

DECIDING THE CULPABILITY OF OFFENDORS IN RITUALISTIC HUMAN SACRIFICES: A CHALLENGE FOR THE LEGAL SYSTEM OR ANOTHER MURDER CASE SIMPLICITER?

Abstract

There is a very thin line between faith and religion, superstition and delusion. And when these lines overlap, it may result in dangerous consequences. Human sacrifice crimes are still a reality in India and occult practices are performed or propagated by people who are victims of superstitious beliefs or people who take advantages of such superstitions to achieve a material gain or avoid a loss. An act with the intention to kill is punishable as murder in the Indian Penal Code. However the very nature of ritualistic human sacrifice makes it different from other kind of murders. But the legal system does not have any carve out for such kind of murders separately and punish them as murders but with a different motive. Often the punishment may even be more if the crime involves a barbaric nature where the victim may even be an innocent child. However, the question which the authors pose is a much greater one. The offenders committing these murders often are themselves victims of deep rooted superstitions, illiteracy and may even could be suffering from delusional disorders. So, the laws should include the mental aspect of the criminal indulging in such ritualistic human sacrifice murders and the culpability of the offenders should be decided as such. This paper tries to understand the crime of ritualistic human sacrifice murders and the existing laws and stand of Indian judiciary in this regard. The paper will try to analyse how far there can be a mitigation in these cases especially in context of capital punishment.

I Introduction

MURDERS ASSOCIATED with occult practices is still a fact in 21st Century which is a matter of concern for legal system. Even in a developing nation like India, acts of human and child sacrifice are not uncommon and every year several such cases are reported from several parts of the country. The laws and the judiciary decide the cases in the light of the barbaric nature of the crimes. However, individualised sentencing requires taking into account the entire criminological and penological aspects of the criminal. Therefore the act is not in isolation because these kind of murders have always been a result of complex motives and having roots in deep social and anthropological causes.

Human sacrifice: A historical and anthropological overview

The act of ritualistic human sacrifice seems to predate history. Human sacrifice has been a part of several religions and cultures since thousands of years. Archaeological evidences suggest several patterns in which individual or mass killings took place throughout history. Excavations have revealed human sacrifice throughout the Bronze

age and Iron age in different parts of the world. Often they were linked to complex human events or sociological patterns.¹

In some cases, they may have been linked to slavery system where slaves were sacrificed as retainers and buried with their superiors. Or in other cases, they were sacrificed to Gods for some betterment of mankind or averting some undesired events. Biblical reference in ancient Israel of Abraham willing to sacrifice his own son on the command of God suggest how human sacrifices were inherently linked with religious and spiritual practices.

Archaeological evidences from The Maya, Inca and Aztec civilisations have unearthed several evidences of child sacrifices which were practised during those times. Three child mummies were found near the remains of a shrine at Mount Llullaillaco . An active volcano on the border of Chile and Argentina. Researchers found that in the year before they died they were “fattened up” with a diet of maize and dried llama meat. Even in ancient Egypt around 5000 years ago, human sacrifices were common bas found by the graves of early Pharaohs in Abydos, but later phased out gradually during the time of Giza pyramids.Also in ancient China, archaeologists have also found thousands of human sacrifices at Shang Dynasty (1600 – 1040 B.C.) sites in the modern-day city of Anyang.²

In India Tantric forms of Hinduism and Buddhism also have the concept of ritualistic sacrifice associated with them. Primitive societies have practised human and child sacrifices and they have been associated with either individual gains or superstitious beliefs and rituals. With modern civilisation, it has been recognised as a crime, however, there are still many parts in India and other parts of the world from where still such cases emerge. These people who are often a product of complex anthropological and psychological factors ,the criminal justice system is placed with the responsibility of discharging the decision as to their culpability or punishment.

II Culpable homicide in India linked to ritualistic sacrifice

Kerala: A case study as to the practice of human sacrifices

On June 8, 2022 Rosalyn, a woman aged 49, who was working as a lottery vendor went missing from Ernakulum district of Kerala. Her daughter lodged a missing report with the police in August who failed to find any leads. Again on September, another woman named Padmaja went missing and her sister filed a missing complaint.

1 Tim Brinkhof, “The mysterious origins of human sacrifice”, *Big Think* (May 24, 2022), available at: <https://bigthink.com/the-past/human-sacrifice-ritual-history/> (last visited on Mar. 10, 2024).

