any other name or symbol suggesting her to be a witch; or

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(ii) accuses a woman of performing witchcraft or any puja or use of mantra or tantra aimed at harming any person by supernatural means,

shall be punished with imprisonment for a term which shall not be less than one year but may extend upto three years and with fine which shall not be less than one thousand rupees but may extend upon five thousand rupees:

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Provided that the Court may, for adequate and special reasons, to be recorded in the judgment, impose a sentence of imprisonment for a term of less than one year.

Punishment
for accusing or
identifying a
woman as
witch.

4. (1) Whoever, labels a woman a witch and blames that woman for any misfortune, which may include natural disasters like droughts, floods or crop loss, that befalls village or any illness or death in the village shall be punished with imprisonment for a term which may extend upon three years and a fine which shall not be less than one thousand rupees but which may extend upto ten thousand rupees; and

Punishment for labelling a woman as witch.

(2) Whoever, assaults or uses criminal force or causes to assault or use criminal force against a woman, accusing her to be a witch, resulting into her death, shall be punished according to the provisions of section 302 of Indian Penal Code, 1860.

45 of 1860.

5. Whoever, intimidates a woman, calls her a witch and accuses her practicing witchcraft, to the extent that the woman is compelled to commit suicide, shall be punished with imprisonment for a term which shall not be less than three years but which may extend upto imprisonment for life and with fine which shall not be less than twenty-five thousand rupees but which may extend upto fifty thousand rupees:

Punishment for intimidating a woman for practicing witchcraft.

Provided that the court may, for adequate and special reasons, to be recorded in the judgment, impose a sentence of imprisonment for a term of less than three years.

6. Whoever, on the pretext of labelling a woman of performing witchcraft or being witch, uses criminal force against that woman or instigates or provokes others in doing so with intent to harm or to displace her from the house, place or the property, lawfully occupied or owned by her or interferes with her rights over any land or premises or coerce her to leave the area of which she is a rightful resident or a visitor, shall be punished with imprisonment for a term which shall not be less than three years but which may extend upto five years and with fine which shall not be less than twenty thousand rupees but which may extend upto to fifty thousand rupees:

Punishment for use of criminal force against a woman and labelling of witch.

Provided that the court may, for adequate and special reasons, to be recorded in the judgment, impose a sentence of imprisonment for a term of less than three years.

7. Whoever, on the pretext of labelling a woman of performing witchcraft or being witch, assaults or uses criminal force against that woman to remove or causes to remove clothes from her body and demonstrates and parades her naked or with such scanty clothes that fail to protect her modesty, shall be punished with imprisonment of a term which shall not be less than three years but which may extend upto to five years and with fine which shall not be less than twenty five thousand rupees but which may extend upto to fifty thousand:

Punishment for assault or criminal force against woman.

Provided that the court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than three years.

8. Whoever, on the pretext of labelling a woman of performing witchcraft or being witch,—

Punishment for torturous or humiliating acts on pretext of performing witchcraft.

(i) subjects that woman to any form of torture including acts of stoning, hanging, stabbing, dragging, public beatings, burns insertion of wooden or sharp objects into her private parts, burning of her hair, forced hair shavings, pulling of her teeth out, cutting of her nose or other body-parts, blackening of her face, whipping or branding;

(ii) forces that woman to perform public acts of humiliation or eat human excrement or drink urine or drink or eat inedible or obnoxious substances or socially ostracize that woman or stigmatize her for life or prohibit her to participate in auspicious occasions or curtail her movements or employment,

shall be punished with imprisonment for a term which shall not be less than three years but which may extend upto five years and with fine which shall not be less than twenty five thousand rupees but which may extend upto fifty thousand rupees:

Provided that the court may, for adequate and special reasons, to be recorded in the judgment, impose a sentence of imprisonment for a term of less than three years.

