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WITCH-HUNTING: A CRITICAL APPRAISAL UNDER THE PRESENT LEGAL FRAMEWORK IN INDIA

Shruti Priya Jha*

I. ABSTRACT

Witch-hunting in India is frequently dismissed as an irrational relic of rural superstition, yet empirical reality reveals it to be a lethal, systematic instrument of patriarchal and economic subjugation. Tracing its historical and sociological trajectory, this study distinguishes the Indian phenomenon of Daayan Pratha from the early modern European witch-craze. Whereas European persecution stemmed from a synthesis of Christian demonology and heresy trials, contemporary witch-branding in India is driven primarily by localized land disputes, resource scarcity, and caste and tribal power struggles. Superstition operates merely as an ideological smokescreen to police female autonomy, sexuality, and inheritance; disproportionately targeting widows, single women, and Dalit and Adivasi women to usurp property and reassert male supremacy. Employing a doctrinal and socio-legal methodology, this paper evaluates the adequacy of India's legal architecture in confronting this gendered violence. It examines the normative mandate of Articles 14, 15, 21, 23, and 51A(h) of the Constitution alongside India's international obligations under CEDAW, the ICCPR, and UN Human Rights Council Resolution 47/8, asserting the supremacy of constitutional morality over violent customary practices. By examining fragmented state statutes, the provisions of the Bharatiya Nyaya Sanhita, 2023, the SC/ST (Prevention of Atrocities) Act, 1989, NCRB data on crimes, and the evolution of jurisprudence from Gaurav Jain to Balku Oram, this research highlights severe enforcement gaps and inadequate victim remedies. Its principal finding is an empirical funnel of impunity: only a small fraction of witch-hunting incidents enters official records, chiefly as murders, while branding, torture and displacement largely escape registration and the few prosecuted cases rarely end in conviction. The paper therefore advocates a comprehensive Central legislation grounded in a victim-oriented model of prevention, protection and rehabilitation, supported by time-bound interim relief, protection of victims' land and effective witness protection.

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II. KEYWORDS

Witch-Hunting, Gender Justice, Constitutional Morality, Bharatiya Nyaya Sanhita, Victim Compensation and Rehabilitation.

III. INTRODUCTION

Rooted in deep-seated beliefs in the supernatural, witch-hunting is an enduring form of gender-based violence in which communities brand individuals, overwhelmingly women, as witches[1]. At its core lies a sharp social contradiction: while women are revered as goddesses when associated with nurturing or benevolent power, they are ruthlessly hunted on the mere suspicion of wielding dark magic[2]. This double standard reinstates patriarchy.

Because women are almost exclusively the ones demonized while men rarely face similar accusations, witch-branding functions as a tool of social terror that keeps male authority intact[3]. Those singled out endure severe physical abuse and psychological trauma that frequently ends in death, a pattern that intensifies during flood, droughts and famines when desperate communities seek a scapegoat for collective misfortune.[4]

Women proclaimed as a witch are believed to possess powers to augment the nature's course and are given different names such as dayan, tonhi, chudail etc[5]. To prevent her from disrupting the course of nature people tend to execute, considering her a witch. While often perceived as a relic of medieval Europe, witch hunting remains a consistent and lethal practice in contemporary India, especially Rajasthan, Odisha, Bihar, Chattisgarh, Assam and Jharkhand[6]. According to National Crime Records

[1] U.N. Hum. Rts. Council, *Elimination of Harmful Practices Related to Accusations of Witchcraft and Ritual Attacks*, U.N. Doc. A/HRC/RES/47/8 (July 12, 2021); Partners for Law in Dev. (PLD), *Piecing Together Perspectives on Witch Hunting: A Review of Literature* 7–12 (2013).
[2] Soma Chaudhuri, *Witches, Tea Plantations, and Lives of Migrant Laborers in India: Tempest in a Teapot* 24–29 (Lexington Books 2013).
[3] Silvia Federici, *Caliban and the Witch: Women, the Body and Primitive Accumulation* 163–70 (Autonomedia 2004); Govind Kelkar & Dev Nathan, *Gender and Tribe: Women, Land and Forests in Jharkhand* 88–94 (Kali for Women 1991).
[4] Nandini Sundar, *Divining Evil: The State and Witchcraft in Bastar*, 5(3) Gender, Tech. & Dev. 427, 429–32 (2001).
[5] Partners for Law in Dev. (PLD), *Contemporary Practices of Witch Hunting: A Report on Social Trends and the Interface with Law* 11–13 (2014).
[6] *Id.* at 14–16.

Bureau (NCRB)[7] data, several thousand people, mostly women have been killed on suspicion of witchcraft since independence, with hundreds of cases still reported annually[8].

Far from being purely a matter of superstition, empirical studies show the practice is frequently entangled with land disputes, denial of inheritance to widows, caste and tribal power struggles, and the policing of female autonomy[9]. Despite the existence of scattered state level legislation and prevalent cases of witch-hunting across various parts of India, India still lacks a uniform central law, and enforcement of existing laws remain weak[10]. This research undertakes a critical study of how the Indian legal system: Constitutional, Statutory and judicial have responded to witch-hunting and evaluates whether that response is adequate to the gravity of the harm.

A. Statement Of Problem

Despite the enactment of special legislation in at least eight Indian states Bihar[11], Jharkhand [Prevention of Witch (Daain) Practices Act, 1999, as applied in Jharkhand[12]], Chhattisgarh[13], Odisha[14], Rajasthan [Prevention of Witch-Hunting Act, 2015[15]], Assam[16], Maharashtra[17] and Karnataka[18] witch hunting still continues largely

[7] Nat'l Crime Records Bureau, Ministry of Home Affairs, Gov't of India, *Crime in India* (annual reports, 2001–2023) (tables on motives of murder, "witchcraft" head).
[8] Nat'l Crime Records Bureau, Ministry of Home Affairs, Gov't of India, *Crime in India* (Annual Reports 2000–2023).
[9] Partners for Law in Dev. (PLD), *supra* note 5, at 22–28; Madhu Mehra & Anuja Agrawal, *"Witch-Hunting" in India? Do We Need Special Laws?*, 51(13) Econ. & Pol. Wkly. 51, 52–53 (2016).
[10] Mehra & Agrawal, *supra* note 9, at 54–56.
[11] The Prevention of Witch (Daain) Practices Act, 1999, Bihar Act 9 of 1999 (India).
[12] The Prevention of Witch (Daain) Practices Act, 1999, Bihar Act 9 of 1999 (India), as continued in force in Jharkhand following the Bihar Reorganisation Act, 2000, No. 30, Acts of Parliament, 2000 (India); *see* Mehra & Agrawal, *supra* note 9, at 51–52 (noting its adoption by Jharkhand in 2001).
[13] The Chhattisgarh Tonhi Pratadna Nivaran Act, 2005, Chhattisgarh Act 17 of 2005 (India).
[14] The Odisha Prevention of Witch-Hunting Act, 2013, Odisha Act 3 of 2014 (India) (assented to Feb. 15, 2014; published in the Odisha Gazette Feb. 25, 2014).
[15] The Rajasthan Prevention of Witch-Hunting Act, 2015, Rajasthan Act 14 of 2015 (India).
[16] The Assam Witch Hunting (Prohibition, Prevention and Protection) Act, 2015, Assam Act 21 of 2018 (India) (assented to by the President June 13, 2018; published in the Assam Gazette June 30, 2018).
[17] The Maharashtra Prevention and Eradication of Human Sacrifice and other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013, Maharashtra Act 30 of 2013 (India).
[18] The Karnataka Prevention and Eradication of Inhuman Evil Practices and Black Magic Act, 2017, Karnataka Act 46 of 2017 (India) (in force Jan. 4, 2020).

with alarming frequency and brutality. NCRB[19] data indicates that hundreds of cases are still reported annually, while field studies suggest gross under-reporting[20].

The problem is threefold:

First, the absence of a uniform central legislation has created a fragmented and inconsistent legal response leaving several witch hunting prone regions without dedicated law and resulting in varied definitions, procedures and punishments across states.

Second, even where special laws exist their efficacy is severely limited which is further undermined by weak penalties that fail to create a deterrence in the society. Further, the absence of provisions for victim compensation and rehabilitation, poor implementation, and over-reliance on general provisions under the Bharatiya Nyaya Sanhita, 2023[21] do not capture the gendered and collective nature of the crime.

Third, this leads to a persistent and systematic gap between the constitutional guarantees of equality, non-discrimination, life with dignity and protection against exploitation under Articles 14, 15, 21 and 23[22], and the lived reality of women, particularly widows, single women and women from Scheduled Tribes and Scheduled Castes, who are most vulnerable[23]. The practice does not only reflect deep rooted patriarchy and superstition but also exposes the inadequacy of the current legal response.

