

NATA PRATHA: A SOCIO-LEGAL DIMENSION

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Abstract

Nata Pratha, a centuries-old custom not very prominent in the contemporary metropolitan cities of India, is still shockingly prevalent in various parts of Rajasthan and Gujarat. Gujjar, Jat, Rajpoot and Bhil being some of the main castes which practice the Nata system. The custom provides for a married man or a married woman to choose a partner of their choice and live with that partner without the formality of divorce and remarriage. Traditionally, under this custom both the partners entering into Nata, need to be previously married to another person. They leave their respective spouses and start living together without going through the rituals of getting married. The paper while aiming to analytically study this peculiar custom, its advantages and disadvantages, elaborates on the various demographic perspectives regarding Nata Pratha. It throws light on the status of women with regard to this custom and the consequences thereof, primarily affecting the abandoned children. The paper highlights various provisions of law which this custom violates and the judicial discourse on the validity of Nata Pratha by citing few recent cases which clearly reflects the judicial approach towards this custom. This paper will conclude with few recommendations and suggestions to resolve the issues arising from this unusual custom and also how few provisions need to be included in the existing law to protect all the people who are directly or indirectly involved in this custom.

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Introduction

Nata means a relationship, in which a couple can live together without the need to perform any kind of rituals. While there are certain rituals and legal requirements necessary to constitute a marriage Nata-Pratha is defined by the absence of such rituals. Nata-Pratha mainly exists where there is no legal restraint against marriages falling apart. This custom, which is still recognized as a law in, come to the rescue of the unhappy couples. *The maximum incidence of Nata-Pratha is observed during community congregations.¹ During Baawani, which is a well-recognized festival among the tribes of Rajasthan and people of around 52 villages come together, during this festival it is quite common to witness at least ten to fifteen new cases of Nata-Pratha.*

Criteria for Valid Nata-Pratha:

Both partners need to have been formerly married. If a man or a woman chooses to live with another partner, the spouse who is left behind cannot object as long as he or she is being paid Jhagda,² which forms the consideration for this relationship. The Gujjar Mahasabha in Rajasthan in 1974 had fixed the amount to Twenty Thousand Rupees and is now increased to One Lakh Rupees. Mahasabha orders are observed as the final order. It is binding on the couple to settle the separation amicably and in according with the community panchayat norms.³ The other important condition to validate this custom is that this

¹Akhilesh Kumar Singh, *Untying the knot*, THE TIMES OF INDIA(4th August, 2020 at 8:24 pm) <http://timesofindia.indiatimes.com/life-style/relationships/love-sex/Untying-the-knot/articleshow/5229854.cms>

² *ibid*

³ *ibid*

custom can only be practiced within the community.

Recognition of Nata-Pratha

The practice of this custom is taken very seriously across various demographics so much so that if one of the spouses is against Nata, then they would be subjected to ostracisation by the entire village community. In one such incident in Roorangarh village in Kishangarh, the deserted wife objected to her husband's Nata with another woman.⁴ She was ostracized and boycotted by the entire village by refusing to purchase the milk she used to sell for a living, driving her to the brink of poverty. With no end in sight to her despair, she had to finally relent and consent to the Nata-Pratha chosen by her former husband.

Differentiation between a valid Hindu Marriage and Nata-Pratha.

In order to have a better understanding of this custom, produced below is the comparison between Hindu marriage codified by the Hindu Marriage Act 1955 (The Act) and Nata-Pratha.

Validity– According to the Hindu Marriage Act 1955 neither parties should have a spouse living at the time of marriage whereas in Nata-Pratha it is a necessary condition that both the partners in a Nata relationship should be previously married.

Consent – The Act requires that both the parties should be able to give their free consent for the marriage, while in Nata Pratha consent is usually not of free will but forcefully taken given the ostracisation of the non-consenting spouse.

Age - The Act states a prescribed requirement of age for both the male and the female at the time of

⁴ *ibid*

marriage whereas in Nata Pratha the age is not a component for its validity.