Punishment for person claiming to be an <i>ojha</i> .	9. Whoever, being ' <i>ojha</i> ', claiming to possess spiritual and/or magical powers, declares any woman as a witch and does any act of healing allegedly or purportedly to cure her or performs any ritual by doing any act of ' <i>jhadphook</i> ' or ' <i>totka</i> ' to free the woman from the evil spirit or entices a woman or any person on her behalf with a promise to bless the woman with a child or performs any ritual on behalf of any person with intention to harm the woman, and whoever promotes or helps organizing and performing of such rituals or associate oneself with such rituals, shall be punished with imprisonment for a term which shall not be less than one year but which may extend upto three years and with a fine of upto fifty thousand rupees:	5
	Provided that the court may, for adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a term of less than one year.	10
Punishment for removal or disappearance of evidence.	10. Whoever, knowingly or having reasons to believe that an offence has been committed under this Act, causes removal or disappearance of any evidence of the commission of that offence with the intention of helping the offender to escape punishment, or with that intention to mislead the investigation or gives any information, regarding the offence, which he knows or believes to be false, shall, in addition to the punishment under section 182 of Indian Penal Code, 1860 be liable for punishment.	15 45 of 1860.
Attempt to commit offences.	11. Whoever attempts to commit any offence under this Act or does any act towards such commission shall be punishable in accordance with the provisions of the Indian Penal Code, 1860.	20 45 of 1860.
Abetment of offence.	12. A public servant, who willfully refuses to register a case or neglects the investigation or tries to withhold facts and evidences with intention to minimize the gravity of the offence, shall be deemed to have abetted an offence and shall be liable to such punishment for abetting the offence as provided under this Act.	
Punishment for Community Involvement.	13. Where community involvement is proved in causing any offence under this Act, every person of the community involved may be punished with fine which shall not be less than five hundred rupees but may extend upto three thousand rupees and whosoever fails to deposit the said fine shall undergo three months imprisonment excluding the punishment imposed upon him by a court for causing that offence.	25
CHAPTER III		30
TRIAL OF OFFENCES		
Offences to be cognizable, non-bailable and non-compoundable.	14. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, every offence under this Act shall be cognizable, non-bailable and non-compoundable.	2 of 1974.
Imprisonment for non-payment of fine.	15. Any person, who willfully or otherwise, fails to pay the fine ordered by a court, shall be liable to undergo imprisonment as provided under section 64 of Indian Penal Code, 1860.	35 45 of 1860.
Provision of compensation to the victim.	16. (1) The fine realized as punishment for an offence under this Act shall be paid to the victim as compensation. (2) The compensation paid under sub-section (1) shall not be compounded with any other compensation or financial assistance which the Government may decide to pay as immediate relief to the victim or the rehabilitation grant payable under section 24.	40
Appeal.	17. Subject to the provisions of the Code, the aggrieved person shall be eligible to file an appeal to the next higher court within ninety days of from the date on which the court concerned has passed the order:	

Provided that the court may entertain an appeal after the expiry of the said period of ninety days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the stipulated period.

CHAPTER IV

MEASURES FOR PREVENTION AND PROTECTION OF WOMEN

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18. (1) When a police officer receives any information or a report that a witch-hunt is likely to be committed or there are reasonable grounds to suspect that a witch-hunt has been committed against a woman, he shall forthwith proceed to the place and shall take all suitable measures to prevent the witch-hunt and to provide protection to the woman including getting her admitted to a recognized protective refuge or shelter home, in case the woman has no safe shelter.

Measures to prevent and protect women from witch-hunt.

(2) The police officer shall immediately remove the person and the objects expected to harm the woman and shall verbally or in writing warn the person or persons accused of intending or attempting a witch-hunt against the woman to leave the place immediately and abstain from inflicting any harm upon the woman.

(3) The police officer may arrest the person or persons and take action in accordance with section 151 of the Code and the person so arrested shall be produced before the executive Magistrate of the area who shall proceed under sections 107 and 116 of the Code.

(4) Whenever an offence under this Act is reported to a police officer, in whose jurisdiction the offence is committed, the officer concerned shall record the First Information Report and shall take suitable action as per the law.

(5) Whenever such incident is reported to a police officer which has occurred outside his jurisdiction, the officer shall immediately inform the police officer in whose jurisdiction the offence falls and send a copy of the written complaint, if available, for further necessary action.

19. The Government shall,—

Duties of the Government.

(i) draft appropriate guidelines for the implementation of the provisions of this Act;

(ii) sensitize and train police officers regarding the issue of witch-hunting;

30 (iii) ensure confidentiality during testimony of victim as well as witnesses;

(iv) ensure proper monitoring and follow up of reported incidences;

(v) provide relief and compensation for victims of witch-hunting;

35 **(vi) put in place rehabilitation mechanisms and schemes for victims of witch-hunting;**

(vii) provide counselling services to victims of witch-hunting;

(viii) promote education and awareness about the evil of witch-hunting and include the issue of witch-hunting in school curricula;

(ix) launch public awareness schemes to inform communities of the provisions of this Act;

40 **(x) launch campaigns against superstition and witch-hunting practices and organize padyatras and public awareness meetings with the participation of voluntary organizations, schools, and others especially in regions where the menace of witch-hunting is most rampant; and**

45 (xi) organise women's groups at village level and draw up creative plans in consultation with such groups to enhance the self-confidence and economic independence of vulnerable women in such areas.