2 Owen Jarus , “Cultures That Practiced Human Sacrifice”, 25 *Live Science* (June 16, 2017), available at: <https://www.livescience.com/59514-cultures-that-practiced-human-sacrifice.html> (last visited on Mar. 10, 2024).

On investigation the Police were led to the accused Shafi, which subsequently led the police to Bhagaval Singh and Laila, practising traditional healers in Elanthoor.³

This couple from Elanthoor district were connected to Shafi who had convinced them to commit the human sacrifices to appease the Gods and gain wealth and prosperity. Various accounts are emerging during investigations, as to the details of the victims. Both were residents of Ernakulum and were poor lottery sellers and one of them made a living by selling door to door products. Taking advantage of their situations, Shafi who had been previously convicted of several offences including a murder had taken advantage of the couple's situation and along with them brutally murdered the two women whose body parts were then buried outside their house, which were exhumed from the backyard of the house during investigations.

Twenty five years ago, in the same Elanthoor district a case had emerged when a four and a half year old child was killed in human sacrifice to obtain wealth. Her father, who was a homeopathic doctor and two of his wives were involved in this gruesome murder case and were sentenced to Life imprisonment. She had been subjected to torture for some days and her dead body was recovered with severe burns.

There had been several such incidents in Kerala in the 20th Century, where in 1955 a child of 15 years was sacrificed by a black magic practitioner to save an elephant or in 1973 when a villager stabbed a six year old child to appease the Gods, and sentenced to life imprisonment by the sessions court.⁴

Even the early accounts of Kerala's history are replete with such macabre incidents in which animal and human sacrifice had been carried out for materialistic gains or appeasing the Gods and Goddesses. A very interesting account can be found in Historian A. Sreedhara Menon's book *Cultural Heritage of Kerala*, where in 1920s a princess of the Travancore royal family had been indulging in some mysterious black magic practices in the palace as per a letter communicated from British Resident Colonel CG Crosthwaite to Sir CC Watson. This was to secure her position as a regent queen and lead to the death of her cousin who was in line with her to becoming the regent queen, and to completely keep the prince under her control. Several Old legends in Kerala pointed out to human sacrifices being performed in temple premises

3 Shaju Philip, "Behind Kerala ritualistic 'sacrifice': 2 missing women, a 'healer' who wanted to get rich", *Indian Express*, Oct. 12, 2022, available at: <https://indianexpress.com/article/cities/thiruvananthapuram/behind-kerala-ritualistic-sacrifice-2-missing-women-a-healer-who-wanted-to-get-rich-8203392/> (last visited on Mar. 10, 2024).

4 Gis, "Macabre tales: A history of human sacrifices in Kerala to please the gods", *The News minute*, (Oct. 17, 2022), available at: <https://www.thenewsminute.com/article/macabre-tales-history-human-sacrifices-kerala-please-gods-168974>(last visited on Mar. 10, 2024).

sometimes to lead the Brahmin supremacy over Buddhists to reclaim the temples or to establish supremacy of higher castes on lower castes.⁵

It seems bizarre in context of Kerala being the state with the highest literacy, that it has been replete with such incidents of human sacrifice and practice of superstitious and black magic acts. The reason behind this may have deep socio-psychological roots.

NCRB data related to human sacrifice crimes

In India, there are several areas which have been under the influence of such primitive thoughts and such backward societies or communities still exist amongst seemingly normal neighbourhoods also. The recent incident in Kerala human sacrifice has raised many questions which are indeed thought provoking. One cannot deny the existence of such macabre grey areas still prevalent in many parts of the India. So the legal framework also need to take into account this aspect. As per National crime records Bureau (NCRB) data, there have been total 103 ritualistic sacrifice from 2014 to 2021.⁶ NCRB does not release any separate data for occult crimes. The act of human sacrifice would be anyway punishable under Section 302 IPC for murder, however, the very nature of occult based crimes makes it different from other crimes.

III Scope of mitigation in ritualistic human sacrifice crimes

As an insanity defence

An act of human sacrifice may be committed under some delusions pertaining to some religious or cult practices. However, often such delusions may be with respect to one a particular aspect. The offender may be normal in all aspects.