Prohibited degree -. The Act states that the parties are prohibited from being in a „prohibited“ relationship such as marrying an aunt or an uncle while in a Nata-Pratha there is no such condition stated in regard to having a relationship within the prohibited degree.

Reasons for Nata

Some of the main reasons for Nata Pratha is domestic violence against women , when a man gets another women to his house even after being already married or pressurizes the woman to leave the him as he would want to stay with another woman , Apart from the above reasons such as low economic condition of the spouse or even when the spouse is not been able to satisfy the needs of the partner.⁵ For a better understanding of this custom we contacted a NGO named Vaagdhara which is situated in Rajasthan. This is the only NGO in India which has researched this custom. The empirical study had been conducted by VAAGDHARA and UNICEF in Aspur&Sabla block of Dungarpur district. There are various statistics which was derived from the study conducted by this NGO.

Consent

It is to be highlighted that not all girls who agree to bind themselves in the ties of Nata Pratha give their free consent for the same. It does not resemble any contractual obligation, as the element of free consent and adequate consideration is negated from the girl“s side. Jhagda is even paid

⁵ Rakesh Goswami, *Tribal children bear brunt of Nata Pratha in Rajasthan, Study*, Hindustantimes, December 20 , 2016

Table 1: Reasons Nata Pratha

Interviewee Segregation	Male	Female
Total sample size	84	91
Spouse left	5(6%)	20(22%)
Spouse went Nata	34(40%)	29(32%)
Spouse dead	31(37%)	18(20%)
Desire	12(14%)	15(16%)
Divorce	2(2%)	9(10%)

to the father in absence of the husband. The fathers of the girls willingly give their girl child due to the lucrative monetary return they get out of the transaction. The relationship between the father and daughter being reduced to „a transaction“ clearly throws light on the ill effects of this custom. The same has been highlighted in a case which occurred on June 28, 2015, the facts of which are as follows

A man named Ratan Jat , aged 35 who is an elected representative 35 from Rajasthan reportedly married a six-year-old girl, in order to move in with a married woman.⁶ As this custom is only valid if both the man and the women are married to other person, therefore this man from Rajasthan chose to marry a 6-year girl just to enter into Nata Pratha with another woman. This incident would clearly amount to child marriage thus the police came to the spot. But once the police reached, there was no villager at that spot and no one was ready to utter a word about the

⁶ Mahim Pratap Singh, *To move in with married woman, ward panch marries 6-yr-old*, Indian Express, June 28 2015

incident. While the government ignores the practice, even fathers at times force their daughters into one marriage after another, making money from each deal, with the protection of the panchayats and the police who get a share of the bride price. Here even the own biological father is not concerned of the plight of his own daughter. With the breaking and arranging of marriages being a money-making proposition, there are many who try to dissolve marriages and fix new ones just to get a share of the Jhagda. It is also commonly witnessed that the girl's family often slaps false cases of dowry harassment on men to deny them their share of the bride price on the subsequent marriage.⁷ The reason which can be inferred from the above behavior, is that people have very scarce resources to make a decent living and any means by which a little money can be earned is obviously chosen by them.

Status of Children

*“Two kinds of Nata persist: First is when the husband dies and wife moves in with some other man either on her own will or with the consent of the society, and the second is when a woman moves with other man even though her husband is alive without the ritual of marriage.”*⁸ In both the situations, the children are forcefully abandoned since the man is not willing to take the responsibility of the children from her previous relationship. This causes multiple vulnerabilities to children who are then forced to live with their grandparents or other relatives, and are subjected to work in fields or other establishments, thereby depriving them of their fundamental right to education. Hence it is the children who are worst

affected by the practice of this custom., both emotionally, mentally and physically. Empirical evidences clearly suggest the trauma experienced by the children due to the prevalence of this custom. The incidents have been recorded by the child sensitivity social protection program at Save the Children in Rajasthan.⁹

