



BREAKING THE SPELL: A SOCIO-LEGAL INQUIRY INTO WITCH-HUNTING IN INDIA

16/06/2025

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L.L.M./Human Rights Final Thesis

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AUTHOR’S DECLARATION

I, the undersigned, **Nidhi Jha**, candidate for the LLM degree in Human Rights declare herewith that the present thesis titled “**Breaking the Spell: A Socio-Legal Inquiry into Witch-Hunting in India**” is exclusively my own work, based on my research and only such external information as properly credited in notes and bibliography. I declare that no unidentified and illegitimate use was made of the work of others, and no part of the thesis infringes on any person’s or institution’s copyright. I also declare that no part of the thesis has been submitted in this form to any other institution of higher education for an academic degree.

Vienna, 16 June 2025

Nidhi Jha

ABSTRACT

This thesis examines witch-hunting in India as a gendered and intersectional form of violence rooted in structural inequalities of caste, class, and patriarchy. It challenges dominant narratives that dismiss witch-hunting as superstition, instead framing it as systemic violence that disproportionately targets women from Scheduled Castes and Scheduled Tribes. The study adopts a critical legal and feminist methodology, drawing on intersectionality theory to analyse how overlapping identities shape women's vulnerability to witchcraft accusations. Focusing on anti-witch-hunting laws at the national and the state level, the research evaluates the gender sensitivity and effectiveness of state responses. It also engages with India's obligations under international human rights law, particularly the Convention on the Elimination of All Forms of Discrimination Against Women, highlighting significant gaps in legal protection and the absence of intersectional approaches. Through doctrinal analysis and case studies, the thesis reveals institutional failures and the socio-legal dynamics sustaining witch-hunting. Finally, it proposes legal and policy reforms grounded in an intersectional human rights framework to better address the specific harms faced by marginalised women and promote more inclusive and effective protections against this form of violence.

KEYWORDS: Witch-hunting, gender-based violence, intersectionality, Scheduled Castes, Scheduled Tribes, feminist legal theory, structural violence, human rights, anti-witch-hunting legislation, India.

ACKNOWLEDGEMENTS

This thesis carries within it the echoes of many voices, the quiet strength of many presences, and the enduring faith of those who have accompanied me; near and far, present and remembered.

My deepest gratitude begins with my family, the foundation of all that I am. My father has been with me in every step, especially in moments of doubt and perseverance. His quiet strength continues to guide me. My mother's courage and boundless love have made it possible for me to dream at all; this work exists because of her. My sister, Jyotsna, my brother, Nitin, and my brother-in-law, Abhishek, have been my loudest champions, my constant sources of strength and unwavering support.

I am profoundly thankful to my supervisor, Professor Mathias Möschel, for his patient guidance and the thoughtful clarity he brought to this project. I am also indebted to Professors Juliana Cesario Alvim Gomes and Judit Minczinger, whose incisive questions and intellectual generosity helped expand the contours of my thinking.

This thesis would not have been possible without the belief of Rudraksh and Abhijeet who held faith in this work even when I struggled to. Their conviction made space for mine to return. The girls of Favoriten, Sara, Ena, Ain, Fanni, Palak, Zsofi, Jasmine, and Elena, who brought light, laughter, and resilience to every stage of this journey. Their presence, through every high and low, remains one of its most cherished gifts. Farhan, Vijetha, Nedim, and Dilara who helped me find my footing in Vienna and made an unfamiliar city feel like home, gently, generously, and without condition.

Finally, to the many friends back home, whose love, memories, and quiet presence are too numerous to name but live between the lines of this work, thank you for helping me grow, and for reminding me, always, of where I began.

This thesis is more than a culmination of research; it is a testament to the people who carried me here. For that, I am deeply grateful.

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I. INTRODUCTION

Gender-based violence remains one of the most persistent and normalized forms of inequality worldwide, transcending geography, culture, class, and religion.² Whether occurring in homes, communities, or conflict zones, the violence inflicted on women is not random, it is systematic, patterned, and rooted in structural power imbalances.³ As Amnesty International powerfully highlights, women everywhere, regardless of background, are united by a common thread of violence, often inflicted by those closest to them or by institutions that fail to protect them.⁴

Contemporary feminist scholarship has expanded the understanding of violence to include not only physical harm but also psychological, emotional, and symbolic forms of domination.⁵ Such violence cannot be separated from the broader cultural and material conditions that produce and sustain it, such as poverty, patriarchy, racism, and institutional neglect.⁶ Against this backdrop, this thesis examines witch-hunting as one of the most enduring and brutal manifestations of gender-based violence, which continues to persist in the shadows of legal recognition and protection, particularly within the Indian context.

² Michael L. Penn and Rahel Nardo, *Overcoming Violence against Women and Girls The International Campaign to Eradicate a Worldwide Problem* (Rowman & Littlefield Publishers, Inc., 2006) 1-3.

² *ibid.*

³ *ibid.*

⁴ Amnesty International, "Stop Violence Against Women: 'It's in our hands'" (2024) <<https://www.amnesty.org/en/wp-content/uploads/2021/08/act770012004en.pdf>> accessed 02 June, 2025.

⁵ Nancy Scheper-Hughes and Philippe Bourgois, "Introduction: Making Sense of Violence" in Nancy Scheper-Hughes and Philippe Bourgois (eds.) *Violence in War and Peace: An Anthology* (Wiley-Blackwell, 2003) 2-5.

⁶ *ibid.*

1.1. Research questions and objectives

While often dismissed as an anachronistic remnant of superstition,⁷ witch-hunting persists as a contemporary phenomenon functioning as a deeply political act used to punish female autonomy, enforce caste hierarchies, and assert control over land, labour, and bodies.⁸ The persistence of the practice and the impunity with which it is carried out raises urgent questions about whose lives are deemed grievable, whose suffering is made visible, and how law selectively recognises violence that follows.

Despite the ongoing prevalence and severity of this phenomenon, Indian legal and policy frameworks remain inadequate in addressing the specific harms experienced by women accused of witchcraft. Existing legislation has focused on the criminalisation of perpetrators while neglecting the socio-structural conditions that enable such violence. Furthermore, these laws often fail to account for the gendered nature of the crime and lack provisions for the protection, rehabilitation, and reintegration of victims. The absence of an intersectional lens in the legal discourse has contributed to the continued invisibilisation of the particular vulnerabilities and needs of women who face witch-hunting.

⁷ See Maroof Khan, "Blinded by Superstition: A Case Study on Witch Hunting" (Newsreach, 2017) <<https://www.pradan.net/wp-content/uploads/2017/02/Blinded-by-Superstition-A-Case-Study-on-Witch-Hunting.pdf>> accessed 11 June 2025; Ashwaq Masoodi, 'Witch hunting – Victims of superstition' (*Mint*, 23 Feb, 2014) <<https://www.livemint.com/Politics/Nnluhl4wjhiAAUklQwDtOL/Witch-hunting--Victims-of-superstition.html>> accessed 11 June 2025; ASRP Mukesh, 'Witch hunts, superstition kills more than Naxals in Jharkhand' (*Times of India*, 23 Jun, 2019) <<https://timesofindia.indiatimes.com/city/ranchi/witch-hunts-superstition-kills-more-than-naxals-in-jharkhand/articleshow/70336295.cms>> accessed 11 June 2025; Tapasa Kumar Parida, 'When superstition kills: Odisha's unfinished war against witchcraft violence' (*ETV Bharat*, 26 May 2025) <<https://www.etvbharat.com/en/!state/when-superstition-kills-odishas-unfinished-war-against-witchcraft-violence-enn25052605787>> accessed 11 June 2025; Nimisha Neel Shah, 'The Narayanpur witch-hunt murders: Exposing a cruel legacy of superstition and patriarchy' (*Reflections.live*, 22 May, 2025) <<https://reflections.live/articles/23111/the-narayanpur-witch-hunt-murders-exposing-a-cruel-legacy-of-superstition-and-patriarchy-article-by-nimisha-neel-shah-22291-mazdq9p5.html>> accessed 11 June 2025.

⁸ Silvia Federici, "Women, Witch-Hunting and Enclosures in Africa Today" (2010) *Sozial 3 Geschichte Online* 10–27, 2 <https://duepublico2.uni-due.de/servlets/MCRFileNodeServlet/duepublico_derivate_00024612/03_Federici_Women.pdf> accessed 11 June 2025.

In response to these gaps, the present research pursues three interrelated objectives. The first is to analyse the gendered dimensions of witch-hunting in India and examine how these intersect with broader structures of caste and class-based discrimination as well as entrenched patriarchal norms. The second objective is to critically evaluate the existing legal and policy frameworks at both the national and state levels,⁹ with a focus on their capacity or lack thereof to address the intersectional nature of the harm inflicted by witch-hunting. The third objective is to propose legal and policy reforms that are informed by an intersectional human rights framework.

These objectives are guided by a set of central research questions that shape the analytical direction of the thesis. The first question explores how the practice of witch-hunting in India reflects gendered forms of violence and systemic oppression. The second seeks to understand the ways in which caste hierarchies, class disparities, and patriarchal social norms intersect to perpetuate witch-hunting. The third question interrogates the international as well as Indian current legal and policy responses, highlighting the absence of gender-sensitive and intersectional approaches in addressing this particular form of violence. Finally, the fourth question explores how an intersectional approach to human rights can inform the development of a more comprehensive and effective legal framework to combat witch-hunting.

Together, these questions and objectives aim to uncover not only the structural roots of witch-hunting but also the institutional failures that have allowed it to persist.

⁹ In India, “state laws” refer to legislation enacted by the individual states within the federal system, each of which has its own legislature with the power to pass laws on certain subjects under the Indian Constitution.

1.2. Methodological approach: intersectionality and human rights framework

This study adopts a qualitative and critical legal methodology rooted in feminist theory and intersectional approaches to human rights. Central to the analytical framework is the concept of intersectionality, first articulated by Crenshaw and later expanded upon by numerous feminist scholars across the globe.¹⁰ Crenshaw's theory of intersectionality emerged as a response to the limitations of single-axis frameworks that analyzed oppression solely through the lens of one category, such as race or gender.¹¹ Instead, intersectionality posits that individuals experience discrimination in multiple, overlapping ways, shaped by the convergence of various social identities.¹² This framework rejects additive models of oppression, advocating instead for a structural analysis that captures how power relations are simultaneously shaped by race, gender, class, caste, age, disability, and other categories of difference.¹³ Intersectionality thus provides a powerful lens through which to examine how various axes of oppression such as gender, caste, class, age, and tribal status interact to produce unique and compounded vulnerabilities for women accused of witchcraft. Rather than viewing these categories in isolation, intersectionality insists on a multidimensional analysis that recognizes the overlapping and mutually reinforcing nature of structural inequalities.

The methodological approach comprises several interrelated dimensions. First, the research undertakes a comparative legal analysis of state-level anti-witch-hunting legislation in India, with a primary focus on the Odisha Prevention of Witch-Hunting Act (2013) and the Assam Witch Hunting (Prohibition, Prevention and Protection) Act (2015). These two statutes are

¹⁰ Kimberlé Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics' (1989) University of Chicago Legal Forum 139, 149-150.

¹¹ *ibid.*

¹² *ibid.*

¹³ *ibid.*

examined in depth for their conceptualization of witch-hunting, legal definitions, prescribed penalties, and most importantly their gender sensitivity. The analysis critically assesses how these laws respond to the specific vulnerabilities of women, particularly those from Scheduled Castes (“SC”)/ Scheduled Tribes (“ST”), who are disproportionately affected by witch-hunting and related violence. The analysis also includes an examination of the Prevention and Prohibition of Witch-Branding and Witch-Hunting and Other Harmful Practices Bill, 2022, which represents an important attempt at creating a unified national legal response.

While six Indian states, Odisha, Assam, Jharkhand, Bihar, Chhattisgarh, and Rajasthan, have enacted specific legislation to counter witch-hunting, and states like Maharashtra and Karnataka have broader anti-superstition laws that encompass witch-hunting, this study limits its legal analysis to Odisha and Assam. This decision is driven by both methodological and empirical considerations. According to recent data, witch-hunting remains highly prevalent in 12 of Odisha’s 30 districts¹⁴ and has been recorded in at least 21 of Assam’s 35 districts.¹⁵ These two states represent some of the highest reported incidences of witch-hunting violence in the country. Although Jharkhand tops the national list for witch-hunt-related murders with 523 women reportedly lynched between 2001 and 2016 according to National Crime Records Bureau (“NCRB”) data, the state’s legislation is not publicly accessible through any verified government repository, thereby precluding a rigorous and transparent legal analysis.¹⁶

¹⁴ Priya Ranjan Sahu, “Witch hunting: 83% of Odisha's cases in six districts, says report” (Down to Earth, 21 Dec, 2021) <https://www.downtoearth.org.in/governance/witch-hunting-83-of-odisha-s-cases-in-six-districts-says-report-80779#google_vignette> accessed 02 June, 2025.

¹⁵ TTN, “Getting to the roots of decades old-problem of witch hunting in Assam” (Times of India, 18 Oct, 2020) <<https://timesofindia.indiatimes.com/city/guwahati/getting-to-the-roots-of-decades-old-problem-of-witch-hunting-in-assam/articleshow/78731380.cms>> accessed 02 June, 2025.

¹⁶ Sanjoy Dey, “Jharkhand tops in witch-hunt murders, 523 women lynched between 2001-16: NCRB” (3 Dec, 2017) <<https://www.hindustantimes.com/ranchi/jharkhand-tops-in-witch-hunt-murders-523-women-lynched-between-2001-16-ncrb/story-oNIPZYiPrnzOrwGS6EKvEP.html>> accessed 02 June, 2025.

Consequently, Assam and Odisha were chosen not only for the substantial accessibility of their legal frameworks, but also for the continued prevalence of witch-hunting within their jurisdictions. Together, they offer compelling case studies to assess how legal interventions operate in practice in high-incidence regions.