Delusions are a type of mental disorder where there can be a false belief. As per DSM V, a diagnosis of schizophrenia requires any two of the following, hallucinations, delusions and disorganized speech. DSM IV had a special carve out for religious beliefs, excluding them from the category of religions. Though DSM V has done away with these exception, delusions are meant to include any belief as clearly implausible and not understandable to same-culture peers and do not derive from ordinary life experiences.

M'Naghtens rules as propounded in 1843 in England has continued to be the basis of the defense of insanity in England and other Commonwealth countries including India.

5 *Ibid.*

6 DM Web Desk, "Human sacrifices in India over the years", *Deccan Herald Interactive*, (Oct. 16, 2022), available at: <https://www.deccanherald.com/national/interactive-human-sacrifices-in-india-over-the-years-1154106.html> (last visited on Mar. 10, 2024).

As per section 84 of the Indian Penal Code, 1860 "*Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.*"

The basis of M'Naghtens rules of insanity and section 84 of IPC are the principles of (i) "*Actus nonfacit reum nisi mens sit rea*" (an act does not constitute guilt unless done with a guilty intention) and (ii) "*Furiosinullavoluntase*" (a person with mental illness has no free will).

Two elements are involved when one speaks of actions, cognition and volition. Section 84 clearly relies on the lack of cognition, that is a person who is either not able to understand the physical nature of the act or, not able to understand that it is wrong.

The Supreme Court of India has clarified that for the purposes of section 84 *legal insanity* is relevant and it has nothing to do with medical insanity. And therefore, it is just a legal concept, to verify that *at the time of commission of the crime* what was the mental state of the accused. So, the court has clarified, that mere abnormality of mind or partial delusion, irresistible impulse or compulsive behaviour of a psychopath affords no protection under section 84 IPC. Motive for the crime, previous mental history, and the events thereafter also helps in establishing the entire chain of causation and *mens rea* in the crime.⁷

When a man commits a crime under a delusion, knowing the act to be legally wrong, the judiciary has interpreted it to be outside the ambit of insanity defence.

In the case of *Asbiruddin Ahmed v. The King*,⁸ the accused had a dream in which he was commanded by someone in paradise to sacrifice his own son of five years. The next morning the accused took his son to a mosque and killed him by thrusting a knife in his throat. He then went straight to his uncle, but, finding a chaukidar nearby took his uncle to a tank at some distance and slowly told him the story. On these facts it was held by a High Court of Calcutta Bench that the accused did not know that his act of killing his son was wrong as he was labouring under a belief that his dream was a reality. Acting under delusion of his dream, he made this sacrifice believing it to be right. Thus he was granted the defence of insanity under section 84.

However, the above judgment has been criticized in later judgments. In *Lakshmi v. State*,⁹ the court observed, "*We find ourselves unable to endorse this view of section 84, I.P.C., and must therefore, express our respectful disagreement with it. We are further of opinion that once this view is accepted to be correct, it will lead to serious consequences as it will be open to an accused in every case to plead that he had dreamt a dream enjoining him to do a criminal act, and believing*

7 Math SB, Kumar CN, Moirangthem S. "Insanity Defense: Past, Present, and Future", 37(4) *Indian J Psychol Med* (Oct.-Dec. 2015)

8 AIR 1919 Cal 182.

9 AIR 1959 All 534.

that his dream was a command by a higher authority, he was impelled to do the criminal act, and he was therefore, protected by section 84. We are of opinion that such a plea would be untenable, and would not fall within the four corners of section 84.”

Therefore, as per the interpretation of section 84, a delusion in respect of a particular fact, keeping the rational mind otherwise intact will not be covered by the insanity defence.

Motives for human sacrifice and the interpretation of “wrong” as per M’Naghten’s rule

With the advancement of medical science, the theory of partial insanity is untenable since the medicine has come to recognize that the mind is a whole one and indivisible. There is no mental disorder, however, partial in appearance, that does not have its reverberations throughout the rest of the affected mind.¹⁰

A person who has committed an act of human sacrifice under a delusion of avoiding a calamity or for appeasing a God though would be aware of it being a legal wrong may be having a justification for the crime.

“Wrong” in M’Naghten’s rules of insanity may be interpreted in three different ways. A wrong may be a wrong according to the established legal standards, or a wrong according to societal norms or a wrong according to one’s own conscience.

