

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

ASSAM

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Act 21 of 2018

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Assam Witch Hunting (Prohibition, Prevention and Protection) Act, 2015(Assam Act No. 21 of 2018)Last Updated 12th February, 2020(Received the assent of the President on 13th June, 2018)Published in Assam Gazette No. 340, dated 30.6.2018An Act to provide for more effective measures to prohibit witch hunting and prevent and protect persons from witch hunting; and to eliminate torture, oppression, humiliation and killing of such persons by a section of the society by providing for punishment by trial of offences relating to witch hunting; and, for the relief and rehabilitation of victims of such offences.Preamble: Whereas it is expedient to provide for more effective measures to prohibit witch hunting and prevent and protect persons from witch hunting and to eliminate torture, oppression, humiliation and killing of such persons by a section of the society by providing for punishment by trial of offences relating to witch hunting; and for the relief and rehabilitation of victims of such offences and for any other matters connected therewith or incidental thereto;It is hereby enacted in the Sixty-sixth Year of the Republic of India as follows :-

1. Short title, extent and commencement.

(1)This Act may be called the Assam Witch Hunting (Prohibition, Prevention and Protection] Act, 2015.(2)It extends to the whole of Assam.(3)It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. Definitions.

- In this Act, unless the context otherwise requires,-(a)"abettor or identifier" means any person who identifies, calls, stigmatizes, defames or accuses any other person as witch or instigates, aids or abets such an act, by words, or by signs or indications or by conducts, aids in instigating any other person or does anything which tend to cause any person any harm or causes anything which gives

reasonable apprehension of stigmatization in the mind of such person so identified, called, stigmatised, defamed or accused that there may be harm caused to him/her. or that his/her dignity or public estimation is damaged or likely to be damaged;(b)"cede' means the Code of Criminal Procedure, 1973;(c)"prescribed" means prescribed under this Act;(d)"Special Court" means a Court not below the rank of an Additional Session Judge as may be designated by the State Government by notification in the Official Gazette exercising jurisdiction in the area where the offences under this Act alleged to have taken place;(e)"State Government" means the State Government of Assam;(f)"victim" means and includes any person who has been harmed, injured, made to suffer, either physically or mentally, or singled out by cruel and unjust treatment or killed or executed as a result of witch hunting;(g)"witch" means any person who has been supposedly identified, called, stigmatized, defamed or accused as Daini, Daina, Dakini, Dakan, Shoot, Bhootuni, or any other such name by person or persons under the grip of unrealistic and unfounded impression that such person has the power to harm anyone or society at large, in any manner;(h)"witch hunting" means the identifying, calling, stigmatising, defaming or accusing any person as witch by any other person by words, or by signs or by indications or conducts or actions or in any manner, thereby causing or abetting physical and! or mental harm or execution of a witch which may involve mass hysteria, lynching or any other activities;(i)words and expressions used but not defined in this Act and defined in the Code or the Indian Penal Code, 1860 (Central Act 45 of 1960) shall have the meanings respectively assigned to them thereunder.

3. Prohibition of witch hunting.

- No person shall identify, call, stigmatize, defame or accuse any other person as witch by words, or by signs or indications or by conducts or actions or any other manner or instigate, aid or abet such an act or commit witch hunting.

4. Punishment for identifying, calling etc as witch and for abetment.

- Whoever, -(i)identifies, calls, stigmatizes, defames or accuses either by words, signs, indications, conducts, actions or any other manner, any person as witch.(ii)instigates or aids or abets any such acts mentioned in clause (i) above, shall be punished with imprisonment for a term which shall not be less than three years but can extend up to a term of seven years and with fine, which shall not be less than Rs. 50,000/- but which may extend to Rs. 5,00,000/-.

5. Punishment for causing death.

- Whoever, assaults or uses criminal force or causes assault or use of criminal force against a person accusing him/her to be a witch, resulting in his/her death, shall be punished in accordance with section 302 of the Indian Penal Code, 1860.

6. Punishment for leading the person to commit suicide.

- Whoever intimidates a person identifying, calling, stigmatising, defaming or accusing him/her a

witch and does any act leading or compelling the person to commit suicide shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and with fine which shall not be less than Rs. 1,00,000/- but which may extend to Rs. 5,00,000/-.

7. Punishment for use of criminal force identifying, calling etc. as witch.

- Whoever, identifying, calling, stigmatizing, defaming or accusing any person as witch, uses criminal force against that person and/or instigates or provokes others in doing so with intent to harm and/or to displace the person from the house, place or the property, lawfully occupied or owned by him/her or interferes with his/her rights over any land or premises or to coerce him/her to leave the area of which he/ she is a rightful owner, resident or a visitor, shall be punished with imprisonment for a term which shall not be less than five years but which may extend to ten years and with fine which shall not be less than Rs. 1,00,000/- but which may extend to Rs. 5,00,000/-.