Second, the study conducts a doctrinal analysis of national legislation in light of relevant national jurisprudence and international human rights instruments. This includes examining India's obligations under the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW") and the International Covenant on Civil and Political Rights ("ICCPR"). Through this lens, the research ultimately assesses the extent to which Indian law complies with international norms on gender-based violence in case of witch-hunting and identifies areas of divergence and deficiency. While the thesis briefly engages broader international frameworks such as the ICCPR, it foregrounds the limitations within CEDAW's legal architecture, especially its failure to adopt an intersectional approach, as a key factor constraining its effectiveness in addressing forms of violence such as witch-hunting. This analytical emphasis is warranted both because CEDAW constitutes the principal international instrument governing gender-based violence, which this thesis conceptualises witch-hunting as, and because the scope of the research necessitates a focused examination of one core treaty body.

Third, the research incorporates case studies of documented witch-hunting incidents, sourced from non-governmental organization reports, media archives, and judicial decisions. These case studies provide a grounded understanding of the socio-economic, cultural, and political contexts in which witch-hunting occurs. They illustrate the mechanisms through which women are

targeted, the roles played by various local actors including police, panchayats,¹⁷ and community leaders and the enduring impact on the lives of victims and their families.

Together, these methods enable a comprehensive and critical examination of witch-hunting as a gendered and intersectional form of violence. The methodology not only reveals the structural and institutional conditions that allow such violence to persist but also seeks to contribute constructively to legal and policy reform. By grounding its analysis in empirical data, feminist theory, and international human rights norms, the study aims to develop evidence-based, gender-sensitive recommendations that can inform a more robust and inclusive legal framework to combat witch-hunting in India.

¹⁷ Panchayats are local self-government institutions in rural India, functioning as village councils under a three-tier system of governance established by the 73rd Constitutional Amendment. They play a significant role in local dispute resolution, delivery of welfare services, and community decision-making, though in some regions, informal or extra-legal panchayats may also exercise social control in ways that contradict constitutional norms.

II. WITCH-HUNTING IN INDIA: HISTORICAL, CULTURAL, AND GENDERED DIMENSIONS

Witchcraft, as a concept, is highly variable across cultures. Deriving from the Old English “wicce” (witch) and “cræft” (skill or ability), it originally referred to mystical knowledge rather than malevolent intentions.¹⁸ Over time, however, especially in Western discourse, it has become associated with danger, subversion, and heresy.¹⁹ However, its meaning is not universally fixed; witchcraft in different societies is marked by distinct connotations whether as sorcery, shamanism, or divination.²⁰ In parts of Africa, for example, witchcraft is associated with harm through supernatural powers, while in certain Christian traditions, it is understood as a sinful practice connected to the occult.²¹ Despite this diversity in definitions, witchcraft accusations have usually historically served as a mechanism of social control, especially targeting women who defy prescribed roles or threaten the existing social order.²²

While witchcraft denotes the use or attribution of supernatural power, often embedded in cultural or spiritual traditions, a witch-hunt is a socio-political campaign, frequently gendered and punitive, aimed at suppressing dissent or reinforcing hierarchies.²³ In this thesis, the terms “witchcraft accusations” and “witch-hunting” are often used interchangeably to refer to the socio-legal phenomenon of targeting individuals, primarily women, as “witches.” However, it is important to distinguish this from the practice or belief in witchcraft itself.

¹⁸ Ronald Hutton, “The Meaning of the Word “Witch” (2018) 13 *Magic, Ritual, and Witchcraft* 98.

¹⁹ *ibid.*

²⁰ Human Rights Council, “Report of the Independent Expert on the enjoyment of human rights by persons with albinism on the expert workshop on witchcraft and human rights” (A/HRC/37/57/Add.2, 23 Jan 2018) 7 <<https://documents.un.org/doc/undoc/gen/g18/016/97/pdf/g1801697.pdf?OpenElement>> accessed 01 June 2025.

²¹ *ibid.*

²² Ata Mallick, “Witch-hunting in 1857” (2008) 33 *Economic and Political Weekly* 39 <<https://www.epw.in/journal/2008/39/discussion/witch-hunting-1857.html>> accessed 01 June 2025.

²³ Silvia Federici, *Caliban and the Witch: Women, the Body and Primitive Accumulation* (Autonomedia 2004) 163–165.

The Salem witch-trials of early modern Europe, for instance, disproportionately affected women, particularly older, widowed, or socially marginalized women, who were accused of consorting with the devil or causing harm through supernatural means.²⁴ These accusations were not simply about belief in magic; they were embedded in the gender, religious, and political upheavals of the time. As Federici argues, the witch-hunts were a central part of the transformation of European society under capitalism, helping to impose new gender norms and reinforce patriarchal family structures.²⁵

In contemporary contexts, witch-hunting has not disappeared. In fact, it continues to surface in parts of Africa, South America, Southeast Asia, and South Asia, often driven by a complex interplay of superstition, poverty, patriarchal norms, and local politics.²⁶ While the specific content of accusations may differ, the underlying gendered power dynamics remain remarkably consistent. Women, especially those who are poor, elderly, widowed, or otherwise socially vulnerable are disproportionately targeted.²⁷

Similarly in India, the practice of witch-hunting has deep roots, intertwined with religious, cultural, and social structures that have persisted for centuries. Drawing insights from ancient Hindu scripts and colonial legacies, the persecution of individuals accused of witchcraft reflects not only a belief in supernatural forces but also the reinforcement of societal norms and power dynamics.²⁸ The stigmatization of witches in India is inextricably linked to the Brahmanical²⁹

²⁴ Federici (n 7) 10–27.

²⁵ *ibid.*

²⁶ HRC (n 19) 7 <<https://documents.un.org/doc/undoc/gen/g18/016/97/pdf/g1801697.pdf?OpenElement>> accessed 01 June 2025.

²⁷ *ibid.*

²⁸ Govind Kelkar and Dev Nathan (eds.), *Gender and Tribe: Women, Land and Forest* (Zed Books, 1991) 88–109.

²⁹ Brahmanical or Brahmanical Patriarchy refers to a system of domination that intertwines caste and gender hierarchies, ensuring both the subordination of women and the maintenance of caste purity. According to historian Uma Chakravarti, this framework operates through strict control over women's sexuality, endogamous marriage practices, and the regulation of female labor to uphold caste-based social structures. Uma Chakravarti, "Conceptualising Brahmanical Patriarchy in Early India: Gender, Caste, Class and State," (1993) 28 *Economic and Political Weekly* 579, 585.

concept of caste purity, which enforces strict hierarchies based on caste identity.³⁰ Moreover, the intersection of caste, class, and gender exacerbates the vulnerability of those targeted, particularly women from marginalized communities such as SC and ST.

The scope and persistence of this violence are underscored by national data. According to the NCRB, 2,468 murders were committed between 2001 and 2016 in which witch-persecution was recorded as the motive.³¹ In 2016 alone, 134 individuals were killed after being accused of practising witchcraft, typically linked to allegations of causing illness, death, or misfortune within their communities.³² However, these figures likely represent a significant undercount due to underreporting. From 2017 onwards, NCRB has ceased to publish specific data on killings related to witch-persecution, making contemporary trends harder to track. Moreover, many cases are likely misclassified under alternate motives such as land disputes or interpersonal conflict, concealing the gendered and caste-based dimensions of the violence. Even more critically, NCRB data captures only the most extreme manifestation of persecution i.e., murder while remaining silent on the widespread instances of torture, social ostracisation, sexual violence, or branding that precede or accompany such killings. In many cases, it is only after a woman is murdered that her story enters the formal legal record.³³

This chapter critically examines the phenomenon of witch-hunting in India, situating it within the broader social matrix of caste, gender, and structural violence. Far from being merely a vestige of irrational superstition, witch-hunting operates as a deeply political and gendered practice, disproportionately targeting women. The chapter contends that while accusations of witchcraft are frequently framed as expressions of supernatural belief, they are in fact strategic

³⁰ Kelkar and Nathan (n 27) 88–109.

³¹ ActionAid "Witch-Hunting in Odisha" (Report Dec, 2021) 3-5 <<https://www.actionaidindia.org/wp-content/uploads/2022/02/Study-Report-Witch-Hunting-in-Odisha-ActionAid-Odisha-State-Women-Commission-20Dec2021.pdf>> accessed 01 June 2025.

³² *ibid.*

³³ *ibid.*

tools of coercion, deployed to assert control over land, resources, and women's bodies. By unpacking the intersectional dynamics that make certain groups particularly vulnerable to such accusations, this chapter seeks to move beyond culturalist or criminal law framings and instead position witch-hunting within a continuum of structural and symbolic violence. It explores the underlying motives behind these practices such as economic, patriarchal, and casteist.

2.1. Overview of the practice of witch-hunting in India

The progression of witch-hunting unfolds systematically, often with brutal consequences, and can broadly be delineated into three distinctive stages: accusation, declaration, and persecution.³⁴ These stages encapsulate the socio-cultural mechanisms through which predominantly women are singled out and labelled as witches within their communities.

Accusation marks the inception of the witch-hunting saga, where women are held responsible for a myriad of misfortunes afflicting the community or individuals within it.³⁵ These misfortunes range from the demise of a person, child, or animal, to illnesses, natural calamities, or agricultural failures. Blaming these calamities on the alleged witch ignites the subsequent phases of persecution.³⁶

Following accusation, the targeted woman endures the process of declaration, wherein she is formally branded as a witch and socially shunned from her community.³⁷ This branding often involves rituals conducted by traditional witch-finders or witch doctors,³⁸ known by various

³⁴ Mallick (n 21).

³⁵ *ibid.*

³⁶ ActionAid "Witch Branding in India A Study of Indigenous and Rural Societies" (Report, Feb, 2022) 10-15 <https://www.uni-kassel.de/forschung/files/Global_Partnership_Network/Downloads/Witch_Persecution_and_Hunting_in_Indigenous_and_Rural_Societies_in_India_V6.pdf> accessed 11 June 2025.

³⁷ Mallick (n 21).

³⁸ Witch-doctors or *ojha* or other related terminologies mentioned refers to a traditional healer or spiritual practitioner in parts of India, particularly in rural and tribal regions. In the context of witch-hunting, an *ojha* often acts as a self-proclaimed exorcist or diviner who identifies individuals, usually women as "witches" believed to be responsible for misfortunes such as illness, death, or crop failure.

titles such as *khonses*, *sokha*, *janguru*, or *ojha*.³⁹ Through these rituals, the accused women are identified as possessing malevolent powers, cementing their status as witches in the community's perception.

The final stage of the witch-hunting saga involves persecution, where the accused women confront unrelenting harassment, violence, and marginalization at the hands of their community heads, families, peers, and authorities.⁴⁰ Perpetrators exploit the declared witch status to rationalize acts of cruelty and discrimination against them. Consequently, these women endure not just physical agony but also profound psychological anguish as they navigate the treacherous terrain of witch-hunting.⁴¹

This tripartite progression, marked by accusation, declaration, and persecution, stands as a stark reminder of the enduring prevalence of witchcraft-related violence and injustice in societies worldwide. However, given the unique cultural context of India, characterized by the omnipresent issue of caste, the atrocities faced by the victims of witch-hunting are distinct.

2.2. Unveiling the catalysts: investigating the drivers of witch-hunting

It is argued that witch-hunting in India must be understood not as an archaic superstition but as a contemporary and systemic mode of gendered and caste-based control. It is a social practice deeply embedded in the structures of Brahmanical patriarchy, functioning to discipline women, especially Dalit, tribal, and other marginalized women who transgress, resist, or simply fail to conform to the normative expectations of their communities.⁴² Accusations of witchcraft do not arise from any self-ascribed practices of the accused; rather, they are imposed upon women by

³⁹ ActionAid (n 35) 10-15.

⁴⁰ Mallick (n 21).

⁴¹ ActionAid (n 35) 10-15.

⁴² *ibid.* 24-25.

dominant caste actors, often as a form of social punishment rooted in jealousy, economic interest, or sexual coercion.⁴³

The social profile of women branded as witches follows a distinct pattern. Most are elderly, widowed, single, or otherwise socially isolated; many are from SC and ST.⁴⁴ These women are rarely protected by kinship ties or economic capital, and their marginality renders them particularly vulnerable to public identification and ritualised violence. The intersection of caste, class, gender, and age thus creates a matrix of vulnerability, where structural inequality amplifies exposure to violence. These women's exposure to violence cannot be understood through one-dimensional categories such as gender alone. Lacking the protection of kinship ties or economic capital, their marginality is shaped by the intersection of caste, class, gender, and age, social variables that do not operate in isolation but interact to produce specific configurations of disadvantage. Adopting an intersectional perspective will reveal how these interwoven social constructs generate differentiated experiences of vulnerability, making certain individuals more susceptible to public identification and ritualised violence.⁴⁵

From a legal-philosophical perspective, this phenomenon embodies what Fredman characterises as compounded disadvantage and stigma.⁴⁶ The formal guarantees of equality before the law does little for women whose lives are shaped by overlapping systems of exclusion.⁴⁷ Indian criminal law may prohibit violence and murder, but it fails to prevent the deeper pattern of social degradation that underpins witch-hunting. For instance, degrading practices such as tonsuring, forced ingestion of excreta, or parading women naked are often categorised by law enforcement under 'simple hurt' provisions of the Indian Penal Code

⁴³ *ibid.* 19-25.

⁴⁴ PLD, "Targeting Women as Witches" (Report, 2012) 3 <<https://pldindia.org/targeting-women-as-witches/>> accessed 01 June 2025.

⁴⁵ See, Crenshaw (n 8).

⁴⁶ Sandra Fredman, 'Substantive Equality Revisited' (2016) 14 *International Journal of Constitutional Law* 712, 713-14.

⁴⁷ *ibid.*

(IPC).⁴⁸ This reductive classification trivialises the symbolic cruelty of such acts and erases their role in reproducing systemic violence.