English law clearly defines “wrong” as “legal wrong.” In many cases in England and Wales, the appellate courts have restricted the application of wrong to legal wrongness only. As early as 1917, after the first world war, In *R v. Codere*,¹¹ the court of criminal appeal had clarified that the accused must be deemed to know he was doing what was wrong if he was aware that act was one which was punishable and the words “nature and quality” do not refer to the moral aspects of what the offender was doing but solely to the physical facts.

In *R v. Windle*,¹² the accused was charged with the murder of his wife, after he gave her a fatal dose of aspirin on her constant threat of suicide. At the trial evidence showed that he was suffering from a mental condition but since he knew that he was doing a legal wrong, and had told the police that “*I suppose they will hang me for this*” even though he had moral justification for the same, the court strictly interpreted the wrongfulness limb in M’Naghtens rule and convicted him.

Many subsequent judgements have also followed the Windle case ratio.

10 David Henderson and R.D. Gulleppic, *Text Book Of Psychiatry* 172 (1956).

11 1917, 12 Cr App R 21.

12 [1952] 2 QB 826.

However, the proper interpretation of wrongfulness has been still a subject matter of debate, and many jurisdictions like Australia and several states of United States (US) have given a different interpretation.

Deific decree doctrine in US

American law is unclear about its definition of what “wrong” means, and courts take varying approaches. Both case law and statutory history indicate that particular jurisdictions have adopted all three models of “wrongfulness” in varying forms. Some courts have interpreted M’Naghten as focusing on legal wrong, so that a defendant is sane if she knew the offense was illegal. Other courts believe that M’Naghten is about moral wrong. For those courts, a defendant who receives a deific command to kill would be found legally insane, even if she knew that killing was legally wrong. The Washington Supreme Court has limited this “moral wrong” approach to belief in deific decrees only, or “that God ordered the crime committed.”¹³

In *People v. Schmidt*,¹⁴ Judge Cardozo argued that “wrong” should encompass “moral wrong” as well as “legal wrong.”

In US jurisprudence, where the defendant’s cognitive ability was distorted due to a psychotic delusion that God ordered him to commit the act, would qualify as insanity and absolve him of liability. A clinician may diagnose this as an exclusion due to simply being a religious belief or may characterize it as a bizarre delusion. Post 1983, in several states in US, deific decree has been recognised as a defence.¹⁵

However, generally the Courts give the decree only when there has been a history of mental illness. In *State v. Turgeon*,¹⁶ the defendant though claimed the deific decree failed because his rationality was not totally destroyed otherwise.

Mitigation of sentence in capital punishment

Since the cases of human sacrifice involve brutal murders and unless legal insanity is established in rare cases. The accused is convicted under section 302 IPC for murder. However on the question of life sentence or death penalty, the court may have to consider the aggravating and mitigating factors.

In most of the cases, relating to human or child sacrifice, the court has been faced with the question of mitigation of the sentence.

13 Rabia Belt, “When God Demands Blood: Unusual Minds and the Troubled Juridical Ties of Religion, Madness, and Culpability”, 69 *U. Miami L. Rev.* 781 (2015).

14 110 N.E. 945, 945 (N.Y. 1915).

15 *People v. Serravo*, 823 P.2d 128, 130 (Colo. 1992), *People v. Tally*, 7 P.3d 172, 184 (Colo. App. 1999)

16 *State v. Turgeon*, No. 49535-6-I, 120 Wash. App. 1050 (Mar. 22, 2004).

Since the landmark case of *Bachan Singh v. State of Punjab*,¹⁷ it has been recognised in Indian jurisprudence that death sentence is to be imposed only in “rarest of rare” category of cases.

As per section 354(3) of CrPC requires special reasons to be imposed for death penalty in case of life imprisonment. So Life imprisonment is the norm and death sentence is the exception. The Indian judiciary has stressed on individualised sentencing and in each cases. Rarest of rare test has to be applied along with crime test and criminal test.¹⁸ In this context, as a mitigating factor if any scope of inclusion of mental health aspect in the mitigating factor emerges, the court should ideally not give death sentence.

IV Indian judiciary: Reflections on ritualistic murders

Over the years, the cases of the Indian judiciary reflect a varied stance. An understanding of the cases will reflect that it largely depends on the discretion of the judges and there is no uniformity in the consideration of aggravating and mitigating factors. In many cases the court has also imposed death penalty reflecting on the brutal nature of the commission of the murder. However in some cases the courts have taken into account mitigating factors which may be linked to psychological issues or poverty and ignorance. The paper examines some selected landmark cases of the Supreme Court and high courts which reflect this varying approach of the judiciary.