B. Objectives of Research

1. To trace the historical and sociological roots of witch-hunting both globally and in the Indian context and to distinguish the drives specific to India, such

[19] Nat'l Crime Records Bureau, Ministry of Home Affairs, Gov't of India, *Crime in India 2022: Statistics*, Vol. 1, at 142 (2023).
[20] Partners for Law in Dev. (PLD), *Contemporary Practices of Witch Hunting: A Report on Social Trends and the Interface with Law* 14–19 (2014); Madhu Mehra & Anuja Agrawal, *"Witch-Hunting" in India? Do We Need Special Laws?*, 51(13) Econ. & Pol. Wkly. 51, 52 (2016).
[21] The Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023 (India).
[22] India Const. arts. 14, 15, 21, 23.
[23] Partners for Law in Dev. (PLD), *supra* note 5, at 22–28; Kelkar & Nathan, *Gender and Tribe*, *supra* note 3, at 88–94.

as land disputes, gender-based discrimination and tribal power structures from the European witch-craze paradigm.

2. To analyse witch-hunting as a mechanism for reinstatement of patriarchy, and to critically examine how and why the practice disproportionately targets women, particularly widows, single women, and women from Scheduled Tribes and Scheduled Castes, for policing their autonomy, sexuality and property rights.
3. To examine the constitutional framework under articles 14,15,21 and 23 and assess the extent to which it provides protection against witch-hunting related violence and upholds the rights to equality, non-discrimination and life with dignity.
4. To critically analyse the existing state level special legislation on witch-hunting across India and identify legislative gaps, inconsistencies and inadequacies in definitions, penal provisions and victim protection.
5. To study the judicial response to witch-hunting through a doctrinal analysis of supreme court and high court case laws, focusing on judicial interpretation, sentencing trends and compensation.
6. To evaluate the adequacy of enforcement mechanisms, including police response, evidentiary challenges, implementation hurdles and conviction rates under both special laws and general penal provisions under Bharatiya Nyaya Sanhita,2023.
7. To recommend comprehensive legal and policy reforms, including examining the need for a uniform central legislation and suggesting victim centric preventive, protective and rehabilitative measures.
8. To assess the socio-economic, psychological and community-level impact of witch-hunting on victims and their families, and to critically evaluate the adequacy of existing victim compensation, rehabilitation, reintegration and witness protection mechanisms.

C. Research Gap

Despite extensive documentation of witch-hunting as a socio-legal phenomenon, a comprehensive analysis of the existing literature reveals several critical gaps that

remain unaddressed. There is an absence of an Indian-specific paradigm on witch-hunting in contrast to the European model, which has been thoroughly theorized as a theological persecution[24]. Moreover, although feminist scholars acknowledge the gendered nature of witch-hunting[25], no study has exclusively examined witch-hunting as a deliberate mechanism for the reinstatement of patriarchy.

Similarly, the intersection of constitutional morality with customary tribal practices remains unexplored. The existing scholarship has not critically examined the adequacy of the constitutional framework under Articles 14, 15, 21 and 23 as a protective shield against witch-hunting violence[26]. Also, there is no doctrinal analysis consolidating Supreme Court and High Court jurisprudence on witch-hunting with respect to judicial interpretation, sentencing trends, and victim compensation. Case law is scattered and has not been evaluated for judicial consistency.

Previous studies have focused on the IPC and CrPC[27]. No study has evaluated enforcement challenges, evidentiary hurdles, police response, and conviction rates under both the special laws and the newly enacted Bharatiya Nyaya Sanhita, 2023[28]. The most significant gap is the lack of studies on the socio-economic, psychological and community-level impact on victims and their families. Existing literature documents the crime but fails to assess the adequacy of victim compensation, rehabilitation, reintegration and witness protection mechanisms[29].

This paper seeks to address these questions and bridge the existing gaps by undertaking a single, integrated analysis of witch hunting in India that is anchored in the Constitution, centred on the experience of victims, and directed towards reform.

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[24] Brian P. Levack, *The Witch-Hunt in Early Modern Europe* 29–35 (3d ed., Routledge 2013); Julian Goodare, *The European Witch-Hunt* 267–75 (Routledge 2016).
[25] Silvia Federici, *Caliban and the Witch: Women, the Body and Primitive Accumulation* 163–70 (Autonomedia 2004); Govind Kelkar & Dev Nathan, *Gender and Tribe: Women, Land and Forests in Jharkhand* 88–94 (Kali for Women 1991).
[26] India Const. arts. 14, 15, 21, 23.
[27] Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India); Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India); Partners for Law in Dev. (PLD), *Contemporary Practices of Witch Hunting: A Report on Social Trends and the Interface with Law* 45–62 (2014).
[28] The Bharatiya Nyaya Sanhita, 2023, No. 45, Acts of Parliament, 2023 (India).
[29] Madhu Mehra & Anuja Agrawal, "*Witch-Hunting*" *in India? Do We Need Special Laws?*, 51(13) Econ. & Pol. Wkly. 51, 53–55 (2016).

D. Literature Review

Witchcraft is commonly understood as the use of supposed mystical powers to harm another person's mind, body, or property. The word comes from the Old English wicce (the feminine form of wicca, "witch") and craft, meaning skill. While Western scholarship originally used this term as a universal lens to categorize magical practices worldwide, comparative socio-legal literature draws a sharp line between the European and Indian experiences. Levack (2013) describes the European witch craze of the 15th to 18th centuries as persecution sponsored by church and state, driven by demonology and fears of heresy[30].

Indian scholarship, by contrast, places witch-hunting within agrarian and tribal social structures. Malinowski (1944) and, later, Sundar (2001) read accusations as a way for communities to explain crop failure, illness, and general uncertainty[31]. Further, Singh (2011) and Alam & Raj (2017) show the practice is found across India, especially in Jharkhand, Odisha, Chhattisgarh, and Assam, where land disputes, tribal power struggles, and gender discrimination fuel it[32]. NCRB data record 2,468 murders with witchcraft as the motive between 2001 and 2016, though Mehra & Agrawal contend that the true toll is far higher because of under-reporting[33].

Most scholars now reject the view that witch-hunting is a leftover of "superstition" and treat it as structural, gendered violence. The fullest empirical study is Partners for Law in Development's "Witch-Hunting" in India (2013), which finds that in tribal regions of Jharkhand, Bihar, and Chhattisgarh the "witch" label gives a socially acceptable

[30] Brian P. Levack, *The Witch-Hunt in Early Modern Europe* 29–35 (3d ed., Routledge 2013).
[31] Bronislaw Malinowski, *A Scientific Theory of Culture and Other Essays* 69–72 (Univ. of N.C. Press 1944); Nandini Sundar, *Divining Evil: The State and Witchcraft in Bastar*, 5(3) Gender, Tech. & Dev. 427, 429–32 (2001).
[32] Devendra Singh, *Witch-Hunting in India: A Socio-Legal Analysis* (2011); Md. Aftab Alam & Aditya Raj, *Witch-Hunting in India: A Socio-Legal Perspective* (2017);Govind Kelkar & Dev Nathan, *Gender and Tribe: Women, Land and Forests in Jharkhand* 88–94 (Kali for Women 1991).
[33] Govind Kelkar & Dev Nathan, *Witch Hunts: Culture, Patriarchy and Structural Transformation* ch. 3, tbl. 3.1 (Cambridge Univ. Press 2020) (compiling NCRB data recording 2,468 murders with witchcraft as the motive between 2001 and 2016); Mehra & Agrawal, *supra* note 9, at 52–53.

cover for seizing a woman's land, denying a widow her inheritance, or controlling her autonomy, and sometimes for eliminating her[34].

Its companion review, Piecing Together Perspectives on Witch Hunting (2013), situates the practice within international feminist work on gender-based violence and argues that it resembles dowry deaths and honour killings rather than standing apart as a purely "cultural" matter[35]. Feminist writers broadly agree on its gendered character: Barstow (1994) and Federici (2004) describe it as patriarchal terror used to discipline women[36], and Stewart & Strathern (2004) note that sexual violence and public humiliation are used to push women back into their "place."[37]

Indian scholars such as Yadav (2020) note that widows, single women, and women from Scheduled Tribes and Scheduled Castes are disproportionately targeted precisely because they assert autonomy over property, sexuality and inheritance, thereby challenging patriarchal norms[38]. The "witch" label thus becomes a way to strip women of their land and to punish anyone who steps outside social norms, which in turn reinforces patriarchy.

Most legal writing on the subject is about how weak India's response has been. Articles in the *CMR School of Legal Studies Journal* and the *IJLRA* go through the state laws one by one, from Bihar's Prevention of Witch (Daain) Practices Act, 1999 to Assam's 2015 Act[39]. They reach much the same conclusion: penalties are light, police are poorly trained, and evidence is hard to gather, so convictions stay rare even after twenty years of special statutes. They also note that there is still no central law, so some affected states have no dedicated framework at all.

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[34] Partners for Law in Dev. (PLD), *Contemporary Practices of Witch Hunting: A Report on Social Trends and the Interface with Law* 14–19 (2014).
[35] Partners for Law in Dev. (PLD), *Piecing Together Perspectives on Witch Hunting: A Review of Literature* 7–12 (2013).
[36] Anne Llewellyn Barstow, *Witchcraze: A New History of the European Witch Hunts* 17–24 (Pandora 1994); Federici, *supra* note 3, at 163–70.
[37] Pamela J. Stewart & Andrew Strathern, *Witchcraft, Sorcery, Rumors, and Gossip* 112–18 (Cambridge Univ. Press 2004).
[38] Tanvi Yadav, *Witch Hunting: A Form of Violence Against Dalit Women in India*, 1(2) CASTE: Glob. J. on Soc. Exclusion 169 (2020); Chaudhuri, *supra* note 2, at 45–52.
[39] The Prevention of Witch (Daain) Practices Act, 1999, No. 9, Acts of Bihar State Legislature, 1999 (India); The Assam Witch Hunting (Prohibition, Prevention and Protection) Act, 2015, No. 21, Acts of Assam State Legislature, 2018 (India).