A 2016 incident illuminates how witch-hunting operates as both social punishment and extractive violence, particularly against Dalit households.⁴⁹ In a community marked by landlessness and economic precarity, a Dalit family was accused of witchcraft following a series of unexplained deaths.⁵⁰ What followed was not merely an outbreak of superstition, but an orchestrated spectacle of domination where the accused were detained, tortured, and subjected to dehumanising rituals including the forceful extraction of teeth and ingestion of excreta.⁵¹ Financial extortion accompanied this violence where the perpetrators demanded money under threat of further abuse.⁵² The intersection of caste, poverty, and collective mob justice created a space where the rule of law was supplanted by performative cruelty.

This case demonstrates how witch-hunting is less a belief in the supernatural than a disciplinary mechanism directed at the socially vulnerable. The coercive extraction of money, the symbolic mutilation of the body, and the collective nature of punishment all point to a logic of caste and gender regulation. The accused are not simply punished; they are transformed into symbolic repositories of communal misfortune. Their suffering becomes a social ritual that reaffirms existing hierarchies and restores a sense of moral and economic order, however perverse, to a fractured community.

This dynamic often plays out as a tool for redistributive dispossession as well. In many cases, branding a woman as a witch becomes a pretext to seize her land, deny her inheritance, or isolate her from communal resources.⁵³ These women suffer not only the denial of economic

⁴⁸ Indian Penal Code 1860, Section 319-323.

⁴⁹ ActionAid (n 30) 100-101.

⁵⁰ *ibid.*

⁵¹ *ibid.*

⁵² *ibid.*

⁵³ ActionAid (n 35) 24-25.

resources (land, shelter, food) but also symbolic disqualification as they are denied the social legitimacy to make claims, to be heard, or even to be seen as human subjects. This dual exclusion pushes them out of both material and moral economies making them doubly subordinated.⁵⁴

This structural exclusion is exemplified in the case of Pama Murmu, a tribal widow who was once revered in her community as a medium for a local deity.⁵⁵ Over time, her spiritual role was reinterpreted as dangerous. When villagers fell ill, a traditional healer claimed she was responsible, saying he had visions of her during rituals. Without any formal accusation or proof, suspicion turned into collective action. Pama was socially boycotted, branded a witch, and eventually driven from the village.

Though no physical violence was inflicted, she experienced what can be described as a form of social death, a loss of social recognition, community belonging, and access to basic rights.⁵⁶ Denied access to government welfare, excluded from community resources, and abandoned by local officials, she became invisible to both the state and society. Her case reveals how witch-hunting can operate through slow, cumulative forms of harm, through *exclusion*, not just attack. It demonstrates how women marked by caste, poverty, and widowhood can be erased from the moral and material fabric of communal life, even without a single act of visible brutality.

Dalit and Tribal activists have rightly framed witch-hunting as a form of caste-based sexual and structural violence.⁵⁷ It is not merely the expression of irrational belief but a tactical and

⁵⁴ Sharmila Rege, "Dalit Women Talk Differently: A Critique of 'Difference' and Towards a Dalit Feminist Standpoint Position" (1998) 33 Economic and Political Weekly WS39 <<https://www.jstor.org/stable/4403327>> accessed 11 June 2025.

⁵⁵ ActionAid (n 30) 67-70.

⁵⁶ Zoe Headley, "Adjudicating Social Death: Caste Exclusion, Civil Rights and the Colonial High Courts" (2018) 17 South Asia Multidisciplinary Academic Journal 10 <<https://journals.openedition.org/samaj/4448>> accessed 11 June 2025.

⁵⁷ P.G. Ambedkar, "Dalit Women and the "Witches"" (NewsClink, Aug 19, 2024) <<https://www.newsclick.in/dalit-women-and-witches>> accessed 11 June 2025.

deliberate deployment of public violence to discipline Dalit women's agency. Many of these accusations emerge from sexual transgressions, not by the women themselves, but by upper-caste men whose advances have been rejected. Violence becomes a spectacle not just of punishment, but of reassertion.⁵⁸ It reestablishes caste purity and masculine honour through the degradation of the resistant female body.⁵⁹ As Indian feminist scholars like Rege have long argued, the control of Dalit women's bodies has always been central to the reproduction of caste and gender hierarchies.⁶⁰

These practices are further legitimised by community structures such as panchayats, where caste and gender norms are often institutionalised rather than challenged. The process is cyclical where once a woman is branded, her guilt is assumed, and all misfortune is laid at her feet. There is no evidentiary threshold to meet, only the performance of suspicion. As Kelkar and Nathan observe, the proof in witch-hunting cases comes from hearsay, imagined rituals, or unusual conduct.⁶¹ Even when police intervene, they rarely provide lasting protection, as seen in the case studies above. The woman remains ostracised, her home abandoned, her family shunned. The social sentence of witchcraft often exceeds the judicial one.

Witch-hunting thus operates as a gendered mechanism of accumulation and exclusion, one that is deeply enmeshed in caste politics, land ownership patterns, and patriarchal anxieties. In this way, witch-hunting becomes a mode of caste and gender regulation under the guise of cultural belief. Any meaningful engagement with this practice must move beyond viewing it merely as superstition, recognizing instead the underlying structural inequalities and systemic social and legal shortcomings.

⁵⁸ Feeza Vasudeva-Barkdull, "Articulating Lynching in India" (2024) 38 *International Journal of Politics, Culture, and Society* 111, 128-129.

⁵⁹ Rege (n 54).

⁶⁰ *ibid.*

⁶¹ Kelkar and Nathan (n 27) 88–109.

III. INTERNATIONAL LAW AND WITCH-HUNTING: ADDRESSING A PERSISTENT GAP IN GENDER-BASED VIOLENCE FRAMEWORKS

Despite the evolution of international human rights law and its growing commitment to gender equality, certain culturally embedded and structurally persistent forms of gender-based violence continue to elude meaningful legal engagement. One such phenomenon is witch-hunting which is a practice often dismissed as archaic or culturally peripheral, yet one that remains disturbingly prevalent across various global contexts, disproportionately affecting women, particularly those from marginalized communities. This chapter begins by examining how witchcraft accusations constitute violations of rights, particularly for women from marginalised communities. It then traces the trajectory of relevant developments in international law, assessing the extent to which existing frameworks engage with witch-hunting. The discussion proceeds to evaluate UN responses to witch-hunting in India, situating these within broader institutional efforts to address harmful traditional practices. Finally, this chapter offers a critical examination of the insufficient incorporation of intersectionality within international legal frameworks, particularly CEDAW, and argues that this limitation results in a partial and inadequate engagement with the complex realities of witch-hunting in India. By neglecting intersectionality, international law falls short of fully addressing the structural and symbolic violence underpinning witch-hunting, thereby perpetuating gaps in legal protection and redress for marginalized women.

3.1. Violations of rights in the context of witchcraft accusations

Accusations of witchcraft and the ensuing acts of violence, discussed in the previous chapter, implicate a range of fundamental human rights protected under international law. Such practices frequently result in extrajudicial killings, torture, social ostracisation, property dispossession, forced displacement, and multi-generational trauma, particularly affecting women, children, and members of marginalised castes or tribal communities. Consequently, it will be shown that witch-hunting not only involves individual acts of violence but also constitutes violation of rights enshrined in core international human rights instruments, including ICCPR, CEDAW, the Convention against Torture (“CAT”), and the Convention on the Rights of the Child (“CRC”).

The most egregious violation associated with witch-hunting can be made under the right to life, protected under Article 6 of the ICCPR, which imposes on states a positive obligation to prevent arbitrary deprivation of life.⁶² In India, where state authorities fail to intervene against witch-hunting, the state's inaction may constitute acquiescence or even complicity in unlawful killings, thereby constituting a direct violation of India's binding obligations under international human rights law. As the Human Rights Committee has affirmed, this obligation includes a duty to investigate, prosecute, and punish perpetrators and to provide effective remedies to victims' families.⁶³ In situations where women or children are killed following witchcraft accusations, and authorities fail to act, the state may be in breach of this core obligation.

Accused individuals are also frequently subjected to physical violence, forced evictions, and degrading treatment, thus implicating Article 7 of the ICCPR, which prohibits torture and cruel,

⁶² International Covenant on Civil and Political Rights (adopted 16 Dec 1966, entered into force 23 Mar 1976) 999 UNTS 171 (“ICCPR”), Article 6.

⁶³ Human Rights Committee, ‘General Comment No 36 on Article 6: Right to life’ (30 Oct 2018) UN Doc CCPR/C/GC/36, [7]–[9], [27] <<https://www.refworld.org/legal/general/hrc/2019/en/123145>> accessed 11 June 2025.

inhuman, or degrading treatment or punishment.⁶⁴ CAT, in its interpretation of state obligations under Article 2, has clarified that states are required to exercise due diligence to prevent, investigate, and punish acts of torture or ill-treatment by both state and non-state actors.⁶⁵ Witch-hunting cases in India often involve brutal assaults, parading of women naked, branding with hot irons, or expulsion from villages, treatment which meets the threshold of cruel and inhuman conduct under international law.⁶⁶ Despite the high threshold set by instruments like the UN Human Rights Committee's ("UNHRC") General Comment ("GC") No. 20 (1992) on Article 7 of the ICCPR,⁶⁷ which prohibits torture and cruel, inhuman or degrading treatment, certain acts can still meet this standard due to the severe physical and psychological suffering inflicted.

The discriminatory nature of witchcraft accusations, which disproportionately target women and members of lower castes or indigenous groups, raises serious concerns under Article 26 of the ICCPR, which guarantees equality before the law and protection against discrimination.⁶⁸ The CEDAW Convention further elaborates on this right, requiring states to eliminate discrimination against women in all fields and to take appropriate measures to modify social and cultural patterns of conduct that perpetuate stereotypes.⁶⁹ The CEDAW Committee has consistently recognised that harmful traditional practices, including witch-hunting, constitute a form of gender-based violence and discrimination, and has linked such practices to broader systems of patriarchal control, particularly over land, resources, and social status.⁷⁰ General

⁶⁴ ICCPR, Article 7.

⁶⁵ Committee Against Torture, 'General Comment No 2: Implementation of Article 2 by States Parties' (24 Jan 2008) UN Doc CAT/C/GC/2, [15]–[18] <<https://www.ohchr.org/en/documents/general-comments-and-recommendations/catcgc2-general-comment-no-2-2007-implementation>> accessed 11 June 2025.

⁶⁶ Human Rights Committee, General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment) (10 Mar, 1992) UN Doc A/44/40 [5] <<https://www.refworld.org/legal/general/hrc/1992/en/11086>> accessed 11 June 2025.

⁶⁷ *ibid.*

⁶⁸ ICCPR, Article 26.

⁶⁹ Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 Dec 1979, entered into force 3 Sep 1981) 1249 UNTS 13, Article 5(a) ("CEDAW").

⁷⁰ CEDAW, 'Concluding Observations: India' (2 Feb 2007) UN Doc CEDAW/C/IND/CO/3, [27] <<https://digitallibrary.un.org/record/720690/?ln=en>> accessed 11 June 2025.

Recommendation (“**GR**”) No. 19 and its updated GR No. 35 explicitly classify gender-based violence as a form of discrimination prohibited under the Convention, noting that it includes acts or threats of violence in both public and private life.⁷¹

Witch-hunting, arguably, also infringes upon the right to security of person,⁷² and the right to freedom from arbitrary or unlawful interference with one’s privacy and home.⁷³ Survivors of witch-hunting often find themselves forcibly displaced from their homes, evicted from their lands, and rendered destitute. Women branded as witches may be excluded from social protection schemes or denied inheritance and community membership. The failure of local authorities to provide redress or protection further entrenches cycles of vulnerability and impunity.

Witch-hunting also violates a range of rights protected under the CRC, particularly when accusations are directed at or affect children either directly or as secondary victims. Article 6 of the CRC guarantees every child the inherent right to life and requires states to ensure, to the maximum extent possible, their survival and development.⁷⁴ In communities where children are branded as witches, subjected to abandonment, abuse, or ritualised violence, the failure of authorities to intervene may amount to a breach of this obligation. Moreover, states shall take all appropriate measures to protect children from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation.⁷⁵ Children of accused women often face educational disruption, displacement, and social exclusion, violating their

⁷¹ CEDAW, ‘General Recommendation No 35 on Gender-Based Violence against Women’ (14 Jul, 2017) UN Doc CEDAW/C/GC/35 [9], [15] <<https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-recommendation-no-35-2017-gender-based>> accessed 11 June 2025 (“CEDAW GR No. 35”).

⁷² ICCPR, Article 9.

⁷³ ICCPR, Article 17.

⁷⁴ Convention on the Rights of the Child (adopted 20 Nov 1989, entered into force 2 Sept 1990) 1577 UNTS 3, Article 6 (“CRC”).

⁷⁵ CRC, Article 19.

rights to education,⁷⁶ to be free from discrimination,⁷⁷ and protection from harmful traditional practices.⁷⁸

In addition, witch-hunting often results in the denial of access to justice and legal remedies, undermining the principle of accountability embedded in international law. The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation affirm the duty of states to investigate human rights violations and provide victims with access to justice, adequate reparation, and guarantees of non-repetition.⁷⁹ In the context of witch-hunting, however, survivors frequently face social ostracisation, economic dependency, police inaction, and local complicity (discussed in the previous chapter), which together obstruct legal recourse.

3.2. Developments in International Law

The emergence of witch-hunting as a human rights concern within the framework of the United Nations (“UN”) marks a significant, though still nascent, development in international law. Two key documents reflect this evolving attention are the 2018 Report of the Independent Expert on the enjoyment of human rights by persons with albinism⁸⁰ and the 2021 Human Rights Council Resolution 47/8.⁸¹ Together, they help construct a soft-law framework that seeks to reframe witchcraft accusations and ritual attacks not as folkloric or isolated incidents but as human rights violations demanding coordinated international responses.

⁷⁶ CRC, Article 28.

⁷⁷ CRC, Article 2.

⁷⁸ CRC, Articles 24(3) and 30.

⁷⁹ UN General Assembly, ‘Basic Principles and Guidelines on the Right to a Remedy and Reparation’ (21 March 2006) UN Doc A/RES/60/147.