In *Ishwari Lal Yadav v. State of Chhattisgarh*,¹⁹ the two main accused were the Ishwari Lal Yadav and his wife Kiran Bai, who had been accused of murdering a two year old boy. The accused were “tantrics” and to obtain siddhi, they had performed a human sacrifice of the child in the brutal manner.

The child was abducted and killed by severing his neck and tongue and thereafter his dead body was buried under the ground. There were all sorts of tantric rituals which were performed in the place, the high court imposed death penalty on the two main accused under section 302 IPC read with section 34 IPC. Other accused who were the disciples were sentenced to life imprisonment.

On appeal to the Supreme Court, on the basis of the deposition of the witnesses the Supreme Court came to the conclusion that the two main accused who had committed the murder, had committed in the most gruesome manner, there were no chances of reformation.

17 AIR 1980 SC 898.

18 *Sangeet v. State of Haryana*, AIR 2013 SC 447 and *Shankar Kisanrao Khadev v. State of Maharashtra*, AIR 2013 SC 2268.

19 (2019) 10 SCC 423.

The two accused had also been convicted for sacrificing another 6 year old girl by the high court under which they were sentenced to Life imprisonment which was also upheld by the Supreme Court. This earlier conviction was also held to be an aggravating factor and the death sentence under section 302 IPC read with section 34 IPC for the two main accused was upheld by the Supreme Court.

In the case of *Sushil Murmu v. State of Jharkhand*,²⁰ which involved a case of ritualistic murder, the reasoning of the case revolves around the brutal and grotesque manner of the murder. But there was no mention of any sort of psychological evaluation of the appellant, nor was there any reference to the abnormality of the commission of the crime.

The appellant had caused the death of a nine year old child in sacrifice to Goddess Kali “appease the deity”. When the father of the child found him missing from the house. The dead body of the child was recovered and the severed head was recovered wrapped in a gunny bad thrown by the accused in a nearby pond. He had made extra judicial confessions to a large number of people that he had killed the child.

The child had been brutally murdered and the wife and mother of the accused appellant were also charged along with him. Both the co-accused were acquitted given the benefit of doubt but the main accused was sentenced to death under section 302 IPC. On appeal, the Supreme Court discussed the shift in judicial approach from death penalty to life imprisonment. Section 354(3) and section 361 CrPC support the views of reformation.

The retributive approach or just desert principle of proportionality of the crime and punishment were subjected to the reformative idea in modern criminological jurisprudence.

However, the Supreme Court observed that in the present case, the murder was brutal and diabolical. The appellant did not possess of any “basic humanness”. After committing the murder, he had even non-chalantly thrown away the severed head in a gunny bag. There were no chances of reformation. And superstition cannot be in any way an excuse to commit the murder of an innocent child.

The Supreme Court held the case to be in the “rarest of rare” category and upheld the death sentence of the accused. The accused who was a victim of superstition and illiteracy and the entire matrix of socio-psychological factors were not even called into question by the court. This type of cases raises a much bigger question as to the culpability of the criminal. However the court considered only the nature of the crime.

20 (2004) 2 SCC 338.

It is to be noted here that balancing test of aggravating and mitigating factor has been done away with judgements like *Sangeet v. State of Haryana*²¹ and *Shankar Kisanrao Khade v. State of Maharashtra*.²² *Shankar Kisanrao* case held that crime test has to be 100% and criminal test 0%. Even then rarest of rare test to be applied. But it depends on “society’s” perception and not the will of the judge.

So, is the rarest of rare test depending only on the society’s perception of the crime or should the holistic understanding of the situations leading to the crime is to be judiciously applied?

The Supreme Court did not go into the discussion of the abnormality of the case at all. Gruesome murder and chances of reformation were discussed. However, such cases of ritualistic murder have to be understood in the socio-cultural context of the criminal.

Interdisciplinary engagement with the anthropological and psychological dimensions of human sacrifice is essential to ground the relevance of mitigating circumstances and the capacity for reform in such cases. Sentencing courts must appreciate the fact that in order to truly individualise the punishment, it must be proportionate not just to the heinousness of the offence, but also to the culpability of the offender.²³

However, in some cases the courts have considered some mitigating factors in such cases.