Few writers tie Articles 14, 15, 21 and 23 directly to witch-hunting, but constitutional commentary supplies the groundwork[40]. Articles 14 and 15 bar discrimination against women. The Supreme Court has read Article 21 broadly to include a life with dignity, which reaches the inhuman treatment branded women suffer[41]. Article 23, against exploitation, is cited for parading women naked, shaving their heads, and driving them from their villages. No study, however, has tested how these remedies perform in actual witch-hunting cases.

On the European side, Brian Levack's balanced synthesis and Anne Barstow's feminist account are the usual reference points[42]. They show that European hunts grew out of religious and demonological ideas and ran through state-backed inquisitorial procedure. Indian cases look different: they are scattered, driven by communities, and tied to material and gender-related motives. The comparison shows what is specifically socio-economic about the Indian pattern.

Lastly, commentary on *Balku Oram v. State of Odisha* (2026)[43] suggests that courts are starting to treat witch-hunting as a violation of constitutional and human rights, not just a crime. Commentators warn, though, that judgments alone will not close the gap between constitutional promise and ground reality unless legislation and enforcement change too.

E. Research Methodology

The present study follows a doctrinal approach, relying on primary legal sources. It is qualitative, analytical and critical, and it collects no primary data through surveys or fieldwork. The appraisal is built upon existing secondary material and case law. Its primary sources are the Constitution, the state anti-witch-hunting laws, the Bharatiya Nyaya Sanhita, 2023, the Bharatiya Nagarik Suraksha Sanhita, 2023, the Bharatiya Sakshya Adhiniyam, 2023, and reported decisions of the Supreme Court and High Courts. Secondary sources include books, journal articles, NCRB data, Law

[40] India Const. arts. 14, 15, 21, 23.
[41] *Francis Coralie Mullin v. Adm'r, Union Territory of Delhi*, (1981) 1 SCC 608, 618–19 (India).
[42] Levack, *supra* note 24, at 4–10; Barstow, *supra* note 36, at 17–24.
[43] *Balku Oram v. State of Odisha*, 2026 INSC 852, 2026 SCC OnLine SC 1568 (India); *see* Nidhi Sharma, *Witch-Hunting in 21st Century: Constitutional Reckoning in Light of Supreme Court's Latest Judgement*, LiveLaw (Aug. 25, 2026).

Commission reports, and reports by government bodies and NGOs. The study also makes a short comparison with the historical European handling of witch-hunting, to bring out what sets the Indian socio-legal setting apart. The framework is interdisciplinary, drawing upon feminist legal theory and victimology to examine witch-hunting as a means of patriarchal control.

F. Research Questions

1. What are the historical and sociological roots of witch-hunting globally and in India, and how do the Indian drivers differ from the European witch-craze paradigm?
2. Does witch-hunting function as a mechanism for reinstatement of patriarchy, and if not then why does it disproportionately target women especially widows, single women and women from Scheduled Tribes and Scheduled Castes?
3. To what extent does the constitutional framework under Articles 14, 15, 21 and 23 of the Constitution of India provide effective protection against witch-hunting related violence and is it able to uphold the rights to equality, non-discrimination and life with dignity?
4. What are the legislative gaps, inconsistencies and inadequacies in definitions, penal provisions and victim protection mechanisms under the existing state-level special legislations on witch-hunting across India?
5. What has been the judicial response to witch-hunting through the doctrinal analysis of Supreme Court and High Court case laws, and what trends emerge in judicial interpretation, sentencing and award of compensation?
6. How adequate are the enforcement mechanisms, including police response, evidentiary challenges, implementation hurdles and conviction rates, under both special laws and general penal provisions under the Bharatiya Nyaya Sanhita, 2023?

7. Is there a need for a uniform central legislation on witch-hunting in India, and what comprehensive legal and policy reforms should be recommended?
8. What is the socio-economic, psychological and community-level impact of witch-hunting on victims and their families, and how adequate are the existing victim compensation, rehabilitation, reintegration and witness protection mechanisms?

G. Hypothesis

1. The practice of witch-hunting in India is driven primarily by socio-economic factors such as land disputes, gender-based discrimination and tribal power structures, which are fundamentally distinct from the theological and church-centric drivers of the European witch-craze paradigm.
2. Witch-hunting operates as a deliberate mechanism for the reinstatement of patriarchy and disproportionately targets widows, single women and women from Scheduled Tribes and Scheduled Castes to police their autonomy, sexuality and property rights.
3. The constitutional framework under Articles 14, 15, 21 and 23 of the Constitution of India provides a strong normative foundation but remains insufficiently enforced in providing effective protection against witch-hunting related violence.
4. The existing state-level special legislations on witch-hunting across India suffer from significant legislative gaps, definitional inconsistencies, inadequate penal provisions and absence of victim-centric protection mechanisms
5. The judicial response of the Supreme Court and High Courts to witch-hunting cases has been inconsistent in terms of interpretation, sentencing trends and award of compensation to victims.

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6. The enforcement mechanisms under both special laws and general penal provisions of the Bharatiya Nyaya Sanhita, 2023 are inadequate due to police apathy, evidentiary challenges, implementation hurdles and low conviction rates
7. There is an urgent need for a uniform central legislation on witch-hunting in India incorporating comprehensive victim-centric preventive, protective and rehabilitative measures.
8. Witch-hunting has severe and long-term socio-economic, psychological and community-level impact on victims and their families, and the existing victim compensation, rehabilitation, reintegration and witness protection mechanisms are grossly inadequate.

H. Limitations of Research

1. The present study is confined to a doctrinal analysis and does not include empirical field research, victim interviews, or surveys. Therefore, the lived experiences and grassroots realities of victims could not be directly captured.
2. NCRB and other official statistical data on witch-hunting are known to be under-reported due to non-registration of cases, social stigma, and classification of witch-hunting crimes under general offences of murder and assault. This limits the completeness of quantitative analysis and accurate assessment of conviction rates.
3. The research is restricted to the Indian legal system while European history is referenced comparatively for contextual understanding. An in-depth comparative legal study with other jurisdictions dealing with similar practices, such as witch-hunting laws in Africa, is beyond the scope of the present study.
4. The study primarily relies on legislations and case laws available in English. Language and access constraints limit engagement with

vernacular/regional sources, trial court records, and unpublished police reports which may contain relevant local nuances.

5. Due to the recent enactment of Bharatiya Nyaya Sanhita, 2023, Bharatiya Nagarik Suraksha Sanhita, 2023, and Bharatiya Sakshya Adhiniyam, 2023, there is limited judicial precedent and scholarly commentary available on their application to witch-hunting cases, restricting detailed analysis of the new legal regime.
6. The scattered nature of victim compensation and rehabilitation data and the lack of systematic follow-up reports on rehabilitation and reintegration make it difficult to comprehensively evaluate the long-term socio-economic impact on victims.

IV. HISTORICAL AND SOCIOLOGICAL ROOTS OF WITCH-HUNTING

A. European roots

While witch-hunting continues to be a grave concern in contemporary times, its roots can be traced back to older historical periods. The early antecedents of organized persecution can be located in the 11th century with events such as the Orleans heresy of 1022, where clerics were executed for heresy. It is regarded as the first recorded burning of heretics in the medieval West, in which King Robert II of France ordered the burning of a group of canons at Orléans for performing secret rites[44]. The turning point came in 1324, with the trial of Alice Kyteler in Kilkenny, Ireland. Historians often cite it as the first case in which a charge of sorcery was recast as heresy involving the Devil[45].

Kyteler was a rich widow who had married several times and lent money. Her stepchildren accused her of using magic to kill her husbands. As the case moved

[44] Malcolm Lambert, *Medieval Heresy: Popular Movements from the Gregorian Reform to the Reformation* 16–20 (3d ed., Blackwell Publ'g 2002); Michael D. Barbezat, *The Fires of Hell and the Burning of Heretics in the Accounts of the Executions at Orleans in 1022*, 40 J. Medieval Hist. 399, 399 (2014).
[45] Norman Cohn, *Europe's Inner Demons: The Demonization of Christians in Medieval Christendom* 152–58 (rev. ed., Univ. of Chi. Press 2000).

forward, Bishop Richard de Ledrede took it over and recast the charges as a denial of Christ. The new allegations included animal sacrifice, sex with an incubus, magical powers, and a pact with the demon. Kyteler used her connections to flee to England. However, her maidservant, Petronilla de Meath, was left to face the court. She was tortured until she confessed, and in November 1324 she was burned at the stake, the first recorded person burned for heresy in Ireland, in a case in which charges of sorcery were recast as heresy[46].

The idea of punishing heresy kept developing from there, and only between the 13th and 15th centuries did witchcraft become a formal crime that could be prosecuted in its own right. This transition relied on the concept of what historians called "cumulative concept of witchcraft" which is defined by historian Brian Levack as the blending of lower-class folklore regarding harmful magic(maleficium) with an upper class, elite theological demonology[47].