⁸⁰ Special Rapporteur, “Report of the Independent Expert on the enjoyment of human rights by persons with albinism on the expert workshop on witchcraft and human rights” (20 Dec, 2017) A/HRC/37/57/ <<https://docs.un.org/en/A/HRC/37/57>> accessed 11 June 2025.

⁸¹ UN Human Rights Council Resolution 47/8 (2021) UN Doc A/HRC/RES/47/8 (“UNHRC 47/8”).

The 2018 Expert Report was catalysed by increasing reports of witchcraft-related attacks against persons with albinism, particularly in sub-Saharan Africa.⁸² However, its scope extended much further, culminating in a dedicated expert workshop held in Geneva. One of the report's key interventions was to define witchcraft-related abuse as a form of harmful practice, comparable to female genital mutilation or early/forced marriage.⁸³ This classification is significant as it brings witchcraft-related violence within the normative reach of treaty-based mechanisms, particularly the CEDAW and the CRC.⁸⁴

The report also foregrounds the urgent nature of the issue, noting that “*attacks are often life-threatening, extremely violent, and rooted in systemic discrimination*” against the most marginalized, including persons with disabilities, women, children, older persons, and the poor.⁸⁵ Crucially, it rejects cultural relativism as a defence for state inaction by noting “*while beliefs in witchcraft and related practices may be deeply entrenched, the human rights abuses that result from these beliefs cannot be excused or justified.*”⁸⁶ The report notes that state complicity often manifests through either active participation (such as law enforcement turning a blind eye) or structural omission, where impunity is widespread and victims lack access to justice or redress.⁸⁷

Among its most novel recommendations is a call to “*focus on harm, not belief*”, an approach that shifts attention away from the metaphysical content of witchcraft accusations and towards the tangible consequences for victims.⁸⁸ This allows for international legal intervention without becoming entangled in the protection of religious freedom or cultural expression. The report also advocates for multi-sectoral responses, including legal reform, social education campaigns,

⁸² HRC (n 77) [30]-[32].

⁸³ *ibid.* [29]

⁸⁴ *ibid.*

⁸⁵ *ibid.*

⁸⁶ *ibid* [65].

⁸⁷ *ibid* [49]-[50], [67].

⁸⁸ *ibid* [67].

documentation and data-gathering, and stronger mandates for UN mechanisms to monitor such abuses.⁸⁹

Building on this momentum, the 2021 Human Rights Council Resolution 47/8 offered the most direct normative articulation to date. One of the most notable aspects of Resolution 47/8 is its explicit classification of witchcraft accusations and ritual attacks as “*harmful practices*” resulting in human rights violations, a framing previously limited to practices like child marriage and female genital mutilation.⁹⁰ The resolution enumerates a range of abuses “*killings, mutilation, burning, coercion in trafficking of persons, torture and other cruel, inhuman or degrading treatment and stigmatization*” particularly targeting “*persons in vulnerable situations, including women, children, persons with disabilities, older persons and persons with albinism.*”⁹¹ This detailed articulation moves beyond general condemnation and provides a catalogue of violations that can be linked to specific treaty protections, including the right to life, bodily integrity, and freedom from torture. When such assessments are repeated and acknowledged by States or treaty bodies, they may amount to “*subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation*” within the meaning of Article 31(3)(b) VCLT, thereby helping shape the authoritative understanding of these provisions.⁹²

Moreover, the resolution confronts a long-standing conceptual tension in human rights law between cultural practices and legal universality. It does so by reaffirming the right to freedom of religion or belief⁹³ while also insisting that such rights must be distinguished from harmful acts committed under their guise.⁹⁴ This is a particularly significant development in the

⁸⁹ *ibid* [70]–[75].

⁹⁰ UNHRC 47/8, Preamble.

⁹¹ *ibid*.

⁹² Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 January 1980) 1155 UNTS 331, Article 31(3)(c).

⁹³ ICCPR, Article 18.

⁹⁴ UNHRC 47/8, Preamble, and Operative [6].

witchcraft context, where harmful practices are often protected or rationalised as religious or customary. Resolution 47/8 encourages States to “*carefully distinguish*” between legitimate religious expression and violent practices masquerading as such, a move that helps navigate the cultural relativism that has historically paralysed international engagement with witch-hunting.⁹⁵

Further, the resolution focuses on State obligation and complicity. It urges States to “*condemn*” and “*eliminate*” these practices, “*ensure accountability,*” and bring perpetrators to justice, thereby affirming the principle of due diligence in preventing, investigating, and prosecuting acts of violence committed by both state and non-state actors.⁹⁶ This is important in contexts where witch-hunting is often treated as a private or local affair, and where law enforcement either fails to intervene or actively colludes in the abuse. The resolution recognises this risk of systemic impunity and calls for the inclusion of witchcraft-related violence in national human rights action plans.

Resolution 47/8 also advances the infrastructural and procedural agenda for future legal development. It requests the UN High Commissioner for Human Rights to organise an expert consultation and produce a comprehensive study on the issue, including recommendations for future institutional action.⁹⁷ This provision effectively mandates a follow-up mechanism and ensures that the issue remains on the agenda of the Human Rights Council (“HRC”). Simultaneously, it invites the engagement of special procedures and treaty bodies, creating the space for thematic coherence across UN mandates, from extrajudicial executions to violence against women, freedom of religion, and the rights of the child.

⁹⁵ *ibid.* Operative [6].

⁹⁶ *ibid.* Operative [1]–[3].

⁹⁷ *ibid.* Operative [8].

While some limitations remain, notably the absence of binding enforcement obligations or a call for a specific treaty mechanism, the resolution's language reflects a consolidation of normative momentum around witchcraft-related violence. It legitimises the framing of such acts as human rights violations and elevates the subject to a level of formal concern previously not afforded within multilateral fora.

In its invocation of specific treaty instruments, such as the ICCPR, International Covenant on Economic, Social and Cultural Rights (“**ICESCR**”),⁹⁸ CRC, CAT, CEDAW, and Convention on the Rights of Persons with Disabilities (“**CRPD**”),⁹⁹ the resolution also lays the groundwork for future interpretive developments through GC, concluding observations, and shadow reporting by civil society. Furthermore, its call for “*context-sensitive*” responses reflects a growing understanding that international law must engage meaningfully with local conditions without sacrificing the universality of human rights.

The Resolution 47/8 represents a turning point in the soft law development of international human rights norms addressing witchcraft accusations and ritual attacks. It reframes what were long treated as fringe or folkloric abuses into matters of serious legal concern, articulates state obligations with specificity, and creates a framework for further expert engagement, policy formulation, and eventual legal codification. The challenge now lies in converting this normative architecture into enforceable standards, institutional practice, and justice for victims.

3.3. UN responses to witch-hunting as gender-based violence India

UN bodies have consistently expressed concern over the persistence of witch-hunting in India, recognising it as a severe and gendered form of violence that disproportionately affects

⁹⁸ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3.

⁹⁹ Convention on the Rights of Persons with Disabilities (adopted 13 December 2006, entered into force 3 May 2008) 2515 UNTS 3.

marginalised women, particularly in rural and tribal areas. As early as 2007, CEDAW identified witch-hunting as a harmful traditional practice.¹⁰⁰ Alongside other practices such as dowry, *sati*, and the *devadasi* system, the Committee characterised witch-hunting as an “*extreme form of violence against women*” and urged the Indian state to adopt appropriate legal measures, prosecute and punish perpetrators, and provide rehabilitation and compensation to affected women.¹⁰¹ It further recommended that such measures be informed by a structural analysis of the causes of witch-hunting, including the control of land, and stressed the importance of public awareness as a means of challenging deeply embedded cultural norms and customs that infringe upon women's rights.¹⁰²

In response, the Indian government committed in its combined fourth and fifth periodic reports to CEDAW to “*adopt appropriate legal and administrative measures to check the practice of victimizing women suspected of witchcraft*” and to implement widespread social awareness and rehabilitation programme.¹⁰³ However, concerns persisted. In its 2014 Concluding Observations, the CEDAW Committee reiterated that India had not taken “*sufficient sustained and systematic action*” to eliminate harmful stereotypes and patriarchal attitudes that underlie traditional practices such as child marriage, dowry, honour killings, *sati*, and accusations of witchcraft.¹⁰⁴ The Committee specifically called on India to launch a comprehensive national campaign, with defined goals and timelines, to combat these forms of gender-based violence and to collaborate with the media and civil society to alter discriminatory narratives and cultural norms.¹⁰⁵

¹⁰⁰ CEDAW (n 68) [26]-[27].

¹⁰¹ *ibid.*

¹⁰² *ibid.*

¹⁰³ India, 'Combined Fourth and Fifth Periodic Reports to CEDAW' (2007) UN Doc CEDAW/C/IND/4-5, [355] <https://digitallibrary.un.org/record/764491/files/CEDAW_C_IND_4-5_Add.1-EN.pdf> accessed 11 June 2025.

¹⁰³ CEDAW (n 68) [21].

¹⁰⁴ CEDAW (n 68) [21].

¹⁰⁵ *ibid.* [21].

Other UN mechanisms have echoed these concerns. In 2013, the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, reported that witch-hunting in India often leads to fatal violence, especially targeting women in socio-economically disadvantaged and tribal populations.¹⁰⁶ The report cited data from the NCRB, which recorded 240 deaths due to witchcraft in 2011 alone, while also noting that the true extent of the violence was likely higher due to systemic underreporting.¹⁰⁷ The Special Rapporteur found that motives behind accusations of witchcraft often included superstition or attempts to appropriate property.¹⁰⁸ Despite existing legal provisions in states such as Bihar, Jharkhand, and Chhattisgarh that criminalise the labelling of women as witches, he noted that punishments were often minimal and failed to reflect the serious long-term harm caused.¹⁰⁹ Further, prosecutions were rare, and witnesses were frequently unwilling to testify, either due to fear or a belief that the killing was socially justified.¹¹⁰

Similar findings were articulated by the then Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo, in her 2014 country visit report on India.¹¹¹ She observed that women branded as witches often endure brutal violence, including public executions, and are subjected to severe stigma, social exclusion, and intergenerational discrimination.¹¹² The Special Rapporteur highlighted the lack of official investigations into such violations and the resultant impunity, noting that these barriers often prevent survivors and their families from accessing justice.¹¹³ Her report called on the Indian state to design and

¹⁰⁶ Christof Heyns, 'Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions: Mission to India' (26 Apr, 2013) UN Doc A/HRC/23/47/Add.1, [61]–[63] <https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.47.Add.5_ENG.pdf> accessed 11 June 2025.

¹⁰⁷ *ibid.*

¹⁰⁸ *ibid.*

¹⁰⁹ *ibid.*

¹¹⁰ *ibid.* [78]–[80].

¹¹¹ Rashida Manjoo, 'Report of the Special Rapporteur on Violence Against Women, Its Causes and Consequences: Addendum – Mission to India' (1 Apr, 2014) UN Doc A/HRC/26/38/Add.1 <<https://www.refworld.org/reference/mission/unhrc/2014/en/99622>> accessed 11 June 2025.

¹¹² *ibid* [22].

¹¹³ *ibid* [63].

implement targeted community-level awareness campaigns to address harmful customary practices including witch-hunting, dowry-related violence, acid attacks, and so-called honour crimes.¹¹⁴

Most recently, in 2024, the HRC, in its concluding observations on India's fourth periodic report, explicitly raised concern over the continuation of witchcraft accusations as a harmful traditional practice contributing to widespread violence against women and girls.¹¹⁵ It noted that the impacts of such practices are especially grave when experienced by women from SC/ST, and religious or ethnic minorities, thereby revealing the intersectional nature of such violence.¹¹⁶ The Committee urged India to ensure prompt investigations, effective prosecutions, and accessible remedies for victims of harmful practices including witch-hunting, and to address the social stigma and systemic underreporting that hinder the pursuit of justice.¹¹⁷

3.4. CEDAW and the limits of legal formalism

After tracing the rights affected by witch-hunting, key international developments, and UN interventions in India, it is necessary to critically examine the capacity of international legal instruments to address such violence. In this context, the CEDAW reveals significant limitations in confronting the complex and culturally embedded nature of witch-hunting practices. Due to the limited scope of this thesis, the focus is confined to CEDAW, the most relevant instrument on gender-based violence, while acknowledging that other frameworks may also be pertinent.

CEDAW, though pioneering in codifying international legal commitments to women's rights, has proven normatively and procedurally inadequate in addressing such forms of complex,

¹¹⁴ *ibid* [80(b)].

¹¹⁵ CEDAW (n 68) [21]-[22].

¹¹⁶ *ibid*.

¹¹⁷ *ibid*.

intersectional harm. Its institutional weaknesses, interpretive inconsistencies, and formalist reasoning all compromise its capacity to intervene in culturally embedded and socially sanctioned gender-based violence.

One of CEDAW's structural weaknesses lies in its permissive reservations' regime, which allows states to derogate from core provisions with little accountability. Article 28 permits reservations unless they are "*incompatible with the object and purpose*" of the Convention.¹¹⁸ However, in practice many reservations have targeted its most substantive equality provisions such as Articles 2, 5, and 16 thereby hollowing out its normative core.¹¹⁹ Charlesworth and Chinkin observed that this "*permits wide-open 'claw back' exceptions to protect 'cultural' practices*" and legitimizes violence under the veil of custom or religious tradition, directly undermining the Convention's transformative aims.¹²⁰ Moreover, CEDAW's initial lack of any enforcement mechanism until the 1999 Optional Protocol ("**OP**") reflects its marginalization within the international legal system. Although the OP introduced an individual communications procedure and inquiry mechanism, over 40 states, including India, have not ratified it, denying victims in those jurisdictions any avenue for redress.¹²¹ Even among state parties to the OP, implementation is neither timely nor guaranteed, with no compulsory compliance mechanism in place.¹²² As Alvarez and Bauder note, CEDAW relies heavily on goodwill, soft recommendations, and moral persuasion rather than hard obligations, further limiting its effectiveness.¹²³ This reliance on non-binding mechanisms allows states significant

¹¹⁸ CEDAW, Article 28.

