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THE UNTOLD AND UNHEARD PRACTICES IN INDIA; VIOLATION OF HUMAN RIGHTS

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Abstract

Human rights are the essential birth rights bestowed on each individual. The fight for the same has been from the time of the first draft of the 'Magna Carta' in 1215 A.D. Even in India, the struggle for these fundamental rights is prominent from the time India was under colonisation and unnerved imperialism. Hence, it was like a reminder to the constitution makers to include as well as protect these rights in part III of the Indian constitution as the 'Fundamental Rights'.

Although it is appalling to know that these rights of the citizens have been abrogated many times, many times due to the religious and cultural practices that are grotesque and to know that even after seventy-five years of independence people in some parts of India still believe in superstitions is a large reminder to the lack of zeal in people to develop and grow out of their poor state of society.

This paper mainly deals with the practices of, "The Devadasi System", "The renaissance era Witch Hunting Practices" and the horrendous "Practice of Female Genital Mutilation".

Keywords: Devadasi, Genital Mutilation.

Introduction

The 'Devadasi System' is the practice in which females generally, girls from the lower caste as young as five or six years old are married off to a Hindu God and are sexually exploited more often assaulted by the temple priests and the higher caste individuals. It is still practised in different parts of India and is referred to in multiple ways;

- Devadasi, Jogathi and Rajadasi in the state of Karnataka,
- Chennsveedu, Kannigeyar, Nithyakalyani, Rudra Dasi, and Manikattar in the state of Tamil Nadu
- Bhogam Bhasavi, Sani, Devali and Kalavathala in the state of Andhra Pradesh,
- Marali and Bhavin in the state of Maharashtra,
- Chakyar and Kudikyar in the state of Kerala
- Maharis in the state of Orissa
- Bhavin and Kulavathinin the state of Madhya Pradesh

The witch-hunting practice was practised in the Renaissance era in Europe but in India, it is prevalent even before, all the unknown diseases were termed to be the curse of the witch for which the woman of the village suffered the wrath. It is understandable for those times as there was no scientific and medical advancement during that era but to continue the same in this period of wide and fast development, where reasoning is the main course for progress, is indeed questionable. Many people who suffer from mental disorders due to genetics or overstress become victims of these crimes.

This crime is more prevalent in the areas of Madhya Pradesh, Orissa, Chhattisgarh, Bihar, Jharkhand, and West Bengal in India. The main motive of these is to capture the land and property inherited by the defenceless widows of these areas.

The practice of Female Genital Mutilation (FGM) is practised discretely in India by the Bohra Community of the Shia sect. This sect is found in

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the areas of Gujarat, Rajasthan, Maharashtra, Madhya Pradesh, and Kerala. It is commonly called "Khatna" which has scarred many females in India and those victims were not able to report it because of the social stigma.

There are three main sub-sects of the Bohra community namely, Dawoodi Bohra, Suleiman Bohra and Alvi Bohra, at the forefront the Dawoodi Bohra practice this iniquity, and the other two practice them as well. Even though the Bohra community is known as well-educated people who even encourage the education of girls, it is saddening to realise that the religious text of this community "Daimul Islam" promotes this kind of practice when girls reach the age of seven years for hygienic reasons. They also believe that it enhances the complexion of the girl and controls her sexual urges and makes her more devout.

These practices violate several international treaties and conventions for women, children, and human rights like the 'Civil and Political Rights', 'Elimination of all forms of Discrimination against Women' 'Universal Declaration of Human Rights', 'the rights of the Children', 'the right against the Sale of Children, Child Prostitution and Pornography'.

History and Evolution of Devadasi Practice

The practice is estimated to be originated in the Keshari Dynasty in the sixth century in South India, during which some of the classical dancers were married to the Gods. Some archaeologists argue that this institution dates back to 2500 B.C. in the Mohenjo-Daro suggesting that sources of an Indian piece of art depicting a naked dancing woman were found. They were believed to be divine as they are married to the immortal soul. Their duties include taking care of the temple, learning classics and worshipping the deity.

This practice is seemed to be connected to a story of Hindu mythology. It seems that there was a sage long ago called Jamadagni and his wife was well renowned to be a virtuous wife. One day, while she was making a pot on the riverbanks, she saw a man and admired his beauty, when it came to the knowledge of her husband, he asked his son Parashuraam to chop off her head, which his son did. Impressed by him he asked Parashuraam to ask a wish that he would fulfil, and Parashuraam asked his mother back to which Jamadagni beheaded the head of a dancer and attached it to his wife's body and resurrected her. He asked her to become a devadasi as her penance as they would dedicate their lives to the temple.

Although it is an astonishing irony that these Devadasis who are mainly hailed from the 'lower castes' or the 'untouchables' become 'divine' just after her marriage to the god. This later turns to undisclosed female and child prostitution. According to the National Commission[30] for Women, there are an estimated minimum of about 44,000 active devadasis and the numbers may even rise as high as 2,50,000 devadasis across India. Out of which 63.6 % of young girls were forced into this due to 'custom.' [31]

As a result of the rigid 'caste system', 'patriarchy', 'religious influence', 'societal framework' and the 'economic need', the young females of the country have to bear the burden.

In many parts of India, it is horrendous to know that the landowners and upper caste men believe that deflowering young girls is a decoction from diseases. And from the perspective of the girls practising this to rise in their caste system of Indian society.