The modern idea of the witch is usually traced to the western Alps around 1428, and it drew on two earlier episodes[48]. The first took place in Catalonia in 1424, when a local count called in leading men to deal with the Bruxa, a child-eating demon from Iberian folklore, and its human followers. Vincent Ferrer, a priest linked to that mission, wrote about it, and his descriptions shaped the concept of the witch[49].

The second took place in Rome around 1426, where the Franciscan friar Bernardino of Siena launched a fierce campaign against sorcery. It led to the execution of a woman named Finicella and spread the belief that witches flew to night-time gatherings called the tregenda[50]. In 1428 in the Valais region of the Alps, the Catalan folklore of the

[46] *Id.* at 156–58; *see also* Richard Kieckhefer, *European Witch Trials: Their Foundations in Popular and Learned Culture, 1300–1500* 12–15 (Univ. of Cal. Press 1976).
[47] Brian P. Levack, *The Witch-Hunt in Early Modern Europe* 29–35 (3d ed., Routledge 2013).
[48] Levack, *supra* note 24, at 42–45; Richard Kieckhefer, *Mythologies of Witchcraft in the Fifteenth Century*, 1 Magic, Ritual, & Witchcraft 79, 82–86 (2006).
[49] Michael D. Bailey, *Battling Demons: Witchcraft, Heresy, and Reform in the Late Middle Ages* 33–38 (Pa. State Univ. Press 2003).
[50] Franco Mormando, *The Preacher's Demons: Bernardino of Siena and the Social Underworld of Early Renaissance Italy* 52–74 (Univ. of Chi. Press 1999).

child-eating demon met the Roman theology of devil worship, and the result was the first systematic prosecution of an organised witch conspiracy[51].

The Church formalised this change in 1484, when Pope Innocent VIII issued the bull Summis desiderantes affectibus[52], followed in 1487 by the Malleus Maleficarum[53]. Together they gave inquisitors papal backing to pursue witches. The shift mattered because the Church was no longer punishing doctrinal deviation (heresy) alone; it was now hunting people thought to have made a pact with the Devil. The hunts also crossed the Atlantic.

In the European colonies of the Americas, between the 15th and 18th centuries, accused witches were said to have made such pacts and offered human sacrifice to a "demon god," and so to have rejected the authority of the Church and of Christ[54]. They were also accused of attempting to disrupt the normal structure of society by trying to control its course by their magical powers which they further increased by having meetings at night known as sabbat where they engaged in cannibalistic infanticide and participated in sexual orgies with demons or the Devil himself [55]. These executions cannot be separated from the anxieties of early modern European society.

Sociologists often treat witch-hunting as a moral panic: elites shaped it, but ordinary people fed it[56]. The period was marked by the Little Ice Age, drought, floods, crop failures, plague, and religious war. In such conditions communities looked for a sacrifice that would repair the harm and settle divine anger. The witch gave people a feeling of control and drew the community together against a figure of absolute evil[57].

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[51] Kathrin Utz Tremp, *Von der Häresie zur Hexerei: "Wirkliche" und imaginäre Sekten im Spätmittelalter* 495–510 (Hahnsche Buchhandlung 2008); Levack, *supra* note 24, at 44–46.

[52]Pope Innocent VIII, Papal Bull, *Summis desiderantes affectibus* (Dec. 5, 1484), *translated in* Alan Charles Kors & Edward Peters, *Witchcraft in Europe, 400–1700: A Documentary History* 177–80 (2d ed., Univ. of Pa. Press 2001).

[53] Heinrich Kramer & Jacob Sprenger, *The Malleus Maleficarum* 1–15 (Montague Summers trans., Dover Publ'ns 1971) (1487).

[54] John Putnam Demos, *Entertaining Satan: Witchcraft and the Culture of Early New England* 11–20 (updated ed., Oxford Univ. Press 2004).

[55] Cohn, *supra* note 45, at 224–32; Levack, *supra* note 24, at 36–41.

[56] Erich Goode & Nachman Ben-Yehuda, *Moral Panics: The Social Construction of Deviance* 144–65 (2d ed., Wiley-Blackwell 2009).

[57] Wolfgang Behringer, *Climatic Change and Witch-Hunting: The Impact of the Little Ice Age on Mentalities*, 43 Climatic Change 335, 338–46 (1999).

Folk tradition also recognized the category of "white witches," who used knowledge of plants and animals, and claimed supernatural power, to heal the sick. However, they too were often caught up in shifting legal and religious lines and persecuted[58].

B. Indian roots

Witch-hunting in the Indian subcontinent grew out of several overlapping factors: indigenous cosmological beliefs, caste, and local socio-economic hierarchies[59]. These formed the background, but the oldest textual foundations lie in the Atharva Veda, the fourth Veda, which collects spells, charms, and sorcery. Its verses were practical. They aimed to cure illness, offer protection, and ward off hostile forces or rival curses[60]. Later Hindu texts, including the Bhagavata, Brahma, and Markandeya Puranas, already distinguish benevolent folk practice from destructive magic[61]. The Manu Smriti condemns harmful sorcery and prescribes heavy fines for those who use incantations to destroy life[62].

In the eleventh century, Somadeva's Kathasaritsagara tells of figures who can change shape and cause supernatural harm[63]. The English word "witch" is sometimes linked to the Sanskrit dakini, whom the Kathasaritsagara and various Puranas describe as flesh-eating, shape-shifting attendants of Kali[64]. Taken together, these texts show that the witch figure was part of Indian social life long before any institutional intervention.

British rule, however, brought a sharp change in the nineteenth century. The earliest formal records of large-scale witch trials come from the tribal heartlands of the Chota

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[58] Owen Davies, *Popular Magic: Cunning-Folk in English History* 1–18 (Hambledon Continuum 2007); Keith Thomas, *Religion and the Decline of Magic* 212–52 (Penguin Books 1991) (1971).
[59] Govind Kelkar & Dev Nathan, *Gender and Tribe: Women, Land and Forests in Jharkhand* 88–94 (Kali for Women 1991).
[60] *Atharva-Veda Saṁhitā* bk. II, hymns 7, 9 (William Dwight Whitney trans., Harvard Univ. Press 1905).
[61] *The Mārkandeya Purāna* canto LXXXI (F. Eden Pargiter trans., Asiatic Soc'y of Bengal 1904).
[62] *The Laws of Manu* ch. IX, v. 290 (Georg Bühler trans., Clarendon Press 1886).
[63] Somadeva, *The Ocean of Story (Kathā Sarit Sāgara)* vol. 2, at 104–08 (C.H. Tawney trans., N.M. Penzer ed., Charles J. Sawyer Ltd. 1924).
[64] *Id.* vol. 6, at 136–39; *see also* David Gordon White, *Kiss of the Yoginī: "Tantric Sex" in its South Asian Contexts* 27–35 (Univ. of Chi. Press 2003).

Nagpur plateau, Singhbhum, and the Santal Parganas[65]. In these Adivasi(indigenous)societies, traditional belief systems had long linked sudden communal misfortunes such as crop failure, cattle epidemics or mysterious diseases to specific women whose identification was done by a witch hunter known variously as Bhopa, Ojhas, Bhagats or Gunos[66].

Within their communities, these figures held considerable patriarchal authority, and they were seen as protectors because they were the ones who identified the witch. The East India Company found the hunts disruptive and banned witch-hunting between the 1840s and 1850s, imposing harsh penalties on the Bhopas[67]. The ban had an unexpected effect. As colonial resistance built through the mid-nineteenth century, especially in the Santal Rebellion of 1855 and the Uprising of 1857, witch-hunting surged as a symbolic form of resistance outside formal politics.

Rebel leaders argued that witches multiplied because British law shielded them. Violence escalated during these years, and the methods of torture were brutal such as suspending victims over the smoke of burning chillies[68]. Historian Shashank S. Sinha characterizes these events in Chotanagpur as the "first mass witch hunt among tribal communities"[69]. Comparable patterns of gratuitous violence against women branded as witches have also been documented in colonial western India, which indicates that the phenomenon was neither isolated nor confined to one region[70].

Thus, the historical roots of the witch hunt reveal a transition wherein ancient magical traditions were fundamentally weaponized as a complex mechanism of anti-colonial resistance and lethal gendered persecution. The primary catalyst for witch hunting is frequently a localized land dispute or economic conflict and is largely decentralized,

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[65] Shashank S. Sinha, *Witch-Hunts, Adivasis, and the Uprising in Chhotanagpur*, 42(19) Econ. & Pol. Wkly. 1672, 1672–73 (2007); E.T. Dalton, *Descriptive Ethnology of Bengal* 199–201 (Off. of the Superintendent of Gov't Printing 1872).

[66] Nandini Sundar, *Divining Evil: The State and Witchcraft in Bastar*, 5(3) Gender, Tech. & Dev. 427, 429–33 (2001); Kelkar & Nathan, *Gender and Tribe*, *supra* note 3, at 95–98.

[67] Sinha, *supra* note 65, at 1673.

[68] Sinha, *supra* note 65, at 1673–75; *see also* Ranajit Guha, *Elementary Aspects of Peasant Insurgency in Colonial India* 100–05 (Oxford Univ. Press 1983).