¹¹⁹ Amnesty International, "Reservations to the Convention on the Elimination of All Forms of Discrimination against Women Weakening the protection of women from violence in the Middle East and North Africa region" (IOR 51/009/2004) 9 <<https://www.amnesty.org/en/wp-content/uploads/2021/09/ior510092004en.pdf>> accessed 11 June 2025.

¹²⁰ Hilary Charlesworth and Christine Chinkin, *The Boundaries of International Law: A Feminist Analysis* (Manchester University Press 2000) 231–232.

¹²¹ UN Human Rights Treaty Body, "Database Ratification status: India" (OHCHR) <https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/Treaty.aspx?CountryID=79&Lang=en> accessed 11 June 2025.

¹²² Amnesty International (n 114) 5–8.

¹²³ José E Alvarez and Judith Bauder, *Critiques of the CEDAW Regime, International Law, and International Human Rights* (OUP 2024) 2–4.

discretion in implementation, often resulting in superficial compliance or outright neglect without the risk of enforceable consequences.

More fundamentally, even when the CEDAW Committee does consider individual communications under the OP, its reasoning often falters at the level of intersectionality and structural analysis. In *A.S. v Hungary*, the Committee addressed the forced sterilization of a Roma woman, finding a violation of her reproductive rights under Article 12.¹²⁴ Yet, it failed to meaningfully engage with the intersecting dynamics of race, class, and structural medical discrimination that made sterilization possible. The Committee treated the discrimination as a violation of health rights, without fully interrogating how Roma identity and systemic marginalization shaped A.S.'s vulnerability. This superficial engagement with intersectionality echoes the Committee's broader tendency to apply transformative equality inconsistently, articulating it in GR, but failing to operationalize it in case law.¹²⁵

Contrastingly, in *Vertido v Philippines*, the Committee demonstrated a rare model of robust gender reasoning.¹²⁶ A girl with intellectual disabilities was raped and faced prolonged delays and gender-insensitive treatment by law enforcement and the judiciary.¹²⁷ The Committee found violations of Articles 2(c), 2(f), 5(a), and 12(1), and critically emphasized the importance of substantive and transformative equality, particularly for women in vulnerable groups⁴, making this a positive exemplar, not a failure.¹²⁸ However, such analytical depth has not been consistent across cases.

The normative rigidity becomes especially problematic in contexts such as witch-hunting, which involve deeply embedded cultural practices, symbolic violence, and communal

¹²⁴ *AS v Hungary*, UN Doc CEDAW/C/36/D/4/2004, [11.2]–[11.4].

¹²⁵ Simone Cusack and Lisa Pusey, 'CEDAW and the Rights to Non-Discrimination and Equality' (2013) 14 *Melbourne Journal of International Law* 1, 30–33.

¹²⁶ *Vertido v Philippines*, UN Doc CEDAW/C/46/D/18/2008.

¹²⁷ *ibid.*

¹²⁸ *ibid.*

complicity. If a hypothetical complaint were brought before CEDAW by a Dalit or Indigenous woman labeled a witch, driven from her home, assaulted, and denied legal recourse, the Committee would likely focus on whether the state protected her physical integrity or whether the police responded diligently. Such a reading risks reducing the violation to a failure of procedure or individual protection, thereby stripping it of its structural character, namely, the caste hierarchies, superstition, economic disempowerment, and gender roles that produce and sustain witch-hunting. This is not a hypothetical flaw; the Committee's history suggests it would likely adopt such a narrowed frame.

The case of *Cecilia Kell v Canada* illustrates this concern. Kell, an Indigenous woman, alleged violations of her rights following a property dispute with her abusive partner and state inaction in protecting her housing rights.¹²⁹ The Committee found violations, noting the failure to provide effective remedies for intimate partner violence and housing insecurity.¹³⁰ Yet, its decision underplayed the structural and intersectional dimensions of Kell's indigeneity, poverty, and the socio-political neglect of Indigenous women. As feminist scholars have pointed out, Kell's forced eviction and dispossession were not merely private injustices, but systemic outcomes of settler colonialism, racism, and gender bias.¹³¹ A feminist rewrite of the case reinterpreted the facts as a violation of the right to adequate housing, drawing on Article 14(2)(h) of CEDAW and GC under ICESCR to argue that the Committee missed an opportunity for structural intervention.¹³² This underlines the risk that in a witch-hunt case, the same Committee would, probably, similarly fail to recognize the collective, symbolic, and disciplinary power of the accusation, instead viewing it as a series of isolated violations

¹²⁹ *Kell v Canada*, UN Doc CEDAW/C/51/D/19/2008.

¹³⁰ *ibid.*

¹³¹ Alvarez and Bauder (n 118) 10-12.

¹³² Lolita Buckner Inniss et. al., 'Rewrite of Cecilia Kell v. Canada' in Loveday Hodson and Troy Lavers (eds), *Feminist Judgments in International Law* (Hart, 2019) 333-359.

CEDAW's gatekeeping function has also acted to exclude significant structural claims altogether. In *Muñoz-Vargas v Spain*, the applicant challenged a Spanish law that gave male descendants priority over female heirs in the inheritance of noble titles.¹³³ The Committee declared the case inadmissible *ratione materiae*, stating that nobility titles fell outside the scope of CEDAW because they were symbolic and not linked to public or private life within the Convention's meaning.¹³⁴ This decision ignored the opportunity to interrogate how symbolic legal traditions, even within elite domains, perpetuate patriarchal privilege and gender hierarchy. Nobility titles, like witchcraft accusations, function as gendered social regulators, one by bestowing symbolic power on men, the other by punishing deviance in women. As Cusack and Pusey argue, such titles operate through legal or quasi-legal mechanisms that entrench exclusion, yet the Committee's rigid admissibility reasoning excluded this dimension entirely.¹³⁵ The effect is to foreclose engagement with entrenched institutions that reproduce male dominance under the guise of tradition.

Despite CEDAW's ambitions to achieve equality, many feminist scholars have pointed to its deeply limited conceptualization of “women” as a unitary subject. Christine Chinkin, for instance, has highlighted that with the exception of provisions on rural women,¹³⁶ CEDAW fails to account for women outside the public-private binaries of paid labour, marriage to men, political participation, or childbearing.¹³⁷ This framing erases the lived realities of those who do not conform to heteronormative or capitalist expectations and who experience intersectional exclusion. CEDAW's liberal grounding in formal equality, individual autonomy, and ostensibly universal rights obscures systemic patterns of exclusion and disadvantage, underplay the role

¹³³ *Muñoz-Vargas y Sainz de Vicuña v Spain*, UN Doc CEDAW/C/39/D/7/2005.

¹³⁴ *ibid* [11.1]–[11.7].

¹³⁵ Cusack and Pusey (n 120) 33–35.

¹³⁶ CEDAW, Article 18.

¹³⁷ Christine Chinkin, ‘The Convention on the Elimination of All Forms of Discrimination against Women’ in Jill Steans and Daniela Tepe-Belfrage (eds.), *Handbook on Gender in World Politics* (Edward Elgar, 2016) 320.

of social and political institutions, and misrepresent the need for structural transformation over symbolic inclusion.¹³⁸ These critiques are particularly instructive in relation to CEDAW's silence on forms of violence such as witch-hunting, where harm is not reducible to individual acts of discrimination but emerges from collective, symbolic, and historically embedded structures of gendered power.

Other scholars have argued that CEDAW's formal insistence on equality with men ultimately undermines its project of transformative justice. By framing women as victims and men as perpetrators, CEDAW risks flattening gendered experience and entrenching the masculinity of the universal subject.¹³⁹ Mohanty's postcolonial critiques challenges global feminist narratives that universalize the "Third World woman" as a passive subject, contending that such framings perpetuate imperial hierarchies and marginalize situated, resistant forms of subjectivity.¹⁴⁰ This becomes especially problematic in legal engagements with witch-hunting, where women are not simply victims of discrimination but subjects embedded in a web of kinship, caste, economic precarity, and spiritual politics.

GR 19, 28, and 33 offer a counterpoint to the Committee's restrictive case law. GR 19 recognizes gender-based violence as discrimination,¹⁴¹ GR 28 introduces an intersectional framework for interpreting state obligations,¹⁴² and GR 33 emphasizes access to justice.¹⁴³

¹³⁸ Nicola Lacey, 'Feminist Legal Theory and the Rights of Women' in Karen Knop (ed), *Gender and Human Rights* (OUP, 2004) 19–22, 29.

¹³⁹ Darren Rosenblum, 'Unsex CEDAW, or What's Wrong with Women's Rights' (2011) 20 *Columbia Journal of Gender and Law* 98, 134–77.

¹⁴⁰ Chandra Talpade Mohanty, *Feminism Without Borders: Decolonizing Theory, Practicing Solidarity* (Duke University Press 2003) 22–23.

¹⁴¹ Committee on the Elimination of Discrimination against Women, 'General Recommendation No 19: Violence against women' (1992) UN Doc A/47/38 <<https://www.refworld.org/legal/resolution/cedaw/1992/en/96542>> accessed 11 June 2025.

¹⁴² Committee on the Elimination of Discrimination against Women, 'General Recommendation No 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women' (16 December 2010) UN Doc CEDAW/C/GC/28 <<https://www.refworld.org/legal/general/cedaw/2010/en/77255>> accessed 11 June 2025.

¹⁴³ Committee on the Elimination of Discrimination against Women, 33 on Women's Access to Justice' (3 August 2015) UN Doc CEDAW/C/GC/33 <<https://digitallibrary.un.org/record/807253?ln=en&v=pdf>> accessed 11 June 2025 (CEDAW GR No. 33).

These GRs could powerfully support a finding that witch-hunting violates multiple layers of rights, including dignity, safety, cultural participation, and legal redress. Yet there is a striking disparity between the GRs' transformative rhetoric and the Committee's jurisprudential voice, which often reverts to proceduralism and avoids confronting social hierarchies.¹⁴⁴ The Committee's decisions under the OP remain marked by minimal engagement with structural harms, particularly when discrimination occurs through symbolic or community-level violence.

CEDAW's doctrinal focus on formal or individualist interpretations of harm also contributes to a limited conceptualization of equality. Campbell critiques the Committee's tendency to treat intersectionality as an additive requiring proof of separate, parallel forms of discrimination rather than addressing how race, caste, gender, and class mutually constitute experiences of oppression.¹⁴⁵ In witch-hunt contexts, this results in an epistemic gap as the law fails to see the nature of the harm, or to frame the remedy in terms that capture the collective and symbolic violence involved. Unless the Committee adopts an integrated approach to intersectional discrimination, grounded in the realities of caste, superstition, gender norms, and economic exclusion, it will continue to misrecognize and misremedy such cases.

CEDAW's existing jurisprudence demonstrates the need not only for better enforcement mechanisms and broader ratification of the OP, but also for an interpretive revolution in how gendered harm is conceived. The Committee must move beyond formal equality and individual protection models and engage seriously with the communal, structural, and symbolic dimensions of gender-based violence like witch-hunting. Without this shift, CEDAW risks

¹⁴⁴ Catherine Briddick, 'CEDAW's Jurisprudence: A Less Protective Voice Than Its General Recommendations?' (2021) 115 AJIL Unbound 356, 359.

¹⁴⁵ Meghan Campbell, 'CEDAW and Women's Intersecting Identities: A Pioneering New Approach to Intersectional Discrimination' (2015) 11 *Direito GV Law Review* 479, 483.

becoming irrelevant to those most in need of international legal protection to those at the margins of law, culture, and power.

These dynamics also invite us to engage with broader theoretical critiques of international law. Some feminist legal scholars argue that the liberal legal paradigm, with its emphasis on state-based enforcement and formal equality, struggles to address the deep, relational, and symbolic dimensions of gendered violence like witch-hunting.¹⁴⁶ In such critiques, international human rights law is necessary but not sufficient, it must be accompanied by cultural transformation, local engagement, and collective action. This is supported by findings from social scientists like Htun and Weldon, who argue that collective feminist mobilization, more than international law alone, explains state responsiveness to gender-based violence.¹⁴⁷ While this thesis confines itself to critiquing CEDAW due to its specific legal relevance to gender-based violence, these insights underscore the broader limitations of international law as currently conceived, a terrain that deserves more sustained critical attention beyond the scope of this chapter.

While international legal frameworks such as CEDAW provide important normative baselines for addressing gender-based violence, including witch-hunting, their limitations, particularly around intersectionality and localized socio-cultural dynamics, highlight the need to examine how such violence is addressed within national contexts. As this chapter has argued, formal equality and state-centric enforcement mechanisms often fail to engage with the lived realities of those most affected. This gap is especially evident in countries like India, where witch-hunting persists in specific regions despite international commitments. The following chapter turns to the national and state legal responses to witch-hunting in India, with a focus on the states of Assam and Odisha, both of which have enacted specific legislation to address witch-

¹⁴⁶ Sally Engle Merry, *Human Rights and Gender Violence: Translating International Law into Local Justice* (University of Chicago Press, 2006) 103-108.

¹⁴⁷ Mala Htun and S. Laurel Weldon, "The Civic Origins of Progressive Policy Change: Combating Violence against Women in Global Perspective, 1975–2005" (2012) 106(3) *American Political Science Review* 548.

hunting. By analyzing these state laws and a proposed national bill, the chapter explores how local legal innovations confront, or replicate, the same structural limitations critiqued in the international sphere, offering a more nuanced view of how law engages with deeply embedded gendered violence on the ground.

IV. NATIONAL LEVEL LAWS AND WITCH-HUNTING

The UNHRC's Independent Expert in a report on the practice of witchcraft had identified a number of measures necessary for states to fulfil their positive obligations to ensure accountability and effective redress for victims of witch-hunting.¹⁴⁸ These measures included the enactment of laws that capture the range of harms faced by victims and provide appropriate penalties as well as the establishment of mechanisms for the investigation and prosecution of these offences. However, there is no national legislation in India to address witch-hunting, despite the fact that the practice is prevalent in twelve states in the country.¹⁴⁹ There is currently patchy coverage of anti-witch-hunting laws, as they are only present in six states, and the protection offered by these laws also significantly differs.¹⁵⁰

This chapter critically examines two such legislative responses—the Odisha Prevention of Witch-Hunting Act, 2013 and the Assam Witch Hunting (Prohibition, Prevention and Protection) Act, 2015. To reiterate, Assam and Odisha were chosen not only for the substantial accessibility of their legal frameworks, but also for the continued prevalence of witch-hunting within their jurisdictions.