Nata-Pratha a Socio-Economic Boon

Nata Pratha, if practiced in the spirit that it was intended for, is a custom which helps in the empowerment of a woman. In this custom, women have the right to walk out of her marriage without any legal obligations or traditional restrictions. Nata Pratha specially comes to the rescue of women who were victims of child marriage, abusive spouses and early widowhood. Many young girls lose their husbands at a very tender age, and without education have absolutely no means of earning a living. It is here that this custom proves to be a savior to these women. “A woman named Sarju wasn't happy with any of her previous husbands as all of them would harass her. Her husbands, barring the first one, were all live-in partners”¹⁰ The tradition of Nata-Pratha in parts of rural Rajasthan not only blurs the differences between live-in relationships and marriage, but also sanctions the severance of ties after the estranged one is paid Jhagda - a negotiated compensation of sorts. This instance highlights the positive elements of the custom favoring the women. The positives include no

⁹ Shaukat shafi, *India: The children left behind by an ancient custom, poverty and development*, aljazeera.com, (27th August, 2020 at 9:23 pm), <http://www.aljazeera.com/indepth/inpictures/2016/09/india-children-left-ancient-custom-160919103603209.html>

¹⁰ *supra* at 1

⁷ *Ibid*

⁸ *supra* at 5

long-drawn divorce proceedings and lack of social stigmatization.

Nata-Pratha is also good for women because it gives them a chance to choose another partner in case of widowhood or failed marriages.¹¹ Moreover, in Rajasthan, it is socially viable also because there are a large number of child marriages, which result in a high number of young widows. The Nata tradition is predominant in most Hindu communities in Rajasthan, with Rajput's, Brahmins and Jains being the only exclusions.¹²

Legal Sanctity of Nata Pratha Which is Proved In The Below Explained Cases

*Roopsi v State of Rajasthan*¹³

In this case it was held that a Nata marriage performed in accordance with customary rites and ceremonies is a valid marriage. The ritual of saptapadi is not necessary in such a marriage. Custom is one of the sources of law. This case mirrors the importance which the law gives to the various customs in India. Nata-Pratha as a custom has been practiced from time immemorial and therefore the court recognizes this custom. The courts have recognized immemorial antiquity is an essential requirement for a valid custom.

The Rajasthan High Court in the case of *Atma Ram v. Smt. Shanti Devi*¹⁴, has observed that 'Nata' marriage is a valid marriage.

¹¹ Dr. Rachana Choudary, *NATA PRATHA: AN UNUSUAL CUSTOM*, VOLUME 2 ISSUE 6 INTERNATIONAL JOURNAL OF LEGAL DEVELOPMENTS AND ALLIED ISSUES, 8 (2016)

¹² Akhilesh Kumar Singh, *Marry once, but „remarry“ as many times you like*, The Times Of India Jaipur, November 18, 2009

¹³ *Roopsi v State of Rajasthan*, (1999)(1) SHLR 622 (Raj.)

*Vishnu Prasad v Smt. Durga Bai*¹⁵

In this case the appellant, Vishnu Prasad has filed for a divorce in the court from his wife on the grounds of cruelty and desertion by the wife, Durga Bai. When further investigation took place, it was learnt by the Court that the appellant had entered into a Nata with another lady named Maya and the appellant created such a situation for the respondent wife that she could not live with him and consequently desertion was not proved by the appellant husband.¹⁶

The court also held the Nata marriage invalid as the appellant was a Brahmin, no such 'Nata' marriage is supported by customary law or statutory law. This case proves that only individual's whose custom allows Nata Pratha only can enter into it, only then the union is considered to be valid in the eyes of law. If found guilty of Nata, the person can be charged for adultery under section 497 of IPC. The punishment for this offence is 5 years of imprisonment or fine or both.

Similar Yet Different:

A comparative analysis of Nata Pratha and live in relationship.