8. Punishment for using criminal force to outrage modesty.

- Whoever, identifying, calling, stigmatizing, defaming or accusing any person as witch, assaults or uses criminal force against a person to remove or causes to remove clothes from his/her body and demonstrates and parades him/her naked or with such scanty clothes that fail to protect his/her modesty, shall be punished with imprisonment for a term which shall not be less than five years but which may extend to ten years and with fine which shall not be less than Rs. 10,000/- but which may extend to Rs. 50,000/-.

9. Punishment for some forms of torture.

- Whoever, identifying, calling, stigmatizing, defaming or accusing any person as witch, -(i) subjects that person to any forms of torture including acts of stoning, hanging, stabbing, dragging, public beatings, burns, cutting/burning of hair, forced hair shavings, pulling of teeth out, cutting of nose or other body-parts, blackening of face, whipping, branding with hot objects or use of any other blunt or sharp weapons or objects. (ii) forces that person to perform public acts of humiliation or to eat human excrement or to drink urine or to drink or eat inedible or obnoxious substances or to socially ostracize or to stigmatize for life or to prohibit to participate in auspicious occasions, to curtail movements and employment or subjects him/her to taunts, slurs and other verbal abuses, shall be punished with imprisonment for a term which shall not be less than five years but which may extend to ten years with fine which shall not be less than Rs. 50,000/- but which may extend to Rs. 1,00,000/-.

10. Punishment for damaging reputation, dignity etc.

- Whoever, with malicious intention harasses a person to damage his/her reputation and dignity, or with intention to sexually exploit or with intent to extort money or the property, or any other ulterior motive, identifies, calls, stigmatizes, defames or accuses a person as witch. shall be punished

with imprisonment for a term which shall not be less than three years but which may extend to seven years and with a minimum fine of Rs. 10,000/- which may extend to Rs. 50,000/-.

11. Punishment for attributing misfortune.

- Whoever, identifies, calls, stigmatizes, defames or accuses a person as witch and blames that person of any misfortune that befalls his village/area/locality or community which may also include natural disasters, such as droughts, floods, crop loss, illness or any death in the village, shall be punished with imprisonment for a term which may extend to three years and with fine which shall not be less than Rs. 10,000/- but which may extend to Rs. 50,000/-.

12. Punishment for causing disappearance of evidence.

- Whoever, knowingly or having reasons to believe that an offence has been committed under this Chapter, causes any evidence of the commission of that offence to disappear with the intention of shielding the offender from legal punishment, or with that intention misleads investigation or gives any information, regarding the offence, which he knows or believes to be false, shall, be liable for punishment provided for that offence under section 201/182 of Indian Penal Code, 1860 (Central Act 45 of 1960).

13. Punishment for attempt to commit offences.

- Whoever attempts to commit any offence under this Central Act and does any act towards such commission shall be punishable as per the provisions of section 511 of 1860 the Indian Penal Code, 1860 (Central Act 45 of 1960).

14. Punishment for abetment of offence.

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

15. Punishment for community involvement.

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

16. Constitution of Special Courts, their powers, functions and procedures.

(1)For trial of offences under this Act, the State Government shall constitute Special Courts in consultation with the High Court.(2)The Special Court shall exercise such powers and functions and follow such procedures as laid down under the Code for the trial of warrant cases.(3)The Special Court shall complete trial of any case under this Act within one year from the date of filing of police report before the court.

17. Offences to be cognizable, non-bailable and non-compoundable.

- Every offence under this Act shall be cognizable, non-bailable and non-compoundable within the meaning of the Code.

18. Punishment for non-payment of fine.

- An offender, wilfully or otherwise, failing to pay the fine ordered by the Court, shall be liable to undergo imprisonment as provided under section 64 of the Indian Penal Code, 1860 (Central Act 45 of 1960).

19. Fines to be paid as compensation to the victim.

(1)The fine realized as punishment for an offence under the Act, shall be paid to the victim or his/her next of kin as compensation by following the procedure as may be prescribed.(2)The compensation paid under sub-section (1) shall not be compounded with any other compensation or financial assistance which the State Government may decide to pay as immediate relief to the victim and the rehabilitation grant payable under section 28 of the Act and under the Assam Victim Compensation Scheme, 2012.

20. Appeal.

- The aggrieved person may prefer an appeal before the High Court as per the provisions of the Code.