This chapter interrogates whether these laws move beyond a purely penal paradigm to engage meaningfully with the structural and intersectional roots of witch-hunting. The chapter also turns to the proposed national bill, the Prevention and Prohibition of Witch-Branding and Witch-Hunting and Other Harmful Practices Bill, 2022, assessing its potential to offer a more coherent and transformative legal response. Through this analysis, the chapter seeks to uncover

¹⁴⁸ HRC (n 19).

¹⁴⁹ Rishika Singh, “‘Human sacrifice’ in Kerala: What are the laws on witchcraft in India’s states?” (*Indian Express*, Oct 13, 2022) <indianexpress.com/article/explained/what-are-the-laws-on-witchcraft-in-india-8206958/> accessed 11 June 2025.

¹⁵⁰ *ibid.*

how law, when limited to carceral remedies and abstract notions of equality, may fail to protect the most vulnerable and may even re-inscribe the social hierarchies it purports to dismantle.

4.1. Deficiencies in the Indian legal framework

The legislative responses to this practice exemplified by the Odisha Prevention of Witch-Hunting Act, 2013¹⁵¹ and the more recent Assam Witch Hunting (Prohibition, Prevention and Protection) Act, 2015¹⁵² appear, on the surface, to mark state recognition of this violence. However, a closer comparative analysis reveals that both Acts are undergirded by a carceral, formalist legal logic that obscures the intersectional, structural, and epistemic dimensions of the problem. When placed under the lens of intersectional feminist legal theory, legal pluralism, structural violence, and critical carceral feminist thought, these legislative frameworks are revealed to be inadequate both in theory and practice.

Using Fraser's tripartite theory of justice, which distinguishes between recognition, redistribution, and representation, we can identify a key limitation: both Acts over-invest in the politics of recognition (labeling witch-hunting as a crime) while neglecting redistribution (addressing land alienation, poverty, and access to healthcare) and meaningful representation (ensuring marginalized women's voices shape the law's implementation).¹⁵³ Both the Odisha and Assam Witch-Hunting Acts reflect a state response anchored predominantly in criminalisation, revealing a broader reliance on punitive justice. This carceral orientation is especially pronounced in the Odisha Act, which focuses on the punishment of so-called "witch doctors" and perpetrators.¹⁵⁴ While the Assam Act takes a more holistic approach by incorporating provisions for shelter, medical support, and legal aid,¹⁵⁵ these remain largely

¹⁵¹ Odisha Prevention of Witch-Hunting Act, 2013 ("Odisha Act").

¹⁵² Assam Witch Hunting (Prohibition, Prevention and Protection) Act, 2015 ("Assam Act").

¹⁵³ Nancy Fraser, "Reframing Justice in A Globalizing World" (2005) 36 New Left Review 69.

¹⁵⁴ Odisha Act, Section 2.

¹⁵⁵ Assam Act, Section 21.

declaratory and unenforceable. The failure to operationalize these provisions undermines India's compliance with its obligations under CEDAW¹⁵⁶ which emphasize the importance of effective access to justice and adequate institutional support mechanisms.

To understand the limitations of these Acts, the tripartite theory of justice offers a powerful evaluative framework.¹⁵⁷ Recognition pertains to the status order of society that ensures that individuals and groups are not culturally devalued or misrecognized.¹⁵⁸ Both Acts centre recognition by symbolically naming witch-hunting as a crime and acknowledging the existence of victims. Yet, this is a thin form of recognition, filtered through the lens of criminal law, which fails to interrogate the underlying social meanings and gendered stigmas that fuel such accusations. Such affirmative remedies that affirm identity but leave status hierarchies intact results in misrecognition.¹⁵⁹ The superficial acknowledgment does little to undo the gendered, caste-based, and epistemic devaluation embedded in witch-hunting practices. The performative criminalisation seen in both Acts parallels critiques of thin compliance under international law, where states meet formal obligations (such as enacting legislation) without addressing underlying cultural and structural causes.

The second limb, redistribution, is the most underdeveloped in both laws. Witch-hunting is not merely a cultural anomaly; it is deeply embedded in economic marginalisation, land dispossession, and healthcare inaccessibility disproportionately affecting marginalised women. Neither Act adequately provides material support mechanisms such as compensation, land restitution, income security, or access to state welfare schemes despite the symbolic and social trauma inflicted by witch-hunting. While international human rights law, particularly through

¹⁵⁶ See CEDAW Article 2; CEDAW GR No. 33.

¹⁵⁷ Nancy Fraser, *Scales of Justice: Reimagining Political Space in a Globalizing World* (Polity Press 2009).

¹⁵⁸ Nancy Fraser, "Rethinking Recognition," (2000) 3 *New Left Review* 107.

¹⁵⁹ *ibid.*

CEDAW General Recommendation No. 35,¹⁶⁰ has begun to recognise the importance of holistic and survivor-centred responses, including reparations and support services; such obligations remain underenforced and often sidelined in domestic implementation, as seen in both the Acts. It is argued that justice systems must go further and incorporate a trauma-informed and redistributive provisions to avoid re-victimizing survivors and to move from punitive justice toward healing and structural transformation. Justice systems that neglect trauma-informed care often re-victimize survivors as the law becomes more concerned with classifying and punishing than healing and restoring.¹⁶¹

Here, Fraser's insights converge with Crenshaw's theory of structural intersectionality, which emphasizes how systems of caste, class, gender, and indigeneity converge to create compound vulnerabilities.¹⁶² The fact that most witch-hunting victims are poor, tribal or Dalit women is not incidental but structurally diagnostic. The failure to engage with material inequality renders the laws blind to structural subordination.¹⁶³ Moreover, the absence of integration with broader gender justice frameworks such as the Protection of Women from Domestic Violence Act, 2005 or India's CEDAW obligations, reflects a structural blindness. The laws treat witch-hunting as a set of discrete criminal acts, not as an expression of compound vulnerabilities and entrenched hierarchies.

Finally, representation i.e. parity of political voice is glaringly absent.¹⁶⁴ Neither Act creates mechanisms for the meaningful participation of the very communities most affected such as tribal women's collectives, grassroots human rights defenders, or local panchayats led by

¹⁶⁰ CEDAW GR No. 35.

¹⁶¹ Judith Herman, *Trauma and Recovery: The Aftermath of Violence—from Domestic Abuse to Political Terror* (Basic Books 1992) 159.

¹⁶² Kimberlé Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color' (1991) 43 *Stanford Law Review* 1241, 1249–56.

¹⁶³ *ibid.*

¹⁶⁴ Fraser, Nancy, and Alex Honneth, *Redistribution or Recognition? A Political-Philosophical Exchange* (Verso, 2003).

marginalized women. This amounts to misframing, resulting in the unjust delineation of who counts as a legitimate subject of justice.¹⁶⁵ In constructing witch-hunting as a narrow criminal law issue, the statutes exclude the political claims of those most directly affected by it. Without ensuring procedural inclusion and meaningful voice, legal remedies remain formally neutral yet substantively exclusionary.¹⁶⁶ Importantly, CEDAW not only permits but requires temporary special measures, including affirmative action, to ensure women's effective participation in public and political life.¹⁶⁷ It is thus argued that such measures must be extended to legal reform processes themselves, especially in contexts of deeply embedded structural violence impacting women.

While the Assam Act provides a broader definition of harm, including verbal abuse, social boycott, and ostracism,¹⁶⁸ these provisions lack institutional specificity, funding, and monitoring frameworks. As such, they risk becoming mere rhetorical gestures focused on recognition without addressing economic inequalities or expanding democratic participation.¹⁶⁹ Legal recognition alone cannot dismantle epistemic, material, and political subordination.

The inadequacy of these statutes also lies in their epistemological orientation, that is, in how they construct and authorize knowledge about belief systems, harm, and justice. As Merry has argued, laws that fail to engage substantively with local norms and plural legal orders risk reinforcing, rather than challenging, entrenched hierarchies and social exclusions.¹⁷⁰ In the context of anti-witch-hunting legislation such as the Odisha and Assam Acts, this manifests

¹⁶⁵ *ibid.*

¹⁶⁶ Crenshaw (n 158) 1264.

¹⁶⁷ Committee on the Elimination of Discrimination against Women, 'General Recommendation No 25 on Article 4, Paragraph 1 of the Convention on the Elimination of All Forms of Discrimination against Women, on Temporary Special Measures' (2004) UN Doc CEDAW/C/GC/25. [18] ("CEDAW GR No. 25") <[https://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20\(English\).pdf](https://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20(English).pdf)> accessed 11 June 2025.

¹⁶⁸ Assam Act, Section 4.

¹⁶⁹ Fraser (n 153) 17–20.

¹⁷⁰ Merry (n 142) 134–140.

through rigid and top-down definitional frameworks that attempt to isolate and criminalize categories like “witch” and “witch doctor.” However, by codifying these categories without interrogating their local meanings or the socio-political contexts in which they function, the laws inadvertently affirm the underlying ontology of superstition. Instead of deconstructing the belief in witchcraft as a socially embedded discourse, the statutes treat it as a fixed, deviant practice to be purged, thus legitimising rather than destabilizing the epistemic foundations of witchcraft accusations. This approach limits the law’s transformative potential and renders it complicit in the very power structures it seeks to dismantle.

Moreover, the blanket criminalisation of traditional healers risks alienating communities from the law itself, reinforcing perceptions of state intervention as external, hostile, and culturally unmoored. What is lost here is not merely legal efficacy, but also the opportunity for what Merry calls translative adaptation which requires the reformulation of human rights and legal norms in ways that are legible and legitimate within local moral and epistemic frameworks.¹⁷¹

It is important here to note the conceptual distinction between witchcraft and witch-hunting, even if it lies beyond the central scope of this thesis. To reiterate, witchcraft can be understood as a belief system, cultural practice, or cosmology and is not inherently harmful and may constitute a form of cultural or religious expression protected under the right to belief and tradition. In contrast, witch-hunting is the violent social response to such beliefs, often weaponized as a means of disciplining, dispossessing, or eliminating marginalized individuals especially women. The failure of legal instruments to draw this distinction risks reinforcing cultural alienation while leaving the underlying gendered and economic violence unaddressed.

Finally, both Acts can be interpreted through the lens of carceral feminism, a term popularized by scholars like Bernstein and Davis, which critiques the overreliance on incarceration as a

¹⁷¹ *ibid.*

feminist strategy. These legal responses conflate justice with punishment, sidelining restorative and community-based alternatives.¹⁷² In rural India, where police presence is minimal and legal infrastructure underdeveloped,¹⁷³ such carceral strategies are often ineffectual or even counterproductive, exposing victims to retaliation while failing to deter future violence.

While the Assam Witch Hunting Act represents a partial evolution from the earlier Odisha framework, especially in its broader definitions and victim-oriented provisions, both laws remain fundamentally limited by a punitive, state-centric logic. They are trapped within a disciplinary regime, concerned with managing deviance rather than dismantling the social structures that produce it.¹⁷⁴

What is needed is a transformative legal framework that embeds redistributive justice within its provisions, engages in epistemic humility by incorporating non-state justice norms, and offers trauma-informed and community-rooted interventions. Until then, the law will continue to address witch-hunting as an isolated evil, rather than what it truly is: a symptom of India's Brahmanical patriarchal order. Legal interventions that merely criminalize without transforming the conditions of possibility for witch-hunting risk reproducing the very marginalization they seek to redress.¹⁷⁵

¹⁷² Elizabeth Bernstein, "Carceral Feminism," (2012) 41(3) *Theory and Society* 233; Angela Y Davis, *Are Prisons Obsolete?* (Open Media, 2003) 73–75.

¹⁷³ PLD (n 42).

¹⁷⁴ Michel Foucault, *Discipline and Punish: The Birth of the Prison* (Pantheon, 1977) 120, 205.

¹⁷⁵ Leigh Goodmark, *Decriminalizing Domestic Violence: A Balanced Policy Approach to Intimate Partner Violence* (UCP, 2018).

4.2. Critical appraisal of the Prevention and Prohibition of Witch-Branding and Witch-Hunting and Other Harmful Practices Bill, 2022

The Prevention and Prohibition of Witch-Branding and Witch-Hunting and Other Harmful Practices Bill, 2022, introduced in the Indian Parliament on December 9, 2022, signals a noteworthy shift in the legal-political terrain of addressing witch-hunting in India.¹⁷⁶ Unlike the piecemeal state-level legislation of the previous decade exemplified by the Odisha Act and Assam Act, this Bill proposes a central, uniform legal response to a structurally entrenched, gendered, and caste-inflected form of violence. While the symbolic promise of national legislation suggests a move towards parity and coherence, this section argues that centralization without critical reflexivity risks flattening contextual particularities, perpetuating bureaucratic distance, and reinforcing a legalistic fiction of justice that remains detached from lived realities.

Where the Assam and Odisha statutes emerged from regional advocacy, local mobilization, and grounded knowledge of the socio-cultural landscape,¹⁷⁷ the 2022 Bill operates through a top-down paradigm that presumes the transferability of norms across space and time. The legislative intent is laudable in its ambition to criminalize a wide range of humiliating and violent practices, from verbal branding to social ostracization and physical assault.¹⁷⁸ However, the Bill's universality is both its strength and limitation. By failing to engage deeply with the specific failures of prior state laws, such as lack of enforcement mechanisms, administrative apathy, or the marginalization of victims in courtrooms, the Bill risks reproducing the same structural silences it purports to redress.

¹⁷⁶ Prohibition of Witch-Branding and Witch-Hunting and Other Harmful Practices Bill, 2022 ("Prohibition of Witch-Branding Bill").

¹⁷⁷ Prabir Das, "Witch-Hunting and Legal Activism in Odisha" (2017) 52(47) Economic & Political Weekly 14.