[69] Sinha, *supra* note 65, at 1672.

[70] *See* Ajay Skaria, *Women, Witchcraft and Gratuitous Violence in Colonial Western India*, 155 Past & Present 109 (1997) (study of colonial western India, cited for comparison).

community led and mob-instigated[71]. Witch hunting in India is most prevalent in the states of Jharkhand, Bihar, Odisha, Chhattisgarh, Rajasthan, and parts of Assam and West Bengal[72].

V. WITCH-HUNTING AS A PATRIARCHAL TOOL; BEYOND SUPERSTITION

A. The gender exclusivity of the Brand: The linguistic weaponization of the defiant woman

Witch hunting which is a grave social concern from time being is also an instrument of patriarchal structural alignment. Field studies consistently find that those branded as witches are overwhelmingly women[73]. This imbalance demonstrates that witch-hunting is not a gender-neutral reaction to a community's misfortunes. The violence is directly aimed at women and the regional vocabulary itself reflects this. Terms like daayan across the Jharkhand plains, tonhi in Chhattisgarh, and bhootali in Maharashtra exist solely as feminine labels.[74]

Far from simply naming a practitioner of magic, these words create a harmful social identity in which the female body is cast as inherently corrupt, parasitic, and threatening to the community's survival. By contrast, male practitioners such as the *Ojha, Bhopa, or Guno* are respected and given sacred, patriarchal authority, even as their female counterparts are demonised[75]. Once a woman is branded a witch, any act of cruelty against her is rationalised as just and moral, carried out for the collective good.

B. Material Motives Behind Witch-Branding: Land, Caste, and Autonomy:

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[71] Partners for Law in Dev. (PLD), *Contemporary Practices of Witch Hunting: A Report on Social Trends and the Interface with Law* 22–28 (2014).
[72] Nat'l Crime Records Bureau, Ministry of Home Affairs, Gov't of India, *Crime in India* (Annual Reports 2012–2023); Partners for Law in Dev. (PLD), *supra* note 5, at 14–16.
[73] Partners for Law in Dev. (PLD), *supra* note 5, at 14–19; Kelkar & Nathan, *Witch Hunts*, *supra* note 33, ch. 3. NCRB reports witchcraft-motivated murders as a count and does not publish a gender-wise breakdown of persons branded as witches.
[74] Partners for Law in Dev. (PLD), *Contemporary Practices of Witch Hunting: A Report on Social Trends and the Interface with Law* 11–13 (2014).
[75] Nandini Sundar, *Divining Evil: The State and Witchcraft in Bastar*, 5(3) Gender, Tech. & Dev. 427, 429–33 (2001).

Behind almost every accusation lies a clear financial motive alongside gender bias. This pattern is evident in various famous witch trials. The Alice Kyteler witch trials is the classic example of how her being a wealthy widow, independent moneylender and a successful accumulator of property led to her being branded as a witch[76]. Studies conducted by feminist legal scholars and organizations such as Madhu Mehra and Vrinda Grover through Partners for Law in Development reveal how superstition frequently serves as an ideological smokescreen for raw asset appropriation[77].

The omnipresent catalyst in modern witch hunting cases is the conflict over land rights, inheritance and physical autonomy. Field studies by PLD show that widows, single or elderly women, and those from Scheduled Caste and Scheduled Tribe backgrounds are the most vulnerable groups[78].In agrarian villages, customary norms dictate that agricultural land stays strictly within the male bloodline. When a widow claims her legal share of her late husband's estate, male relatives often view her as an obstacle and weaponise *Daayan Pratha* against her. This accusation strips her of family support and financial security, leaving her with little choice but to abandon her land rights.[79]

C. Witch Hunting as a Tool to Discipline Independent Women

From a sociological perspective, witch-hunting operates as a form of boundary maintenance as it polices what a community deems as acceptable womanhood[80]. It is generally directed at women who depart from their prescribed social and cultural roles in some way. These departures include

1. **Economic autonomy:** Independent ownership of property.
2. **Reproductive non-conformity:** Being childless, barren or unwilling to reproduce.

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[76] Norman Cohn, *Europe's Inner Demons: The Demonization of Christians in Medieval Christendom* 152–58 (rev. ed., Univ. of Chi. Press 2000).
[77] Madhu Mehra & Anuja Agrawal, "*Witch-Hunting*" *in India? Do We Need Special Laws?*, 51(13) Econ. & Pol. Wkly. 51, 52–54 (2016).
[78] Partners for Law in Dev. (PLD), *supra* note 5, at 22–28.
[79] Govind Kelkar & Dev Nathan, *Gender and Tribe: Women, Land and Forests in Jharkhand* 98–104 (Kali for Women 1991).
[80] Kai T. Erikson, *Wayward Puritans: A Study in the Sociology of Deviance* 10–13 (John Wiley & Sons 1966).

3. **Behavioural Transgression:** Questioning or challenging deep seated discriminatory hierarchies[81].

D. The Goddess/Evil Binary: Feminist Legal Theory and the Politics of Benevolence

The ideological legitimacy of this violence is rooted in a deeply entrenched cultural binary analysed in feminist legal theory[82]. Under the patriarchal metaphysics, female power is never permitted to exist in an autonomous, unmediated state. It is only celebrated when it is completely domesticated, passive and subservient to patriarchal needs. The moment a woman exercises independent power she is immediately cast into the realm of the diabolical. These reflect how male dominance was not a permanent fixture of the past but had to be violently conquered over time. This is further explained with the help of Table 1[83]:

[81] Soma Chaudhuri, *Witches, Tea Plantations, and Lives of Migrant Laborers in India: Tempest in a Teapot* 68–75 (Lexington Books 2013); Partners for Law in Dev. (PLD), *supra* note 5, at 29–33.
[82] Ratna Kapur & Brenda Cossman, *Subversive Sites: Feminist Engagements with Law in India* 43–51 (Sage Publ'ns 1996).
[83] Dev Nathan, Govind Kelkar & Yu Xiaogang, *Women as Witches and Keepers of Demons: Cross-Cultural Analysis of Struggles to Change Gender Relations*, 33(44) Econ. & Pol. Wkly. WS58, WS58–WS64 (1998).

Indigenous Community	Patriarchal Enforcement Mechanism
Santhal& Munda (Jharkhand, India)	Executing women on claims of witchcraft to dismantle female power.
Naxi (Yunnan, China)	Mass denunciation of women on charges of harboring evil demons
Dai (Yunnan, China)	Systematic ousting of autonomous women on grounds of possessing evil spirits
Table 1: Cross-Cultural Component: Male Ascendancy Model	

VI. CONSTITUTIONAL FRAMEWORK

A. Fundamental Rights and the Constitutional Violence of Witch-Branding

Although India lacks a central legislative framework on witch hunting, the fundamental rights guaranteed by the constitution provide a Constitutional safeguard against such practices. These safeguards include the following Articles.

1. **Article 14:** Equality: It guarantees equality before the law[84]. Witch hunting stands to disrupt this framework by discriminating against women on the grounds of gender, a strong violation of the equality doctrine enshrined under article 14[85]. Therefore, a robust legal mechanism to curb these

[84] India Const. art. 14.
[85] *E.P. Royappa v. State of Tamil Nadu*, (1974) 4 SCC 3, 38 (India); *cf. Balku Oram*, 2026 INSC 852, ¶ 34.

practices should guarantee equal protection regardless of one's gender, caste, community, place of residence or social status.

2. **Article 15:** Prohibition of Discrimination: This article prohibits the State from discriminating against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them[86]. The Supreme Court has read "sex" to include gender identity, so that gender-based discrimination falls within the guarantee[87]. In the author's reading, Article 15 also operates at the intersection of sex and caste, where the branding of Dalit and Adivasi women typically falls; this reading draws on judicial recognition of intersectional discrimination and on the Atrocities Act framework discussed in Chapter 5[88].
3. **Article 21:** Protection of life and personal liberty: It gives the citizens the right to human dignity which encompasses the right to bodily autonomy, privacy and reputation[89]. The public humiliation of women through acts such as stripping, tonsuring and social ostracism directly violates this constitutional protection[90].

B. Limitations on Religious Defences and Constitutional Duties:

The practices of witch-branding are often sought to be justified as an essential part of customary belief under Article 25 which provides for the freedom of practice of religion[91]. However, the right to freedom of religion under Article 25 is itself subject

[86] India Const. art. 15, cl. 1.
[87] *Nat'l Legal Servs. Auth. v. Union of India*, (2014) 5 SCC 438 (India) (holding that discrimination on the ground of "sex" under Articles 15 and 16 includes discrimination on the ground of gender identity).
[88] *Patan Jamal Vali v. State of Andhra Pradesh*, AIR 2021 SC 2190, ¶¶ 12–13, 20–21 (India) (recognising intersectional discrimination based on gender and caste, and discussing the reading of Article 15(1) in *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India)); Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. Chi. Legal F. 139.
[89] India Const. art. 21; *Francis Coralie Mullin v. Adm'r, Union Territory of Delhi*, (1981) 1 SCC 608, 618–19 (India); *Justice K.S. Puttaswamy (Retd.) v. Union of India*, (2017) 10 SCC 1 (India).
[90] Partners for Law in Dev. (PLD), *supra* note 5, at 34–38; *cf. Balku Oram*, 2026 INSC 852, ¶ 32 (describing the torture, beatings, sexual violence and ostracisation of women branded as witches).
[91] India Const. art. 25, cl. 1.

to public order, morality, health and to the other provisions of Part III of the Constitution[92].