Obligation to report about the commission of offence.	<p>20. (1) Every employee of Government shall assist the police in the execution of the provisions of this Act.</p> <p>(2) All village officers or Panchayat people and such other officers as may be specified by the Collector or the District Magistrate in relation to any area and the inhabitants of such area shall, if they have reason to believe or have the knowledge that witch-hunt is about to be, or has been, committed in the area shall forthwith report such fact to the nearest police station.</p> <p>(3) Whoever contravenes the provision of sub-section (1) or sub-section (2) shall be punished with imprisonment of either description for a term which may extend upto two years and shall also be liable to fine.</p>	5 10
<p>CHAPTER V</p> <p>SPECIAL PROVISIONS</p>		
Rescue of victim.	<p>21. (1) Where a Magistrate has reasons to believe from information received from the police or from any other person, that any woman has been victimized in the name of witchcraft, he may direct a police officer not below the rank of a sub-inspector to enter such place, and to remove from there such women and produce her before him.</p> <p>(2) The police officer, after removing the woman shall forthwith produce her before the Magistrate.</p>	15
Free medical assistance to the victims.	22. The Government may provide free medical assistance including medicines and other supportive system to victims of witch-hunt.	20
Rehabilitation grant to the victims.	23. The Government shall provide such rehabilitation grant to be paid to the victim of offences under this act in such manner as may be prescribed by rules made by the Central Government under this Act.	
Free legal aid to the aggrieved women.	24. The aggrieved women shall have right to free legal aid under the Legal Services Authorities Act, 1987.	25 39 of 1987.
<p>CHAPTER VI</p> <p>MISCELLANEOUS</p>		
Non-application of section 360 of the Code or the Probation of Offenders Act to persons guilty of an offence.	25. Section 360 of the Code and the provisions of the Probation of Offenders Act, 1958 shall not apply to any person of the age of twenty-one years and above, who is found guilty of having committed an offence under this Act.	20 of 1958. 30
Non-application of section 438 of the Code to persons committing an offence.	26. Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on accusation having committed an offence under this Act.	
Application of certain provisions of the Indian Penal Code.	27. Subject to other provisions of this Act, the provisions of section 34, Chapter III, Chapter IV, Chapter V, Chapter V-A, section 149 and Chapter XXIII of the Indian Penal Code shall, so far as may be, apply for the purposes of this Act as they apply for the purpose of the Indian Penal Code, 1860.	35 45 of 1860.
Act to override other laws.	28. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time custom or usage or any instrument having effect.	

29. No suit, prosecution or other legal proceedings shall lie against the Government or any officer or authority of the Government or any other person for anything which is in good faith done or intended to be done under this Act. Protection of action taken in good faith.

30. (1) The Central Government may, by notification in the Official Gazette, make rules Power to make rules.
5 for carrying out the purposes of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, 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,
10 both Houses agree in making any modification in the rule or both the Houses agree 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.

STATEMENT OF OBJECTS AND REASONS

The practice of 'witch-hunting' constitutes gender-based discrimination as it affects women disproportionately. Witch-hunting is a gross violation of women's human rights under Part III of the Constitution *i.e.* the Right to Equality under article 14, the prohibition of discrimination on the grounds of religion, race, caste, sex or place of birth under article 15, the Right to Protection of life and personal liberty under article 21 which includes the right to life with dignity and prohibition of torture. Right of equality of opportunity in matters of public employment under article 16, the abolition of untouchability under article 17 and the Protection of the interests of minorities under article 29 of the Constitution. Witch-hunting also violates norms of international human rights law including those in the Universal Declaration of Human Rights, International Covenant on Civil and Political Rights and Convention on Elimination of All Forms of Discrimination Against Women, which are binding upon India.

Presently, section 323 of the Indian Penal Code, 1860 is used to deal with most witch-hunt cases. The effect of this is that the persistent harassment of a woman, violence, social ostracization and deprivation of rights are prosecuted in the same way as a common assault. In addition certain provisions of the Indian Penal Code, 1860 have been typically used to book offenders in cases relating to witch-hunting such as section 382 'theft after preparation made for causing death, hurt or restraint in order to commit theft, sections 339—48 'wrongful restraint and confinement', sections 320—22, 'Causing grievous hurt', sections 359—69, 'Kidnapping and abduction', sections 375—376, 'Rape', sections 499—501, 'Defamation' and section 302, 'Murder'.

The use of the aforesaid sections in the absence of a stringent law to deal with the problem of witch-hunting has resulted in an *ad hoc*, un-coordinated and often insensitive approach to tackle the social evil of witch-hunting. A national law on the other hand would acknowledge, understand and address the specific harms and specific wrong done to women who are labeled as witches and subjected to oppression. There is a need is to prevent, prohibit and prosecute witch-hunting as a specific manifestation of ongoing discrimination and violence against women across India. The co-ordinated and coherent approach of a national law would, therefore, better redress the devastating impact that witch-hunting has on the lives of targeted women across India. It would also better mobilize civil society and law enforcement agencies to fulfil their obligations.