¹⁷⁸ Prohibition of Witch-Branding Bill, Section 25.

One way to read the Bill is through the lens of legal performativity, a concept theorized by scholars such as Butler and expanded in the legal context by scholars like Minow. Legal performativity refers to the way law constructs social realities not simply by regulating them, but by naming and producing the very categories it claims to neutralize.¹⁷⁹ In naming witch-hunting as a criminal offence, the law symbolically intervenes in the cultural imaginary. However, without infrastructural and discursive shifts, such naming may produce juridical recognition without material transformation.¹⁸⁰ The legal declaration of witch-hunting as violence must therefore be assessed not merely by its semantic force, but by its capacity to disrupt the regimes of knowledge and power that render such accusations plausible in the first place, as has been the central theme of the foregoing analysis.

In this context, the Bill's apparent comprehensiveness via its emphasis on punishment, trial timelines, victim protection, and institutional accountability must be interrogated in light of what Chatterjee calls the politics of the governed.¹⁸¹ According to Chatterjee, while civil society claims rights through legal and institutional means, marginalized communities, such as those most affected by witch-hunting, often operate within political society, where access to state protection is negotiated informally through local actors or patronage networks.¹⁸² The Bill, by assuming the universality of formal legal access and rights-based enforcement, risks bypassing these lived realities and replicating the very exclusions it seeks to redress. Witch-hunting is rarely prosecuted by neutral state actors in sanitized courtrooms; rather, it is mediated through village hierarchies, police indifference, and caste-patriarchal control.¹⁸³ The Bill includes

¹⁷⁹ Judith Butler, *Excitable Speech: A Politics of the Performative* (Routledge, 1997) 147; Martha Minow, *Making All the Difference: Inclusion, Exclusion, and American Law* (Cornell University Press 1990) 310–311.

¹⁸⁰ *ibid.*

¹⁸¹ Partha Chatterjee, *The Politics of the Governed: Reflections on Popular Politics in Most of the World* (Columbia University Press, 2004) 53–60.

¹⁸² *ibid.*

¹⁸³ ActionAid “Witch Branding in India A Study of Indigenous and Rural Societies” (Report, Feb, 2022) 12–14.

provisions for penalizing public officials who fail to act¹⁸⁴ and promises speedy trials,¹⁸⁵ but these procedural advances are unlikely to yield justice without dismantling the informal networks of complicity that shelter perpetrators and re-stigmatize survivors. In short, the Bill treats delay as a procedural problem rather than a symptom of institutional capture. Under international human rights law, particularly as elaborated in CEDAW GR No. 35, states are required to exercise due diligence not only in prosecuting acts of gender-based violence but also in preventing and addressing the structural conditions that enable such violence.¹⁸⁶ By failing to confront these systemic factors, the Bill likely falls short of satisfying the due diligence obligation in the context of witch-hunting.

Unlike the Assam Act, which included symbolic victim-support mechanisms but lacked operational depth, or the Odisha Act, which fixated on punishment to the exclusion of structural causality, the 2022 Bill gestures toward a more integrated framework. It includes provisions for rehabilitation, compensation, and reintegration.¹⁸⁷ However, these remain programmatic aspirations rather than enforceable guarantees. The failure to articulate pathways for implementation like budget allocations, interdepartmental coordination, or victim outreach mechanisms, reflects vernacularization gap in law i.e., the disjuncture between normative commitments and actual uptake within communities.¹⁸⁸ Without translation into culturally resonant and locally grounded terms, the Bill risks remaining performative rather than transformative.

What also differentiates the 2022 Bill from the state laws is its aspiration to regulate symbolic violence which is a welcome move, but one that opens complex jurisprudential questions. By

¹⁸⁴ Prohibition of Witch-Branding Bill, Section 14[2].

¹⁸⁵ Prohibition of Witch-Branding Bill, Section 20.

¹⁸⁶ CEDAW GR No. 35 [24]–[26].

¹⁸⁷ Prohibition of Witch-Branding Bill, Sections 22 and 27.

¹⁸⁸ Merry (n 142) 134–162.

criminalizing humiliating speech acts and verbal branding, the Bill acknowledges the role of language in producing harm. However, it does so without engaging with the epistemic hierarchies that allow such speech to acquire social legitimacy. As Bourdieu reminds us, language is not merely symbolic but authorized through institutional power.¹⁸⁹ Therefore, unless accompanied by pedagogical interventions such as curriculum reforms, media sensitization, religious dialogues, the law's attempt to criminalize verbal branding may clash with deeply rooted epistemologies of gendered evil, especially in tribal and semi-literate settings.

Another analytical deficit lies in the Bill's treatment of witch-hunting as an exceptional practice rather than as part of a continuum of patriarchal violence. It does not situate witch-hunting within the broader ecosystem of gender-based harm, such as dowry deaths, domestic violence, sexual violence, or caste humiliation, nor does it cross-reference legal instruments like the Domestic Violence Act¹⁹⁰ or the SC/ST Prevention of Atrocities Act.¹⁹¹ This siloed approach undermines intersectional justice. By ignoring the intersection of caste, gender, tribal identity, and widowhood, the law produces an abstract victim devoid of historical or structural location.¹⁹²

Furthermore, the Bill does not address the temporal dimension of violence. Witch-hunting is not a momentary act; it unfolds over time through gossip, isolation, verbal abuse, ritual humiliation, and eventual physical attack. This slow violence rarely conforms to the temporalities of criminal law, which prefers discrete events over drawn-out processes.¹⁹³ The

¹⁸⁹ Pierre Bourdieu, "The Force of Law: Toward a Sociology of the Juridical Field" (1987) 38 *Hastings Law Journal* 805.

¹⁹⁰ Protection of Women from Domestic Violence Act, 2005.

¹⁹¹ Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

¹⁹² Crenshaw (n 8).

¹⁹³ Rob Nixon, *Slow Violence and the Environmentalism of the Poor* (Harvard University Press, 2011).

Bill's event-based structure, with a reliance on complaint, prosecution, and sentencing, fails to capture the durational nature of harm and the long arc of its social consequences.

Finally, in linking this analysis to the earlier state laws, there is a missed opportunity for institutional learning. The Bill does not provide for a national commission or monitoring body that could evaluate the implementation of anti-witch-hunting laws across states, collect disaggregated data, or facilitate best practices. Such omission reflects a broader crisis of institutional memory in Indian legislative practice: the inability to reflect critically on subnational experiments before scaling them nationally.

V. BETWEEN COMPLICITY AND CONDEMNATION: STATE AND JUDICIAL RESPONSES TO WITCH-HUNTING IN INDIA

While the previous chapter examined national and state-level legal responses to witch-hunting, including the limitations of existing legislation and the proposed national draft bill, this chapter turns to the role of the Indian judiciary and broader state complicity in sustaining such violence. It begins by analyzing judicial responses to witch-hunting cases, highlighting how legal reasoning often isolates such incidents as aberrant or individual crimes, rather than recognizing them as manifestations of entrenched structural and gendered harm. The chapter then expands its focus to interrogate the multifaceted complicity of the Indian state, both through acts of omission and commission, in maintaining the social, institutional, and legal conditions that allow witch-hunting to persist.

5.1. Judicial responses to witch-hunting: between legal formalism and transformative justice

Judicial pronouncements in India have intermittently recognized the grave implications of witch-hunting, denouncing it as a violation of constitutional rights and human dignity. Courts have declared unequivocally that superstition cannot justify acts of violence, including murder or forced displacement. In *Hulikal Nataraju v. State of Karnataka*, the Supreme Court acknowledged the socially corrosive impact of superstition, linking it to human sacrifice and witch-hunting, and warning that such irrational beliefs often mask deeper systemic failures of poverty, caste discrimination, and gendered hierarchies.¹⁹⁴ Similarly, the Gauhati High Court in *Bhim Turi v. State of Assam* categorically termed witch-hunting a “gross human rights

¹⁹⁴ *Hulikal Nataraju v. the State of Karnataka* 2010 (4) AIR KAR R 508.

violation,” rooted in exploitative social customs.¹⁹⁵ These rulings, while normatively significant, invite deeper scrutiny when placed within the theoretical framework of Kelly’s continuum of violence.

Kelly’s foundational concept of the continuum of violence compels a re-evaluation of witch-hunting not as episodic brutality, but as part of a wide spectrum of gendered control that pervades women’s daily lives.¹⁹⁶ This includes psychological coercion, symbolic degradation, social exclusion, and the silencing of women’s autonomy, none of which are adequately addressed by either existing penal provisions or judicial interpretation. The Indian judiciary’s tendency to treat witch-hunting as a discrete, punishable event, whether through assault, murder, or abduction fails to engage with its structural nature as a socially sanctioned mechanism of patriarchal and casteist discipline.

In *Tula Devi v. State of Jharkhand*, for instance, the failure of the court to convict the perpetrators, despite years of harassment and physical abuse, exposes the limitations of a legal system focused narrowly on evidentiary thresholds rather than broader patterns of harm.¹⁹⁷ The judgment dismissed the case for lack of eyewitness testimony, disregarding the systematic intimidation and long-term ostracisation faced by the victim, a common feature across the continuum of violence. Similarly, in *Madhu Munda v. State of Bihar*, the disappearance and near-death experience of a woman accused of witchcraft culminated in the acquittal of the accused due to unreliable witness accounts, yet again revealing the law’s blind spots in recognising non-visible, accumulative, and collective harms.¹⁹⁸

¹⁹⁵ *Bhim Turi v State of Assam* AIR ONLINE 2018 GAU 210.

¹⁹⁶ Liz Kelly, *Surviving Sexual Violence* (Polity Press, 1988).

¹⁹⁷ *Tula Devi v. State of Jharkhand* [2006(3)JCR222(JHR)].

¹⁹⁸ *Madhu Munda v. Bihar* (2003 (3) JCR 156 Jhr.

By focusing only on discrete and extreme manifestations such as abduction, murder, or physical injury, the judiciary overlooks the normative violence that enables witch-hunting, the humiliation, economic exclusion, denial of shelter or access to health care, and the erosion of women's social standing in the village. Kelly's critique of legal and policy silos resonates strongly here, while courts may deliver justice in cases of physical harm, they rarely consider the symbolic, spatial, and economic dispossession that precede and accompany these acts.¹⁹⁹

There is also an urgent need to interrogate how superstition is framed in judicial discourse. Courts frequently refer to witch-hunting as an evil practice rooted in backward traditions of tribal or rural societies.²⁰⁰ While such language signals condemnation, it also has the effect of pathologizing violence as external to modern society, rather than seeing it as part of a continuum of control tactics deeply embedded in caste and gender hierarchies. Kelly cautions against the legal impulse to treat gender-based violence as an anomaly as something that happens only in moments of irrationality or cultural deviance.²⁰¹ This is particularly evident in the way courts and policymakers treat witch-hunting as a separate category, detached from domestic violence, honour crimes, or dowry deaths.

Like CEDAW, Indian courts rarely articulate how violence is compounded by intersectional marginalities in case of witch-hunting. This is a critical omission given that most victims are tribal, Dalit, widowed, or elderly women with limited social capital. As Crenshaw argues, legal systems often default to a singular axis of analysis (gender or caste) but fail to address how overlapping oppressions operate simultaneously to produce heightened vulnerability.²⁰²

¹⁹⁹ Kelly (n 192).

²⁰⁰ *Sushil Murmu v. State of Jharkhand* 2004 2 SCC 338.

²⁰¹ Kelly (n 192).

²⁰² Crenshaw (n 8).

The lived reality of a tribal woman accused of witchcraft is shaped not just by misogyny but also by landlessness, lack of legal access, medical neglect, and entrenched stigma. Yet courts do not invoke intersectionality as an analytical tool, thereby flattening the complexity of the victim's experience. This juridical flattening leads to both symbolic erasures where only the most visible and brutal forms of violence are acknowledged and material neglect where no provision is made for long-term rehabilitation or support.

The Rajasthan High Court, in denouncing the branding of women as witches, rightly emphasised the zero-tolerance principle.²⁰³ Yet zero tolerance must go beyond condemnation to encompass positive obligations ensuring the survivor's safety, restoring her dignity, and breaking the cycle of impunity.

Despite periodic judicial recognition of the seriousness of witch-hunting, the system remains overwhelmingly perpetrator-focused and retributive, rarely engaging with the needs, agency, or dignity of the survivor. A victim-centric approach, as advocated in contemporary feminist legal theory, demands more than compensation or punishment of the accused. It calls for a transformation in how the legal system understands harm, shifting from a reactive model to one that foregrounds prevention, restoration, and structural redress.

Judicial interventions on witch-hunting in India reflect both moments of moral clarity and systemic limitations. Courts have repeatedly acknowledged the cruelty and irrationality of such practices, yet their judgments often stop short of naming the deeper structures of caste patriarchy, economic precarity, cultural impunity that enable them. By framing witch-hunting as an anomaly rather than as part of the continuum of normalized violence, the judiciary reproduces the very conditions that allow it to persist.

²⁰³ *State of Rajasthan v Shankar Lal Parmar* AIR 2012 SUPREME COURT 1913.

5.2. State complicity in witch-hunting: structural harm and the illusion of protection

Despite the introduction of state-level legislation in Assam and Odisha to address witch-hunting, these interventions have largely failed to disrupt the structural conditions that enable such violence. This failure cannot be explained solely by institutional neglect or administrative inefficiency. Rather, it signals a more fundamental form of state complicity. As feminist scholars have argued, complicity is not merely a matter of omission or passive inaction, but an active, constitutive role the state plays in maintaining and legitimizing gendered and caste-based hierarchies.²⁰⁴ It is precisely through its legal structures, bureaucratic protocols, and institutional absences that the state creates the conditions under which violence against marginalized women is rendered routine, invisible, and unaccountable.