In India, the societal stigmatization with regard to a live-in relationship has gone through a gradual change. It is true that such kind of relationship in a conservative society like ours showcases such relationship in poor light, as a result of the profoundly installed idea of marriage as a religious holy observance in individuals'

¹⁴ *Atma Ram v. Smt. Shanti Devi*, 1997 Cr. L.R. (Raj.) (India)

¹⁵ *Vishnu v. Smt. Durga Bai*, A.I.R. 2012 S.C. (India).

¹⁶ *Roopsi v State of Rajasthan*, 1988 (1) WLN 497

attitudes.¹⁷ However, the Supreme Court has legitimized the concept of live-in relationship as stated in this case

Badri Prasad v. Dy. Director of Consolidation¹⁸

This was the first case in which the Supreme Court of India recognized live in relationship and interpreted it as a valid marriage. In this case, the court gave legal validity to a 50 year live in relationship of a couple. It was held by Justice Krishna Iyer that a strong presumption arises in favor of wedlock where the partners have lived together for a long term as husband and wife. Although the presumption is rebuttable, a heavy burden lies on the person who seeks to deprive the relationship of its legal origin. In a Nata relationship only individuals belonging to the particular sect who have Nata Pratha in their customary belief can follow it and it is recognized by the court, but if Nata Pratha is not a customary belief in that particular sect of people, such union is invalid in the eyes of law as we saw in the case of *Vishnu Prasad v Smt. Durga Bai*. As we can observe in a live in relationship custom do not play a role while in a Nata Pratha custom does a play an important role.

Similarity between Nata Pratha and Live in relationship

There are few similarities between Nata Pratha and live in relationship. The significant similarity is that in a live in relationship the custody of the children, after the couple has parted, goes to the parent who has the most potential to take care of the child, while even in Nata Pratha the custody of

the child born out of such a relationship is decided by the panchayat based on the ability of the partner to take care of the child. The second similarity between the two is that a child born out of the union in live a relationship though illegitimate has been given the rights of succession of property while even in Nata Pratha, children born out of this union have been given succession rights.

The same has been explained in the case below -

*Tulsa & Ors vs. Durghatiya & Ors*¹⁹

The Supreme Court gave lawful status to the children conceived from live in relationship. It was held that one of the pivotal pre-conditions for a kid conceived from live-in relationship is that, the guardians probably lived under one rooftop and co-habited for a significantly prolonged stretch of time for society to remember them as a couple and it must not be a "walk in and walk out" relationship.

*Children born out of Nata are being called "galed" which means they are not the legitimate children.*²⁰ Because as per Section. 16 of Hindu Marriage Act, 1955 children born out of void and voidable marriage are legitimate but in Nata, there is a clear absence of marriage. So officially they are not legitimate but as per custom they do have right in their parent's property

Laws which this custom violates

1. Article 21 of the Indian Constitution states the protection of life and personal liberty. The Article gives a view on the Right to Life and

¹⁷ *supra* at 1

¹⁸ *Badri Prasad vs. Dy. Director of Consolidation 1978 [1] 1978 AIR 1557, 1979 SCR (1) 1*

¹⁹ Civil appeal no .648 of 20, *NATA PRATHA: AN UNUSUAL CUSTOM*, VOLUME 2 ISSUE 6 International Journal Of Legal Developments And Allied Issues ,8 (2016)02 (India)

²⁰ *supra* at 12

the fruits gained from personal life. Relating it to this custom, the Right to Education of the children suffering from the process of Nata-Pratha gets infringed as they are left alone or abandoned. The Right to Education was included under Article 21 of the Constitution of India after the case of Mohini Jain v State of Karnataka²¹. The system of Nata-Pratha has most negative effect on children whose parents or parent leave them to live with the other person such as their relatives or grandparents. The education of such children is at stake as there is no one to provide the basic education that they deserve.