In the case of *State v. Jitender*,²⁴ the accused had severed the head of his father in an attempt to perform a ritualistic sacrifice of *devi pooja* at the Kali Temple near his house. He had killed his father and concealed his severed head wrapped in a black cloth in an almirah in a Balmiki Temple premises near his house. When he had created a commotion with the pujari of the temple, he was arrested by the police and later in the following morning, the torso and the head of the deceased were recovered when his sister raised an alarm seeing the lifeless body of their father in the house. The trial court sentenced him to death under section 302 IPC for committing the murder of his father aged 76 years. Though the accused did not raise the issue of insanity, the very nature of the crime as observed by the high court imposes an obligation on the court to look into the mental condition of the accused.

The high court relied on all the circumstantial evidences and deposition of the witnesses which proved beyond reasonable doubt that it was the accused who had committed the murder of his father. However, on the question of death sentence, the court had to consider the mental condition of the accused.

21 AIR 2013 SC 447.

22 AIR 2013 SC 2668.

23 Anup Surendranath, Neetika Vishwanath, Preeti Pratishruti Dash, “*Human Sacrifice, Sentencing and the Death Penalty*”, 55(8) *EPW* (22 Feb., 2020).

24 2013, SCC Online Del 75.

Discussing the literature on ritualistic sacrifices and occult practices, The court referred to several earlier judgements in which these kind of murders had been committed. In *State of Maharashtra v. Damu Gopinath Shinde*,²⁵ where the accused wanted to sacrifice 5 children for discovery of a treasure, killed them in a brutal way by mutilating their body. But the Supreme Court had commuted the death sentence to life imprisonment.

Again in *Kalpna Mazumdar v. State of Orissa*,²⁶ the accused had kidnapped and killed a four year child by cutting the hair, nails and tongue, to appease the deities and get gold and a son as told by a 'tantrik', The Supreme Court did not award capital punishment.

The state of mind of the accused to understand the crime is relevant in deciding the punishment. People who indulge in such practices may be designated as psychopaths and their viewpoints are deeply ingrained in several psychosocial reasons.

In this case, Jitender had not entered the plea of insanity in the trial stage, however, all the circumstances including his disturbed life, alienation from his family members, and his dependence on legal aid, make the court responsible under article 21 and 39A and impose an obligation to do a psychiatric and mental evaluation of the accused.

The accused had been obsessed by *Devi worship*, and his way of life and practices were not normal and this had been endorsed by other witnesses. He had been subjected to delusions of deriving power from the Goddess and the murder was committed in an apparent ritualistic manner when he was smeared with ash and dust.

So the high court convicted the accused but commuted the death sentence to life imprisonment. Ritualistic sacrifices and homicides are perhaps one of the most sensitive and complicated area of crimes, because it involves a complex catena of psychosocial perspectives. To the rational mind, these are undoubtedly abhorrent crimes, but a psychiatric and mental evaluation of the accused may be definitely necessary in these cases. This has been a welcome approach by the Delhi high court to ensure its inclusion under the obligations under article 21 and 39 A of the Constitution.

V Gap in laws or a separate law for human sacrifice crimes?

Uganda: An example of a special law relating to human sacrifice

In 2020, the Parliament in Uganda passed The Prevention and Prohibition of Human Sacrifice Bill. The Memorandum of the Bill interestingly mentions that there is a requirement of a special law because the cases of human sacrifice being peculiar, if they are tried as other murder cases, may often face some evidential challenges also. Like for example they may involve children, relatives or practicing witch doctors,

25 (2000) 6 SCC 269.

26 (2002) 6 SCC 536.

where issues of trust and vulnerability may be connected. Therefore often such cases may never be instituted or even successfully prosecuted. The Bill therefore provides specific ingredients for human sacrifice which is separate from murder and other related offences.

As per clause 2 of the Bill, the offence of human sacrifice is when someone mutilates or causes the death of a human with the purpose of performing a ritual. And ritual has been defined to include a religious, traditional or cultural ceremony performed for the purpose of satisfying a belief.²⁷ The offence of human sacrifice or financing a human sacrifice is punishable with death. Whereas attempt to commit human sacrifice, propagating beliefs relating to human sacrifice for gains or possessing any human body parts for using in any concoction or remedies for sale or instruments for human sacrifice is punishable with imprisonment for life.²⁸

However, though the law provides for psychosocial support for victims of human sacrifice there is no provision which provides for any mental health evaluation of the offender. Rather a death sentence is given mandatorily.