In many States including the States of Jharkhand, Haryana, Uttar Pradesh, Chhattisgarh, Orissa, West Bengal, Madhya Pradesh, Rajasthan, Andhra Pradesh, Gujarat, Maharashtra, Assam, Bihar and Meghalaya there are certain areas where the practice of witch-hunting is prevalent even today. In some of these States, laws to tackle witch-hunting have been enacted. However, these laws contain a range of different provisions at different level and resulting in the pressing need for a coherent national legislation.

Witch-hunting is the practice of naming an individual particularly a woman a witch and then causing her harm to such an extent layout emagination. Women are often singled out in the name of witch-hunting by an individual or a group in the community or the community as a whole for the purpose of holding such women responsible for causing ailment or misfortune to the society. The victims of witch-hunts are usually dalit, adivasi, or indigenous tribal women often living in poverty. Victims are also usually but not always elderly widows, single women or unmarried women. The practice of witch-hunting is most prevalent in rural areas of lower socio-economic development where there is no access to education, medical care, sanitation or legal services. This evil practice, therefore, affects those who are already most vulnerable section in society and who already suffer from multiple forms of disadvantage. The stigma of being labeled a witch and the resulting harm being an additional burden that those already marginalized individuals have to bear.

There have been instances where such women are branded as witches beaten, burned, paraded naked, tonsured, forced to eat human excrement, raped, teeth and fingernails are pulled out. There have also been instances of mutilation of women's body parts and organs including genitalia. Women are tortured to death or murdered.

Branding women as 'witches' cause them harm is used to keep women subordinate in the social hierarchy. It is often used to control and oppress women who are deemed to be 'strong', 'outspoken' or have refused to submit to coercion. For example, women may be branded witches if they have sought to protect their bodily integrity or sexual autonomy and refused sexual or romantic advances of a neighbour. Women are branded witches in order to deprive them of their socio-economic or property rights. Women are branded as witches to prevent them from participating in the public or political life of their communities. For example, Lata Sahu, a dalit woman in Raipur, in the State of Madhya Pradesh, contested the polls against the wishes of landlord or higher castes. She was condemned as a witch, stripped and beaten.

Women who are accused of witchcraft in India, do not seek any legal or police assistance often for fear of further violence and reprisals in the absence of adequate protection by the law enforcement agencies. In many cases, the police fails to lodge First Information Report. Even if First Information Report is lodged and an arrest is made, the accused are set free due to lack of evidence. Due to lack of adequate rehabilitation, relief or compensation to women who have been identified as witches return to their villages and they often face more hostility and anger from their communities with no socio-economic or property rights. Therefore, it is necessary to raise awareness among public about the problem as well as sensitise civil society and law enforcement agencies to check growing incidents of witch-hunting and provide adequate rehabilitation and welfare of victims of 'witch-hunting'.

In summary, witch-hunting is preventing women from participating in and contributing to society and fulfilling their responsibility.

The proposed Bill, therefore, seeks to provide for more effective measures to protect women from 'witch-hunt' and prevent the act of torture, oppression, humiliation and killing by providing punishment for such offences, relief and rehabilitation of women victims of such offences.

Hence this Bill.

NEW DELHI;
February 11, 2016.

RAGHAV LAKHANPAL

FINANCIAL MEMORANDUM

Clause 19 of the Bill provides that the Government shall provide compensation, rehabilitation mechanism and schemes, counseling services and other welfare measures for the victims of witch-hunting. Clause 22 provides for free medical assistance to victim of witch-hunt. Clause 23 provides for payment of rehabilitation grant to the victims of offences under this Act. Clause 24 provides for right to free legal aid to the aggrieved women. The expenditure relating to States shall be borne out of the Consolidated Funds of State Government concerned. The expenditure relates to Union Territory shall be incurred from the Consolidated Fund of India.

The Bill, therefore, if enacted would involve expenditure from Consolidated Fund of India. It is estimated that a recurring expenditure of about rupees fifty crore would be incurred per annum from Consolidated Fund of India.

A non-recurring expenditure of about rupees ten crore is also likely to be involved.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 23 of the Bill empowers the Central Government to provide payment of rehabilitation grant to the victims of offences under this Act in such manner as may be prescribed by rules made by Central Government. Clause 30 of the Bill empowers the Central Government to make rules for carrying out the purposes of the Bill. As the rules will relate to matters of detail only, the delegation of legislative power is of a normal character.

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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.

(Shri Raghav Lakhanpal, M.P.)