Laws Relating to Devadasi System in India

- In the year of 1924, the Indian Penal Code was amended to declare that 'the practice of dedicating girls to engage them in prostitution is illegal."
- These practices also violate articles 14, 15, 19 and 21 of the Indian Constitution.

[30] William Dalrymple, Serving the Goddess: The Dangerous Life of a Sacred Sex Worker, The New Yorker (Aug. 4, 2008), http://www.newyorker.com/reporting/2008/08/04/080804fa_fact_dalrymple?currentPage=all.

[31] [31]Hyun Jin Lee, Temple Prostitutes: Devadasi Practice and Human Trafficking in India, 8 Regent J. Int'l L. 1, 2 (2011).

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- Some of the major enactments were the Prevention and dedication of the Devadasis in the states of Madras, Andhra Pradesh, Karnataka, and Maharashtra in the year 2005.
- These acts abolish the practice of this system even when the females give their consent to it as it is feared that that consent may be forceful. the punishment of which would be imprisonment for a minimum of two years and a maximum of five years with a fine of a minimum amount of two thousand to a maximum of five thousand.
- In the case of Vishal Jeet v. Union of India and others, 1990[32], the Supreme Court held that desired results had not been achieved even though laws have been implemented for the same and called for the evaluation of more measures to be taken by the union and the state government.

This summarises that even though the laws have been made but they have not been properly enacted which has led to this outcome.

Emergence and Legality of the Witch-Hunting Practice in India

In India women are categorised into two subjugations; they are either portrayed as the goddess and are worshipped and kept in high regard or are treated with the utmost disrespect and are hunted down as witches. There is a belief deep-seated in the minds of the people which have myths to back them up which states that darker-looking women who possess supernatural powers try to indulge in evil practices and for their vile needs kill innocent people. So, the witch-hunting practice emerged to remove these "demons" and protect society.

In the past twenty years, more than fifteen thousand women have become a victim of this atrocious act. There are even cases where girls are raped to punish the girl for practising witch hunting.

There is no certain legislation in India that deals with these practices. But as death and murder are conducted along with other practices, it falls under the following;

- Section 302 of Indian Penal Code[33] which includes the Punishment of murder.
- Section 323 of the Indian Penal Code[34] for voluntarily causing hurt.
- Section 376 of IPC[35] for rape ad Section 354 of IPC for outraging a women's modesty.
- Along with them, some acts were passed such as the Prevention of Witch (Dayan) Practice Act, 1999, in Bihar[36].
- Anti witchcraft act in 2001, Chhattisgarh called as 'Tohini Pratama Bill'.
- Rajasthan passed a bill as 'Rajasthan Women Prevention and Protection from Atrocities Act 2006.

The Reason for the Continuation of Which Hunting Practices in India.

There are several reasons which have been collected for the continued practice of Witch Hunting practices in India;

- ✓ In the case of Tula Devi v. State of Jharkhand[37] the person who committed the witch-hunting practice with a mala fide motive was an influential person and due to fear of being evicted and threatened, many witnesses backed out from testifying against him. The lack of evidence has made it impossible for the culprit to be punished.
- ✓ In the case of Madhu Munda v. State of Bihar[38] the victim did not report the incident on time and delays led to the

[32] https://indiankanoon.org/doc/653695/

[33] https://indiankanoon.org/doc/895891/

[34] https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688&orderno=361#:~:text=Whoever%2C%20except%20in%20the%20case,thousand%20rupees%2C%20or%20with%20both.

[35] https://www.indiacode.nic.in/show-data?actid=AC_CEN_5_23_00037_186045_1523266765688&orderno=425#:~:text=(n)%20commits%20rape%20repeatedly%20on,also%20be%20liable%20to%20fine.

[36] https://vlex.in/vid/prevention-of-witch-practices-545546750

[37] 2006 (3) JCR 222

[38] 2003 (3) JCR 156

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relapse of time to file an FIR which led to the witnesses being unreliable.

- ✓ Even though laws have been made in various states, but lack of nationalised laws made the credibility weaker.
- ✓ Lastly, the poor implementation of the laws is one of the main reasons why the practice is growing out of bounds lately.

The Female Rights Violation

Several factors contribute to this practice, the main ones being gender inequality and gender discrimination. Some of the society believe it to be a rite of passage. And the superstition of people believing that girl's sexuality must be suppressed to protect a girl's chastity.

It is ironic that both in Christianity and Islam where this is practised[39], but their relics commonly are against the idea. There are even communities it has become a prerequisite for this. This makes it difficult for families to dispose of this habit when it makes people believe that their daughters would become illegible for marriage.

At least 200 million females have been subjected to this practice as estimated by the UNICEF[40] across 31 countries around the world. UNFPA estimates that approximately 4 million people are at risk of this practice every year, which has escalated due to the covid situation.

There are various laws and acts which have been passed in India and even Supreme Court has given its discretion in the case of Anuj Garg v. Hotel Associations[41], but again the implementation of it is in question.

Conclusion

Many practices in India are violating human rights, but each citizen must reduce the practice and control practice. The least that can be done is to spread its awareness and sensitize people to it. The knowledge of the practice is wrong and evil can make them realise and try to curb it.

[39] https://www.unicef.org/stories/what-you-need-know-about-female-genital-mutilation
[40] https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation
[41] 2008 (3) SCC 1