Therefore, no practice such as divination by Ojhas or Bhopas can claim constitutional validity if it violates Articles 14 and 21[93]. This position is further strengthened by fundamental duties under Article 51A. Article 51A(h), imposes a Duty on every citizen to develop scientific temper, humanism and the spirit of inquiry and reform[94], while Article 51A(e) mandates every citizen to renounce practices derogatory to the dignity of women[95]. Witch-branding, by its very nature, constitutes a direct violation of both these constitutional duties.

C. International Legal Obligations: Evaluating Global Consensus:

Beyond domestic law the persistence of witch-hunting in India stands as a direct violation of the state's international obligations under the following treaties:

1. **Universal Declaration of Human Rights (UDHR) & International Covenant on Civil and Political Rights (ICCPR):** Witch hunting violates article 3 of UDHR and Article 6 of the ICCPR (right to life) along with the protections against torture, cruel, inhuman and degrading treatment.[96]
2. **Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW):** As a signatory to CEDAW, India is mandated under Article 5 to eliminate all forms of prejudices and customary practices based on stereotyped gender roles [97](Article 5). The persistence of Daayan Pratha is in direct contravention of this obligation.
3. **UN Human Rights Council Resolution 47/8 (2021):** This resolution deals with harmful practices rooted in accusations of witchcraft and ritual attacks.

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[92] *Indian Young Lawyers Ass'n v. State of Kerala*, (2019) 11 SCC 1.
[93] *Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, AIR 1954 SC 282.
[94] India Const. art. 51A, cl. h.
[95] India Const. art. 51A, cl. e.
[96] G.A. Res. 217 (III) A, Universal Declaration of Human Rights, arts. 3, 5 (Dec. 10, 1948); International Covenant on Civil and Political Rights, arts. 6, 7, Dec. 16, 1966, 999 U.N.T.S. 171 (ratified by India Apr. 10, 1979).
[97] Convention on the Elimination of All Forms of Discrimination Against Women, art. 5(a), Dec. 18, 1979, 1249 U.N.T.S. 13 (ratified by India July 9, 1993).

It urges member states to hold perpetrators accountable and to give survivors access to remedies[98].

India has no strong, comprehensive central law against witch-branding and relies instead on a patchwork of state statutes. This leaves it falling short of the standards the international community expects.

VII. STATUTORY FRAMEWORK: SPECIAL AND GENERAL LAWS

A. State legislations

With no effective central law on witch-branding, individual states have passed their own special statutes. They differ sharply in how they define the offence, how heavily they punish it, and what they offer victims by way of rehabilitation.

1. **Bihar and Jharkhand (1999 Act):** Although the *Prevention of Witch (Daain) Practices Act, 1999*, which Jharkhand continues to apply after reorganisation, criminalises witch-branding on paper, its implementation is weak[99]. The Act defines "Daain" and punishes identification as an offence, yet the penalties are minimal: up to three months' imprisonment or fine for identifying a woman as a witch, and up to six months' imprisonment or fine for causing her physical or mental torture[100]. It makes no provision for emergency protection or for the economic rehabilitation of survivors.
2. **Chhattisgarh (2005) and Odisha (2013 Act, in force 2014):** Under the *Tonhi Pratadna Nivaran Act* and the *Odisha Prevention of Witch-Hunting Act* the law goes a step further by targeting the witch-doctor[101]. These statutes punish the Ojha or Bhopa more heavily than the person who first makes the accusation, with sentences of up to five years[102].

[98] Human Rights Council Res. 47/8, U.N. Doc. A/HRC/RES/47/8, ¶¶ 1–4 (July 12, 2021).
[99] The Prevention of Witch (Daain) Practices Act, 1999, Bihar Act 9 of 1999 (India); *see supra* note 12 (application in Jharkhand).
[100] *Id.* §§ 2–4.
[101] The Chhattisgarh Tonhi Pratadna Nivaran Act, 2005, Chhattisgarh Act 17 of 2005 (India); The Odisha Prevention of Witch-Hunting Act, 2013, Odisha Act 3 of 2014 (India).
[102] The Chhattisgarh Tonhi Pratadna Nivaran Act, 2005, §§ 5, 6, Chhattisgarh Act 17 of 2005 (India); The Odisha Prevention of Witch-Hunting Act, 2013, §§ 4, 6, Odisha Act 3 of 2014 (India).

3. **Rajasthan (2015) and Assam (2015 Act, in force 2018):** These two states have enacted the toughest frameworks in the country[103]. Assam's Act makes every offence cognizable, non-bailable and non-compoundable, punishes branding with three to seven years' imprisonment, and prescribes seven years to life where the branding drives the victim to suicide[104]. The two States treat collective liability differently. In Rajasthan, the State Government may, after an inquiry, impose a collective fine on the inhabitants of an area concerned in the offence and apply the proceeds to the rehabilitation of victims; in Assam, the court may fine each member of the community involved, and fines are payable to the victim as compensation[105]. The first is an executive measure and the second a judicial penalty tied to conviction, but both acknowledge the communal nature of the crime.

B. General Provisions under the Bharatiya Nyaya Sanhita (BNS), 2023

Whenever witch-branding escalates into severe bodily harm or homicide, police officers routinely bypass these limited state statutes and instead invoke general criminal provisions. The Bharatiya Nyaya Sanhita (BNS),2023 provides for the following protection; perpetrators are charged under Section 103 (Murder)[106], Section 115 (Voluntarily causing hurt)[107], Section 117 (Voluntarily causing grievous hurt)[108], and Section 74/76 (Assault or criminal force to woman with intent to outrage her modesty/strip her naked)[109].

While the BNS provides strict punitive terms it possesses no legal mechanism to intervene during the early stages of a moral panic such as when the Ojha first utters a

[103] The Rajasthan Prevention of Witch-Hunting Act, 2015, Rajasthan Act 14 of 2015 (India); The Assam Witch Hunting (Prohibition, Prevention and Protection) Act, 2015, Assam Act 21 of 2018 (India).
[104] The Assam Witch Hunting (Prohibition, Prevention and Protection) Act, 2015, §§ 4, 6, 17, Assam Act 21 of 2018 (India).
[105] The Rajasthan Prevention of Witch-Hunting Act, 2015, § 8, Rajasthan Act 14 of 2015 (India); The Assam Witch Hunting (Prohibition, Prevention and Protection) Act, 2015, §§ 15, 19, Assam Act 21 of 2018 (India).
[106] The Bharatiya Nyaya Sanhita, 2023, § 103, No. 45, Acts of Parliament, 2023 (India).
[107] *Id.* § 115.
[108] *Id.* § 117.
[109] *Id.* §§ 74, 76.

woman's name during a village ritual. Further, the BNS treats crimes through the lens of individual liability that is Section 61-Criminal Conspiracy and Section 3(5)-Common Intention[110]. However, witch branding is a communal enterprise where the entire village participates in a social boycott or forced displacement. Moreover, by processing the witch hunt as a standard assault or homicide it completely negates the fact that their exist the underlying drivers such as gendered subjugation, property extortion and patriarchal alignment.

C. Interface with the SC/ST (Prevention of Atrocities) Act, 1989:

Since witch-branding in India intersectionally targets Dalit and Adivasi women, the special statutes must be read alongside the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989[111]. This act serves as a more potent legal weapon than any state level witch hunting law[112]. In its landmark multi state empirical study, Contemporary Practices of Witch Hunting: A Report on Social Trends and the Interface with Law, PLD established that there is an overwhelming majority of victims who belong to the schedule tribes(adivasis), Schedule castes (Dalits), and other backward castes (OBCs)[113].

The statutory interface between these laws creates a critical legal dynamic. When a lower caste widow is branded as a witch by dominant caste individuals charging the perpetrators under both the state witch hunting legislations and the SC/ST Act changes the legal landscape[114]. However, despite this a massive enforcement gap remains. If the perpetrators belong to the same tribal community as the victim, the SC/ST Act becomes legally inapllicable[115]. In these scenarios the victim is left with

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[110] *Id.* §§ 3(5), 61.
[111] The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, No. 33, Acts of Parliament, 1989 (India).
[112] *Id.* §§ 3(1)(f), 3(1)(g), 3(1)(r), 3(1)(w), 14, 18; The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Rules, 1995, r. 12(4), annex. I (India) (schedule of relief to victims).
[113] Partners for Law in Dev. (PLD), *Contemporary Practices of Witch Hunting: A Report on Social Trends and the Interface with Law* 19–22 (2014).
[114] Madhu Mehra & Anuja Agrawal, "*Witch-Hunting*" *in India? Do We Need Special Laws?*, 51(13) Econ. & Pol. Wkly. 51, 54–55 (2016).
[115] The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, § 3(1), No. 33, Acts of Parliament, 1989 (India).

weak state statutes exposing a critical gap that can only be resolved through a comprehensive central act.