21. Measures to protect persons from witch hunting.

(1)When a police officer receives information or a report that witch hunting is likely to be committed or there are reasonable grounds to suspect that witch hunting is committed against a person, he shall forthwith proceed to the place and shall take all suitable measures to prevent the witch hunting and to provide protection to the victim/likely victim including getting him/her admitted in the recognised protective or shelter home, in case the person has no place for shelter.(2)The police officer shall immediately remove or cause to remove the person and the objects suspected or likely to harm the victim/ likely victim. The police officer shall verbally or in writing warn the person or persons accused of having intention or attempting at committing witch hunting to leave the place

immediately and abstain from inflicting any harm upon the victim/likely victim.(3)In case the situation so warrants, the police officer may cause arrest of the person or persons and take action in accordance with section 151 of the Code. The person so arrested shall be produced before the Executive Magistrate of the area who shall proceed under the relevant provisions of Chapter VIII of the Code.(4)(i)Whenever offence against any person under the Act is reported to the police officer, in whose jurisdiction the offence is committed, the officer concerned shall record the FIR and shall take action as per law. Any failure to do so shall amount to a cognizable offence against the concerned police officer and shall be dealt with similar legal provision under the Criminal Law Amendment Act, 2013 (Central Act No. of 2013).(ii)Even if such an incident is reported to a police officer belonging to an area outside the jurisdiction of the area where the incident takes place, the said officer shall record the FIR and take all necessary steps till the case is transferred to the police station having jurisdiction in the case.(5)A police officer having the area of his/her jurisdiction shall take necessary step to protect the person(s) associated with social works/ NGO(s), who organize awareness programmes on witch hunting.

22. Special Provisions.

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

23. Obligation of certain persons/ authorities to report about the commission of offence under the Act.

(1)All Government functionaries and local bodies including Panchayats and Village Council Development Committees (VDCs), Government Gaonburah as may be specified by the Collector or the District Magistrate in relation to any area and the inhabitants of such area shall, if they have reason to believe or have the knowledge that witch hunting is about to be, or has been, committed in the area, shall forthwith report such fact to the nearest police station and assist the police in the execution of the provisions of this Act or any rule or order made thereunder;(2)Any Government official who contravenes the provision of sub-section (1) shall be deemed to have committed misconduct under the relevant service rules and liable for departmental action or fine which may extend upto Rs. 10,000/-.

24. Person convicted to be disqualified from inheriting property of the victim.

- Any person convicted of an offence under this Act, in relation to the commission of witch hunting, shall be disqualified from inheriting the property of the person against whom such witch hunting has been committed.

25. Rescue of victim.

(1) Where a Magistrate/Executive-Magistrate has reason to believe from information received from the police or from any other person authorised by State Government in this behalf or otherwise, that any person has been victimised in the name of witchcraft, he may direct a police officer not below the rank of a sub-inspector to enter such place, and to remove therefrom such person and produce him/her before him. (2) The police officer, after removing the person shall forthwith produce him/her before the Magistrate issuing the order.

26. Protective Homes and Rehabilitation Centres.

- The State Government may, In its discretion, establish as many protective homes and rehabilitation centres under the Act as it thinks fit and such homes and centres when established shall be maintained in such manner as may be prescribed.

27. Free medical assistance to the victims.

- The State Government shall provide free medical assistance including medicines and other supportive system to victims of witch hunting.

28. Rehabilitation grant to the victims or next of kins.

- The State Government, as the case may be, shall provide for rehabilitation grant to be paid to the victim or his/her next of kin in such manner as may be as prescribed for the offences committed against them under this Act and, for any other offence which has not been defined in the Act but has been defined in other criminal laws, for the time being in force.

29. Free legal services to the aggrieved person.

- The aggrieved person shall have right to free legal services under the Legal Services Authorities Act, Act 39 1987 (Central Act 39 of 1987).

30. Section 438 of the Code not to apply to persons committing an offence under the Act.

- Nothing in section 438 of the Code shall apply in relation to any case involving the arrest of any person on accusation of having committed an offence under this Act.

31. Application of certain provisions of the Indian Penal Code.

- Subject to other provisions of this Act, the provisions of section 34, Chapter III, Chapter IV, Chapter V, Chapter V-A, section 149 and Chapter XXIII of the Indian Penal Code, 1860 shall, so far as may be, apply for the purposes of this Act as they apply for the purpose of the said Code.

32. Act to override other laws Protection of action taken in good faith.

- The provisions of this Act shall have effect, notwithstanding, anything inconsistent therewith contained in any other State law, custom or usage or any instrument having effect under any law.

33. Power of State Government to make rules.

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

34. Power of State Government to make rules.

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