2. Article 23 of the Indian Constitution deals with trafficking in human beings. This Article gives a view that any exploitation among human beings is not acceptable in law. Viewing the custom of Nata Pratha, the children abandoned by the guardians are exploited in a multitude of ways. Under the guidance of no parent or any other guardian the children are made to do things that are against the law and henceforth the rate of exploitation is very high. The obvious reason for the same is that children being left alone without their parents are succumbed to the vices of the society.
3. Article 26 of the Indian constitution states that the citizens are free to manage religious affairs on their own. In this custom, the management of religious affair is for one's own good. The wife or husband for his or her benefit or pleasure transgresses the authority

of Hindu law distorting the fundamental premise in which a valid Hindu marriage is based – Hindu marriage is a sacrament. A clear violation of the above-mentioned article shows that how the Nata relationship induces a person to perform acts that are against his or her own religion.

4. Article 45 of the Indian Constitution states that the State should ensure childhood care and education below the age of six years. During the custom of Nata Pratha the child if below the age of six years and is left alone by the parents or parent then it becomes the responsibility of the State to take care of the child. But in the very first scenario abandoning of a child by a parent is against the law. The infringement of the right to provide education is punishable under law.
5. Section 317 of the Indian Penal code says that if any parent or parents abandon their child if he or she is below the age of twelve years then it is punishable under the law. During the custom of Nata Pratha the parent leaves the child and lives with another person, therefore he or she abandons the child which as per the above section is punishable under law resulting in imprisonment for 7 years with fine. The people who follow the custom need to understand that sexual pleasure should not overshadow the responsibility of a parent because a child gets mentally affected when he or she sees that the parent is leaving him or her for some other person.
6. Section 497 of the Indian Penal code states that „Whoever has sexual intercourse with a person who is and whom he knows or has reason to believe to be the wife of another

²¹Mohini Jain v State of Karnataka 1992 AIR 1858 (India)

man such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery". In Nata-Pratha adultery is very much prevalent. Here the man who is paying the Jhagda amount has sexual intercourse with a lady who is not his wife legally but is the wife of another man.

Recommendations and Conclusion

It is observed that the Nata is a benefit to the prematurely widowed women giving them a chance to restart their life. It is also undeniable that this custom affects the development of children who are left behind without the love and care of their parents. The needs of these children are being neglected by family, society and government as well. The children whose mothers entered into Nata after the demises of their former husband can get financial aid through Palanhaar scheme but the children whose mother left them even when the husband is alive, do not get care and affection and any kind of financial assistance from state for the smooth development of the child.

From the analysis of the above-mentioned circumstances these are the few recommendations-

1. The Courts must lay down strict rules about this custom.
2. The Court should investigate the status of the abandoned children and take steps in the direction of care, protection and rehabilitation.
3. There is a need for the State to provide or cover the child under financial aid if either of the parent is not able to provide the required financial security to the children so that their development can be continued without any hindrance.

4. The Court should ensure that no women is binding herself into this custom due to any kind of coercion.

5. The State is required to keep a count of the exact number of Nata cases and the Nata affected children.

6. To conduct regular programs to spread awareness in community on the adverse effect of Nata Pratha.

7. A special board or group needs to be established where Nata cases can be registered and kept track of. This boards should also investigate problems related to Nata Pratha.

8. Child tracking mechanism should be implemented in each village to help the government and the NGOs to keep track of children who are getting abandoned by the practice of such customs.

9. The Rajasthan Government should bring about regulations regarding the safety of the women once she enters the Nata relationship.

10. If the wife is left behind by her spouse, she must be given adequate amount of Jagda to sustain her life.

As the popular saying goes, there are two sides of the same coin. In the same manner, this custom, if used in the right spirit, can be a blessing in few individual's life or a curse, if the custom is abused. As traditional Indians, we consider marriage to be a lifelong union and if divorced then there is always a stigma attached to it. Nata-Pratha is an easier way out. However, this custom has been misused more often than being benefited. The condition of children who are left behind is heart breaking. There are various NGO's in

Rajasthan who are coming up with rehabilitation center for such children. Such issues may come to the notice of the Court or the media once in many years, but we cannot deny the fact that such custom is still prevalent in the 21st century. After all there is no tool for development more effective than the empowerment of women and protection of children.