VIII. JUDICIAL RESPONSE

A. Supreme Court Jurisprudence: From Administrative Vigilance to Constitutional Reckoning

The Supreme Court's approach to witch-hunting has evolved over the last 35 years, from treating the crime as a localized police failure to condemning it as an assault on constitutional morality. This change in the Court's approach is evident from the following cases:

1. **Gaurav Jain v. State of Bihar, 1991 Supp (2) SCC 133:** In this public interest litigation where witch hunting led to the murders of property-owning widows in Bihar, M.P. and Andhra Pradesh, a committee set up by the Bihar government recommended enacting a special legislation[116]. The supreme court however, declined to issue mandamus compelling the legislature to pass a separate statute, noting that convictions had already occurred under existing penal laws[117]. Instead the court treated the issue as a law and order, and surveillance problem directing the state to deploy police cells and plain clothes intelligence officers[118].

2. **Balku Oram v. State of Odisha, 2026 INSC 852, 2026 SCC OnLine SC 1568:** Decided on 13 August 2026 by a Division Bench of Justices Prashant Kumar Mishra and N.V. Anjaria, this was an appeal against the appellant's conviction under Section 302 read with Section 34 IPC for the 1998 murder of Puni Naik[119]. The appellant and a co-accused assaulted Puni with a lathi on the suspicion that the death of Manobodha Naik's daughter had been

[116] *Gaurav Jain v. State of Bihar*, 1991 Supp (2) SCC 133, 134 (India).
[117] *Id.* at 134–35.
[118] *Id.* at 135.
[119] *Balku Oram v. State of Odisha*, Crim. App. No. 2298 of 2026, 2026 INSC 852, 2026 SCC OnLine SC 1568, ¶ 1 (India) (Aug. 13, 2026).

caused by Puni's witchcraft, and Puni died of her injuries[120]. Dismissing the appeal and upholding the life sentence, the Court held as follows:

3. **Rejection of the plea under Section 304 IPC:** The Court rejected the plea that the act was committed on grave and sudden provocation, because the nature and site of the injuries on vital parts showed an intention to cause death and no Exception to Section 300 IPC was attracted[121].
4. **Reliability of a related eyewitness:** The Court held that the deceased's daughter, the sole eyewitness, was not an interested witness merely by reason of her relationship, and that her cogent testimony, corroborated by the medical evidence, could sustain the conviction. It also held that the delay in lodging the FIR stood explained[122].
5. **Observations on constitutional morality:** In the concluding part of the judgment, the Court observed that witch-hunting remains a continuing malady, that reason must prevail over collective irrationality, and that the constitutional vision requires practices derogatory to women to be discarded. These observations do not form part of the ratio, but they lend weight to the argument that superstition cannot override constitutional morality[123].

B. High Court Decisions: Interpretation, Sentencing Trends, and Compensation

High Courts across eastern and central India (primarily Jharkhand, Odisha, Calcutta, Chhattisgarh, and Gauhati) constitute the principal appellate forum for witch-hunting trials. The Orissa High Court in *Sashiprava Bindhani* issued guidelines to operate until the State legislated, including the prompt recording of witness statements under Section 164 CrPC so that witnesses do not turn hostile[124].

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[120] *Id.* ¶¶ 2–3.
[121] *Id.* ¶¶ 7, 13, 26–28.
[122] *Id.* ¶¶ 19–25, 29–30.
[123] *Id.* ¶¶ 31–34, 38.
[124] *Sashiprava Bindhani v. State of Orissa*, W.P. (C) No. 17638 of 2011, 2012 SCC OnLine Ori 152 (Orissa HC Apr. 25, 2012) (India).

The Calcutta High Court in *Moyna Murmu* directed an expert study of prevalence, special district cells, prompt registration of cases, legal aid and support for victims[125], and in *Kali Singh* it commuted seven death sentences for the killing of three women branded as witches while directing the State to implement those guidelines[126]. The Orissa High Court likewise commuted nine death sentences in a 2016 witchcraft triple murder in *Dengun Sabar*[127]. Their jurisprudence exhibits distinct patterns across three domains, as illustrated in Table 2: Judicial Approach of High Courts in Witch-Hunting Cases – Interpretation, Sentencing and Compensation Trends.

Judicial dimension	Prevailing high court approach	Key legal impact
Statutory interpretation	Strict reading of evidence; recognition of communal hostility.	Courts frequently critique trial judges for ignoring property disputes behind accusations, yet acquit when independent village witnesses turn hostile.
Sentencing trends	Reluctance to award the death penalty; standard imposition of life imprisonment.	High Courts rarely classify witch-hunting murders as the "rarest of rare" cases, citing the accused's rural background and "superstitious mindset" as

[125] *Smt. Moyna Murmu v. State of West Bengal*, 2016 SCC OnLine Cal 4272 (Cal. HC Aug. 2, 2016) (India) (directing legal aid under the Legal Services Authorities Act, No. 39 of 1987 (India), and asking the State to explore a victim compensation scheme under Section 357A of the Code of Criminal Procedure, 1973).
[126] *State of West Bengal v. Kali Singh*, Death Reference No. 7 of 2016 (Cal. HC Oct. 4, 2018) (India) (holding that the case did not fall within the "rarest of rare" category laid down in *Bachan Singh v. State of Punjab*, (1980) 2 SCC 684 (India)).
[127] *State of Odisha v. Dengun Sabar*, DSREF No. 1 of 2021 (Orissa HC Jan. 15, 2025) (India).

		mitigating factors against capital punishment.
Victim compensation and rehabilitation	Proactive use of writ jurisdiction (Article 226) for restorative justice.	In *Smt. Moyna Murmu v. State of West Bengal* (2016), the Calcutta High Court directed an expert committee on prevalence, special district cells, prompt registration of cases, legal aid and medical and psychological support, and asked the State to explore a victim compensation scheme under Section 357A CrPC (now Section 396 BNSS).

IX. ENFORCEMENT MECHANISMS

A. Police Response, Evidentiary Hurdles, and Implementation Gaps

The primary failure in eradicating witch-hunting occurs at the very first point of contact: the local police station. Field investigations across eastern and central India reveal that this failure is not incidental, but systemic[128]. Since, Local police personnel are often recruited from the same socio-cultural milieu, they frequently share the community's belief in black magic. As a result, police officers routinely refuse to register FIRs during the early stages of witch-branding dismissing them as mere village disputes or advising both parties to reach a compromise[129].

[128] Partners for Law in Dev. (PLD), *Contemporary Practices of Witch Hunting: A Report on Social Trends and the Interface with Law* 45–52 (2014).
[129] *Id.* at 48–50; Madhu Mehra & Anuja Agrawal, "*Witch-Hunting*" *in India? Do We Need Special Laws?*, 51(13) Econ. & Pol. Wkly. 51, 54 (2016).

Even when physical violence compels police intervention this investigative bias persists. Instead of invoking the stringent state-specific anti-witch-hunting laws or the SC/ST (Prevention of Atrocities) Act, the police often register the case solely under minor, bailable hurt provisions of the Bharatiya Nyaya Sanhita, 2023[130]. This deliberate down-gradation of the offence weakens the case from its inception. Finally, even where an FIR is registered under the correct special statute, prosecution collapses at the evidentiary stage. By its very nature, witch-hunting is not an isolated act but a collective spectacle endorsed by the village. Consequently, securing an independent eyewitness becomes nearly impossible, as neighbours turn hostile during trial out of fear of social ostracization or spiritual retaliation[131].

B. Empirical Audit: NCRB Data, Under-Reporting, and Conviction Rates

An empirical examination of official statistics exposes a massive gap between the actual prevalence of witch hunting and the cases that successfully navigate the criminal justice system. This is further summarised in Table 3[132]:

Table 3: The Empirical Funnel of Impunity (India)
1. Actual incidence: Thousands of branding, displacement, & torture cases annually across rural and tribal belts. | ▼ (police intervened in only 69% of 102 documented cases in Odisha)

[130] The Bharatiya Nyaya Sanhita, 2023, § 115, No. 45, Acts of Parliament, 2023 (India).
[131] *Sashiprava Bindhani*, 2012 SCC OnLine Ori 152 (directing prompt recording of witness statements under Section 164 of the Code of Criminal Procedure, 1973, so that witnesses do not turn hostile); *see also Mahender Chawla v. Union of India*, (2019) 14 SCC 615 (India) (approving the Witness Protection Scheme, 2018).
[132] ActionAid Ass'n & Odisha State Comm'n for Women, *Witch-Hunting in Odisha: A Compilation of Case Studies* xiii (Dec. 2021) (reporting, on 102 case studies from 12 districts, that "only 69% of the cases saw police intervention, investigation and arrest"); Nat'l Crime Records Bureau, Ministry of Home Affairs, Gov't of India, *Crime in India 2023*, vol. 1 (2025) (table on motives of murder); *100 Per Cent Increase in Witch-Hunting & Honour Killings in Jharkhand: NCRB Crime Data 2023*, Outlook (reporting a national total of 74). Some reproductions of the same data report 72, so the figure should be read against the primary NCRB table.

2. Registered FIRs: Only severe physical assaults or homicides make it into official records (NCRB recorded 74 murders with witchcraft as the motive in 2023).

|

▼ (hostile witnesses and weak charges)

3. Convictions: Chronic delays and low conviction rates under state special laws compared to general homicide prosecutions.