Laws in India

Such central law is not present in India, though the socio-cultural setup of India still presents a fertile ground for the growth of these kind of occult practices and many such incidents happen every year in several parts of the country. In 2016, Prevention of Witch hunting Bill was introduced in Lok Sabha but it was not passed.²⁹

However, there are some state laws relating to black magic, occult practices and witch hunting. Some of such laws are-

- i. Karnataka Prevention and Eradication of Inhuman Evil Practices and Black Magic Act, 2017 which punishes any inhuman practices linked to religious rituals.
- ii. Maharashtra Prevention and Eradication of Human Sacrifice and Other Inhuman, Evil and Aghori Practices and Black Magic Act, 2013 which punishes practicing any form of black magic or human sacrifices.

Both these laws have certain acts mentioned in the Schedules which are punishable. These acts relate to any sort of practicing or propagating any evil or sinister practices by claiming to have any supernatural powers or explanations behind it. Some magical or miraculous remedies provided by some acts harming an individual or public. Both the Acts punish any such act up to an imprisonment of seven years.

27 The Prevention and Prohibition of Human Sacrifice Bill, Clause 2(2) (2020).

28 The Prevention and Prohibition of Human Sacrifice Bill, Clause 3-6 (2020).

29 Rishika Singh, 'Human sacrifice' in Kerala: What are the laws on witchcraft in India's states?, *The Indian Express*, Oct. 13, 2022,

The state government may appoint vigilance officers specially empowered to take cognizance of such acts, perform search and seizure of any material if such activities are detected. However particularly Human sacrifice in any form would attract section 302 IPC as culpable homicide amounting to murder. So, the applicability of Indian Penal Code would be in addition to these special laws.

VI Conclusion and suggestions

In India, the act of human sacrifice per se does not have any existing law or defence as already discussed. The crime would be governed by section 302 IPC and the defence, if at all would be governed by section 84 IPC. As discussed previously, NCRB also does not give any separate data relating to it, but covers it under motives of murder under section 302 IPC.

As discussed previously, unless the offender can establish some delusional disorder fitting into the legal insanity criteria, it would not be covered by section 84 IPC. The occult killings could be governed by mitigation in individualised sentencing considering the factors which would lead to such abnormal acts.

As discussed above in *Ishwari Lal Yadav's*³⁰ case, while deciding the appropriate punishment, the court emphasised on the manner of the commission of the offence, that is, severing the head and cutting the tongue and cheeks of the victim. Based on this, the court concluded that the accused persons lacked “basic humaneness” and were therefore incapable of reform and, thus, deserving of the death penalty.³¹

Judgements like *State v. Jitender*,³² are indeed a welcome approach in Indian Judiciary because as noted by the court, poverty, illiteracy, in access to medical and psychological treatment often pose a challenge to place before the court the relevant evidences pertaining to the mitigating and aggravating circumstances of the crime, as some pre-conceived notions only from the perspective of a rational mind may hinder the proper appreciation of facts.

Since the act of ritualistic murder is a different offense in its nature, a specialised central law is required which provides for the punishment and as well as provides a carve out for mental health evaluation of such offenders as well as psychosocial support to the victims of such attempted human sacrifice. Though the judiciary has considered the psycho-social background of the offender in some cases, there seem to be no uniformity in applying these factors for mitigation. Rather it may act as a reason to render capital punishment.

30 *Ishwari Lal Yadav v. State of Chhattisgarh* (2019) 10 SCC 423.

31 Anup Surendranath, Neetika Vishwanath, Preeti Pratishruti Dash, “*Human Sacrifice, Sentencing and the Death Penalty*” 55(8) *EPW* (22 Feb, 2020).

32 2013 SCC Online Del 75.

Human sacrifice laws and laws prohibiting black magic have stressed upon the punishment of such acts, however the authors propose that a centralised special law should also carve out a mitigation for such crimes from death penalty.

Such a special law should also be in tandem with the Mental Healthcare Act 2017 where the offenders in most of such cases should be subjected to proper mental evaluation and there should be individualised sentencing considering the mental health aspects due to restricted upbringing and lack of clarity of thoughts deeply entrenched in superstitious beliefs.

Kavita Singh &*

*Aratrika Chakraborty***

* Professor, West Bengal national University of Judicial Sciences, Kolkata.

** Assistant Professor, Amity University, Kolkata.