Conceptualizing witch-hunting as a manifestation of feminicidal governance necessitates shifting the analytical lens from isolated incidents of violence to the structural logic that sustains them.²⁰⁵ In this view, the state is not a failed or absent actor but a differentiated and hierarchical apparatus whose composition and practices actively reproduce group-specific precarity.²⁰⁶ Laws that exist only on paper, procedures that fail to center caste or gender, and criminal processes that require atomized intent all work to ensure that violence against Dalit, tribal, and rural women is not exceptional, but expected. The question, therefore, is not why the law fails to prevent witch-hunting, but how the law participates in its continued normalization.

This structural complicity is compounded by the state's role in determining which forms of violence become publicly visible and legally actionable.²⁰⁷ As Hawkesworth notes, the state's

²⁰⁴ Mary Hawkesworth, 'Visibility Politics: Theorizing Racialized Gendering, Homosociality, and the Feminicidal State' (2020) 45(2) *Signs: Journal of Women in Culture and Society* 311, 313.

²⁰⁵ Paulina García-Del Moral, 'The Murder of Indigenous Women in Canada as Feminicides: Toward a Decolonial Intersectional Reconceptualization of Femicide' (2018) 43(4) *Signs* 929, 934.

²⁰⁶ Hawkesworth (n 199) 314.

²⁰⁷ *ibid.* 316.

invocation of equality and constitutional guarantees often functions to mask its own embeddedness in systems of racialized gendering.²⁰⁸ In the Indian context, this is evident in the way witch-hunting is frequently explained through cultural deviance, superstition, or community dysfunction, frameworks that displace scrutiny from institutions and redirect it toward the irrational other. What appears as inaction is, in fact, a form of statecraft: a strategic invisibilization of violence that renders certain lives disposable, their suffering intelligible only when stripped of political meaning.

The feminist intervention that distinguishes between "femicide" and "*feminicidio*" becomes instructive here.²⁰⁹ While femicide refers to the murder of women, *feminicidio* is state complicity in gendered structural harms.²¹⁰ The Indian state, through its acts of omission, plays a central role in this structure of harm. Its failure to investigate, prosecute, and punish violence against women accused of witchcraft is not simply bureaucratic inefficiency; it is a political act of abandonment²¹¹. Survivors are frequently turned away from police stations, pressured to settle "socially," or worse, arrested themselves under countersuits.²¹² This deliberate refusal to address the root causes of inequality effectively excludes certain groups from the protection of the law, even in systems that claim to uphold equal citizenship.

Moreover, the everyday experience of women subjected to witch-hunts is one of routinized, normalized terror that Moral describes as the normalization of vulnerability and fear as 'feminine', thereby reinforcing male power as both natural and necessary.²¹³ Women are not just excluded from legal protections; their suffering is rendered intelligible only through

²⁰⁸ *ibid.* 313.

²⁰⁹ *ibid.* 314.

²¹⁰ *ibid.*

²¹¹ Shalhoub-Kevorkian, Nadera, "Reexamining Femicide: Breaking the Silence and Crossing 'Scientific' Borders." (2003) 28(2) *Signs* 581, 608.

²¹² PLD, "Targeting Women as Witches" <<https://pldindia.org/targeting-women-as-witches/>> accessed 01 June 2025.

²¹³ García-Del Moral, Paulina, "The Murder of Indigenous Women in Canada as *Feminicides*: Toward a Decolonial Intersectional Reconceptualization of Femicide" (2018) 43(4) *Signs* 929, 954.

frameworks of irrationality, superstition, or community dysfunction, never as a reflection of the state's structural neglect and complicity.²¹⁴

This violence is compounded by the exclusionary composition of state institutions, from police officers who dismiss complaints to male-dominated local panchayats that sanction mob punishments, to legislatures that remain disproportionately *savarna*²¹⁵ and male, the machinery of governance is structurally disinclined to see such violence as systemic.²¹⁶ State complicity is not limited to failure of enforcement but stems from its composition, practices, and products.²¹⁷ These include laws that are reactive rather than transformative, institutions that operationalize caste and gender norms, and bureaucratic protocols that reproduce domination under the guise of neutrality.

This reflects what Gilmore terms as the state-sanctioned and/or extra-legal production and exploitation of group-differentiated vulnerability to premature death, central to the state's gendered racialization project.²¹⁸ In witch-hunt cases, the vulnerability of rural and tribal women is not an accident of geography or tradition; rather it is the outcome of deliberate institutional neglect, active stigmatization, and ideological abandonment. This is gendered structural harm, legitimized through law's symbolic neutrality and selective visibility.

²¹⁴ *ibid.*

²¹⁵ *Savarna*- In Sanskrit, literally 'those with Varna.' Thus the term refers to members of the Caste System, and especially those in the three higher-ranking Varnas. The term is often used in contrast to *Avarna* communities, which include Dalits and tribals, who are historically excluded from the varna system and subjected to caste-based oppression.

Dr. B. R. Ambedkar, "Varna and Caste," (Columbia University)<<https://ccnmtl.columbia.edu/projects/mmt/ambedkar/web/groups/6770.html>> accessed 29 May 2025.

²¹⁶ PLD, "Targeting Women as Witches" <<https://pldindia.org/targeting-women-as-witches/>> accessed 01 June 2025.

²¹⁷ Hawkesworth (n 199) 311-319.

²¹⁸ *ibid*; Ruth Wilson Gilmore, *Golden Gulag: Prisons, Surplus, Crisis, and Opposition in Globalizing California* (University of California Press, 2007).

Even more insidiously, state complicity is embedded in the everyday functioning of bureaucratic and legal systems, through what is referred to as the managerialization of law.²¹⁹ This concept highlights how laws and policies, instead of being actively enforced, are reduced to mere formalities.²²⁰ Unenforced rules, biased procedures, ineffective programs, and ideologies that legitimize existing inequalities are presented as compliance, while in practice, they reinforce the very injustices they purport to remedy.²²¹ In the Indian context, state-level witch-hunting laws function similarly by serving more as signs of performative commitment than as mechanisms of justice. The mere presence of such laws often allows courts or officials to presume that adequate protections exist, even when survivors repeatedly report police inaction, judicial apathy, or retaliatory violence.²²²

Witch-hunting in India, thus, must be located within the analytical frame of feminicidal state complicity, where the state, through its acts and omissions, actively reproduces caste-gender hierarchies, erases accountability, and legitimizes structural violence. Rather than exceptional or marginal, witch-hunts should be seen as symptomatic of the state's broader gendered governance, where the lives of marginalized women are rendered disposable, their suffering bureaucratically managed, and their safety conditioned upon compliance with social and gender norms.

The persistence of witch-hunting in India, particularly in marginalized communities such as Dalit, tribal, and rural women, underscores the profound gaps in the country's legal frameworks and the state's broader failure to address systemic forms of gendered and caste-based violence. While accusations of witchcraft and subsequent violence are often framed as isolated

²¹⁹ Hawkesworth (n 199) 311-319; Lauren B Edelman, *Working Law: Courts, Corporations, and Symbolic Civil Rights* (Chicago University Press, 2016) Ch 6, 40, 133.

²²⁰ *ibid.*

²²¹ *ibid.*

²²² ActionAid (n 35).

superstitions, they are, in fact, deeply rooted in structural inequalities. The lack of a national law addressing witch-hunting, coupled with inconsistent enforcement and judicial apathy, perpetuates an environment in which violence continues largely unchecked. This underscores the gap between India's international human rights obligations, as discussed in the earlier chapters, and its domestic legal responses. The law often fails to engage with the root causes of witch-hunting, focusing instead on superstition and individual acts of discrimination. This perspective ignores the collective nature of the violence and the socio-economic and cultural structures that sustain it. Witch-hunting is not a mere byproduct of irrational belief systems but a strategic tool of social control, used to silence women who challenge patriarchal authority or assert property rights. The violence is collective and normalized, making the legal system's focus on individual intent a major obstacle to justice.

CONCLUSION AND RECOMMENDATIONS

This thesis has argued that witch-hunting must be recognised as a manifestation of structural and intersectional violence. It is not simply ‘superstition’ but a mechanism of control that regulates widows, punishes women who claim land, disciplines Dalit and tribal women who refuse compliance. In that sense, it exemplifies misrecognition and maldistribution by denying social status and the material conditions for a dignified life.²²³ Similarly, the framework of substantive equality which includes redistribution, recognition, transformation, and participation offers a more meaningful foundation than the thin formalism that currently guides state and judicial responses.²²⁴ To honor this vision, legal responses must go beyond punishment. They must transform the underlying power structures of caste, patriarchy, and feudalism that enable witch-hunting to endure.

To achieve this, this thesis proposes a multi-pronged reform strategy that translates feminist legal theory into actionable state and civil society interventions:

Enactment of a Comprehensive National Law

India urgently requires a national-level statute to address witch-hunting as a distinct and egregious form of gender-based violence. While a few states have enacted laws, these remain fragmented, inconsistent, and lack harmonisation with constitutional principles. A central legislation should:

- Define witch-hunting as a specific offence, incorporating its symbolic, communal, and gendered dimensions;

²²³ Fraser (n 154) 107–120.

²²⁴ Fredman (n 44) 713–14.

- Ground its understanding of harm in intersectionality, particularly the compounded vulnerability faced by SC/ST, widow, rural, and Indigenous women;
- Codify state obligations for prevention, protection, investigation, prosecution, and reparation, drawing on CEDAW's GR 35 and Indian constitutional values;
- Provide statutory mandates for survivor rehabilitation, including legal aid, mental health care, housing, and economic restitution;
- Establish an independent monitoring and grievance redressal mechanism, embedded within or alongside the National Commission for Women and National Commission for SCs/STs.

Such a law must be co-drafted in consultation with survivors, grassroots women's groups, Dalit and tribal rights organisations, and feminist legal scholars to ensure the law is not merely symbolic but grounded in lived experiences.

Reforms to Existing State Laws

In the absence of national legislation, interim reforms to state-level laws are imperative. These laws should be revised to:

- Expand the definition of witch-hunting to include non-physical harms like public naming, economic boycotts, displacement, and social ostracism;
- Clarify and institutionalise victim support, including the right to shelter, trauma-informed medical care, and compensation;
- Make awareness programs in rural, tribal, and forested areas a legal obligation, not a discretionary policy;

- Recognise collective liability in cases where panchayats, local councils, or community leaders endorse or facilitate witch-hunting, thereby piercing the veil of community impunity.

These revisions must be accompanied by model rules, budgetary allocations, and periodic evaluations to ensure they are not merely aspirational texts.

Institutional Training and Accountability

One of the recurring failures in witch-hunt cases is the indifference or active collusion of local police, prosecutors, and bureaucrats. To address this institutional apathy:

- Introduce mandatory, ongoing training for law enforcement and judicial personnel on caste- and gender-sensitive handling of witch-hunt complaints;
- Establish dedicated gender-based violence and culturally embedded violence units within state police departments, with special cells trained in social and forensic investigation;
- Implement independent accountability mechanisms to investigate dereliction of duty, including under SC/ST Act²²⁵ provisions where applicable;
- Mandate public data collection and disaggregation by caste, gender, region, and age, to illuminate the true scale of the problem and inform policy.

Such reforms are not merely procedural but epistemic, they shift the lens through which institutions perceive gender-based violence from an individual problem to a systemic one.

Socio-Economic Empowerment of Vulnerable Women

²²⁵ Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

Legal and institutional reforms must be supplemented by measures that address the material deprivation that renders women vulnerable to accusations. In the spirit of Fraser's emphasis on redistribution and Fredman's call for transformative participation, the following measures are essential:

- Enforce land and inheritance rights of SC/ST women through special land tribunals and community land monitoring bodies;
- Make state schemes for housing, pensions, education, and healthcare non-discretionary and rights-based, with on-the-ground facilitation for access;
- Include survivors of witch-hunting in livelihood guarantee programs, self-help group schemes, and skill-building initiatives as a form of restorative justice;
- Promote community legal literacy programs and support the formation of grassroots legal resource centres, particularly in high-incidence districts.

These interventions must be designed not as welfare but as rights, and must aim to dismantle the social and economic dependencies that enable patriarchal control.

Engagement with International Human Rights Mechanisms

India's commitment to CEDAW, the ICCPR, and other human rights treaties obliges it to prevent and redress systemic gender-based violence. Yet these obligations remain underutilised in domestic accountability frameworks. To bridge this gap:

- India should ratify the OP to CEDAW, allowing individuals and civil society to seek recourse at the international level;

- The Government should submit detailed reports on witch-hunting during its CEDAW review cycles and encourage UN Special Rapporteurs to conduct country visits;
- Civil society organisations must be supported to file shadow reports and engage in Universal Periodic Reviews (UPR), using international advocacy to press for domestic change;
- Encourage legal academics and practitioners to build transnational jurisprudence that links witch-hunting to global discourses on cultural rights, extrajudicial violence, and gender-based violence.

International engagement is not a substitute for national reform, but it serves as a powerful lever for moral, legal, and political accountability.

The eradication of witch-hunting requires more than legal innovation, it demands a societal transformation rooted in substantive equality, intersectional justice, and participatory governance. Law must move beyond naming and punishing harm to redefining whose pain is visible, whose lives are deemed grievable, and whose dignity is protected by the state. If Ambedkar's vision of constitutional morality is to be fulfilled, India must confront witch-hunting not as aberration, but as a systemic failure and build structures that ensure, in both letter and spirit, that every woman, regardless of caste or location, can live a life of freedom, safety, and equal respect.²²⁶

This transformation cannot be the task of the state alone. It must be co-created by survivors, grassroots organisations, legal advocates, and citizens who are willing to hold systems accountable. As Dr. Ambedkar famously declared, the path to liberation lies in the triad:

²²⁶ Dadasaheb Tandale, "Educate, Agitate, Organize" (12 May, 2021) <<https://www.saada.org/tides/article/educate-agitate-organize>> accessed 09 June 2025.

educate, agitate, organise.²²⁷ We must educate ourselves and others to unlearn the casteist and patriarchal logics that enable witch-hunting; agitate against the indifference of law and bureaucracy; and organise collectively to imagine and build a world where no woman is hunted for asserting her autonomy, her dignity, or her place in society. Only then can we truly honour the constitutional promise of justice: social, economic, and political, for all.

²²⁷ *ibid.*

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