C. Navigating the New Criminal Codes: BNS, BNSS, and BSA (2023)

The recent overhaul of India's criminal law framework provides new procedural tools that could strengthen enforcement while simultaneously posing new challenges. This is better illustrated in Table 4: Reframing Witch-Hunting Enforcement Under BNS, BNSS, and BSA (2023).

Criminal code	Key statutory provision	Impact on witch-hunting enforcement
BNS,2023	Section 103(2)-Mob lynching and Section 111-organized crime	Recognizes group-based fatal violence, requiring prosecutors to explicitly link daayan branding to sex or caste discrimination to invoke enhanced mob-lynching penalties.
BNSS,2023	Section 173 -Zero FIR and e-FIR, Section 176(3)-Mandatory Forensics	Enables displaced victims who flee their villages to file a Zero FIR at any police station. Mandatory

		forensic collection for offenses carrying 7+ years imprisonment reduces reliance on hostile village eyewitnesses.
BNSS,2023	Section 398-witness protection	Mandates state governments to notify and enforce witness protection schemes, critical for shielding surviving family members who testify against village mobs.
BSA,2023	Section 63- electronic and digital records	Streamlines the admissibility of smartphone videos and social media posts, allowing viral footage of public stripping or Ojha rituals to serve as primary, tamper-evident proof in court.

X. IMPACT ON VICTIMS AND ADEQUACY OF REMEDIES

A. Multi-Dimensional Harm: Socio-Economic, Psychological, and Community-Level Devastation

Unlike conventional crimes that conclude once the physical act ends, witch-branding inflicts a permanent, contagious social death[133]. Even when a targeted woman survives a physical assault, the label of daayan or tonhi permanently alters her socio-

[133] Partners for Law in Dev. (PLD), *Contemporary Practices of Witch Hunting: A Report on Social Trends and the Interface with Law* 34–38 (2014).

economic reality, psychological health, and standing within her community**.** This enduring harm manifests across three interlinked dimensions:

1. **Socio-Economic Dispossession:** The immediate consequence of an accusation is the collapse of the survivor's livelihood through eviction from agricultural land, denial of access to village commons and market boycotts[134]. Widows and single women dependent on independent farming or wage labour are thus rendered destitute, often forced to migrate to urban slums[135].
2. **Psychological and Physical Trauma:** Survivors endure ritualized public humiliation: public stripping, tonsuring, blackening of face and parading. This triggers long-term trauma including PTSD, depression, and suicidal ideation, with virtually no access to mental healthcare in rural/tribal settings[136].
3. **Intergenerational Stigma:** The stigma extends to the entire family. Children face bullying, school expulsion and ostracization, damaging their marriage prospects and mobility. At the community level, it entrenches patriarchal fear and deters women from claiming property or leadership rights[137].

B. Evaluating the Adequacy of Remedies: Compensation, Rehabilitation, Reintegration, and Witness Protection

While Indian statutory frameworks and judicial pronouncements recognize victim rights in theory, an audit of ground-level implementation reveals that restorative remedies remain fragmented, bureaucratic, and largely inaccessible. An audit of victim compensation schemes and their on-ground delivery gaps in witch-hunting

[134] *Id.* at 22–28; Govind Kelkar & Dev Nathan, *Gender and Tribe: Women, Land and Forests in Jharkhand* 98–104 (Kali for Women 1991).
[135] Soma Chaudhuri, *Witches, Tea Plantations, and Lives of Migrant Laborers in India: Tempest in a Teapot* 76–82 (Lexington Books 2013).
[136] Partners for Law in Dev. (PLD), *supra* note 5, at 38–42.
[137] Partners for Law in Dev. (PLD), *supra* note 5, at 42–44.

cases is illustrated in Table 5: Implementation Gaps in Compensation, Rehabilitation and Witness Protection for Witch-Hunting Victims.[138]

Remedial pillar	**Existing legal framework**	**Ground level reality and structural gaps**
Financial compensation	Victim Compensation Schemes under Section 396 BNSS, SC/ST PoA Rules, and state acts (e.g., Assam, Rajasthan)	Meager payouts, bureaucratic delays requiring proof of conviction, and failure to restore stolen land or agricultural assets.
Rehabilitation	State welfare schemes, shelter homes (*Swadhar Greh / Shakti Sadan*), and free legal aid under NALSA.	Severe shortage of safe transit shelters in tribal districts; lack of specialized psychological counseling or vocational retraining.
Community reintegration	Judicial directives (e.g., *Moyna Murmu*) on special cells, legal aid and victim support; police-assisted return of survivors was recorded, not ordered, in that case.	The "Safe Return" Paradox**:** Police escort a survivor back to her village, only for social boycotts or retaliatory attacks to resume once officers leave.

[138] For the frameworks summarised in Table 5, *see* The Bharatiya Nagarik Suraksha Sanhita, 2023, §§ 396, 398, No. 46, Acts of Parliament, 2023 (India); Ministry of Women & Child Dev., Gov't of India, *Mission Shakti: Scheme Implementation Guidelines* (2022) (Shakti Sadan component of the Samarthya sub-scheme); *Mahender Chawla*, (2019) 14 SCC 615 (Witness Protection Scheme, 2018).

Witness protection	Section 398 BNSS and the Witness Protection Scheme, 2018.	Virtually non-existent at the rural grassroots; survivors and family eyewitnesses remain exposed to coercion and hostile mobs during protracted trials.

XI. SUGGESTIONS AND RECOMMENDATIONS:

To transition from declaratory protections to enforceable remedies, the state must adopt a multi-tiered, victim-centric framework across legislative, judicial, executive, and grassroots institutions. It is better illustrated in Table 6: Proposed Reform Framework for Transitioning from Declaratory to Enforceable Remedies

Tier	**Measure**	**Purpose**
Legislative	Enact a uniform Central Act criminalizing witch-branding and *Ojha* complicity as cognizable, non-bailable offenses, harmonized with BNS Section 103(2)-mob lynching and BNSS Section 396-interim relief within 15 days.	Eliminate fragmented state statutes, close intra-tribal legal loopholes, and replace delayed, conviction-dependent relief with guaranteed statutory remedies.
Executive	Establish dedicated district budget lines, confidential widow-property registries, and automatic District Magistrate injunctions freezing the transfer or occupation of a victim's land upon FIR registration.	Link constitutional entitlements to named administrative duty bearers and neutralize land-grabbing, the primary economic motive behind witch-branding.

Policy and Forensics	Mandate zero-tolerance FIR registration at early branding stages, enforce forensic documentation under Section 176(3) BNSS, and operationalize Section 398 BNSS for rural witness protection.	Prevent escalation from verbal stigma to homicide, reduce reliance on hostile village eyewitnesses, and shield survivors from retaliatory mobs.
Judicial	Adopt remedy-conscious adjudication in High Courts and Special Courts by imposing collective village fines, ordering court-monitored physical land restitution, and rejecting superstition as a sentencing mitigator.	Convert abstract declarations of constitutional morality into concrete material restoration and consistent criminal deterrence.
Access and Rehabilitation	Establish decentralized, block level transit shelters with trauma counselling, single-window recovery of destroyed identity/land documents, and targeted legal aid via State Legal Services Authorities.	Make legal remedies and holistic rehabilitation reachable for marginalized Adivasi and Dalit women without requiring protracted litigation.
Supervisory and transparency	Mandate public annual compliance audits by State Women's and Human Rights Commissions alongside Gram Sabha accountability and women-led scientific temper campaigns under Article 51A(h).	Dismantle patriarchal myths at the grassroots and enforce institutional accountability over local police and village councils.

XII. CONCLUSION

Witch-hunting in India is not a residual byproduct of rural superstition, but a calculated mechanism of patriarchal and economic control. Unlike the early modern

European witch-craze which stemmed from elite Christian demonology and heresy trials, Indian witch-branding is driven primarily by localized land disputes, caste hierarchies, and tribal power structures. Superstition serves merely as an ideological smokescreen to police female autonomy, sexuality, and inheritance, disproportionately targeting widows, single women, and Dalit and Adivasi women to strip them of their property and reassert male dominance.

While Articles 14, 15, 21, and 23 of the Constitution, reinforced by Article 51A(h) and international obligations under CEDAW, the ICCPR, and UNHRC Resolution 47/8 establish a strong normative framework where constitutional morality overrides violent customs, ground-level enforcement remains weak. Fragmented state statutes suffer from inconsistent definitions and negligible penalties, while the general provisions of the Bharatiya Nyaya Sanhita, 2023 remain purely reactive. Compounded by police apathy, hostile village witnesses, low conviction rates, and fluctuating High Court standards, despite the Supreme Court's progressive trajectory from *Gaurav Jain* to Balku Oram, survivors are left to endure severe psychological trauma, social death, and economic destitution without adequate compensation or witness protection.

Ultimately, a legal right is the sum of a declaration and a remedy, and in addressing witch-hunting, India has been generous with the first and sparing with the second. Until constitutional guarantees are backed by institutional duty-bearers, property restitution, and enforceable accountability, legal protections will remain merely declaratory. Eradicating this practice requires shifting legislative and judicial energy from symbolic condemnation to a uniform statutory framework that protects a woman's life, land, and dignity before violence begins.

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