

# Mautana: An unwarranted Pratha and a parallel legislation

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**Abstract:** Lawlessness in Rural areas even in this 21<sup>st</sup> century where even International law has been recognized as binding without much effective punitive action has been a matter of great concern. Even today practices such as Mautana, Child Marriage, Dowry Death etc. are rampant in the society resulted into pathetic condition of rural people. Their growth has been halted because of these practices. They remain in the clutches of these Prathas from generation to generations. Under Mautana Pratha People along with their community members sometime coerced another person to settle down the dispute at their own terms and condition and that too outside the legal domain and sometimes make this practice a tool to exploit the death for getting money which is not contemplated when this tradition was started amongst the tribal community in the Mewar parts of state of Rajasthan. This article talks about this Pratha and its impact on people at large and society.

**Key Words:** Mautana, Death -Compensation, Custom, Rural Traditions, Pratha.

## 1. INTRODUCTION:

Custom has always been considered a source of law in almost all the societies. Even the International law recognizes custom as a source of law. But certain customs over the period of time changes their text and texture in such a fashion that to continue them in distorted form is doing great injustice with the masses. One such custom is Mautana which is in practice in the southern western parts of Rajasthan. Word “Mautana” is composed of two different words, “Maut” which contemplate Death and Aana which signifies money and hence the word “Mautana” refers to - Money against death. The custom of Mautana rooted deep in the tribal areas of south-western parts of Rajasthan, mainly in the Mewar area of Rajsamand, Sirohi, Pali, Udaipur, Banswara, Pratapgarh Districts etc., was developed with the splendid purpose of providing monetary relief to the victim’s immediate family members in cases of unnatural death of victim, but over the period of time and with policy paralysis this custom has been clothed with new attributes.

## 2. RESEARCH METHODOLOGY:

This work is analytical, descriptive and doctrinal wherein the author has researched this project work by reviewing and critically analyzing the primary and the secondary sources available. While primary source refer to the opinion of the different people witnessed such practices, the secondary sources relate to the books and scholarly articles that have also been referred to. Due to the certain limitations, the research is restricted to articles and publications on the Internet.

## 3. LITERATURE REVIEW:

The Author came across sufficient literature which is relevant to the topic and some of the articles and other material has been briefly reviewed as under:

- Different Cases reported in the News Papers
- Opinion of the people living in tribal areas of Rajasthan
- Different views from Indian electrical and print media like The Hindu, Times of India, Economic Times, Indian express,
- law Journals like EPW Economic and Political weekly, Jstore

## 4. FINDINGS AND DISCUSSIONS:

Communities like Ninama, Damor, Garasiya, Bhil and others inhabitants of mainly south-western part of hilly Rajasthan terrain, in the olden days used to live in scattered houses in the forests. These tribes were not agrarian i.e. agriculture practices were not known to them and hence they depended mainly on the forest produce and wild animals for their existence. On the matter of resources and sometimes also for personal reason they often end up attacking and killing members of other groups, leaving behind family members of both the groups to be looked after.

Finally to curb this menace the tribal carved out a common solution under which if a death is caused or anybody killed any other person, the community as a whole will strive to provide the much needed support to the victim’s family through the accused, the one who caused such death or even suspected of such death. For coercing the accused or the suspect as the case may be they used to put the victim’s body at the doorstep of the accused till

support in terms of food grain, land or any other means is extended to the dependents of the victim. And for coercing the accused to submit to this demand the family of the victim and the community members postponed cremation of the body even for days until the Mautana is paid. To determine the amount of Mautana the adult male member of the community use to mediate and hence bargains from both side was common. In case the accused or the suspect refuses to pay heed to the demand, the community as a whole was justified in destroying his property or even killing him, they even force him to flee or migrate to some other village and (This force migration is known as Chadhotra<sup>1</sup>) on the other hand if the demand is accepted the whole community was served with drinks and food in gratitude said Mr.Kahniyalal.

The Custom started with noble intention and welfare purpose has over the time changed a lot. The interference of middle man has increased terrifically and the monetary relief sought for the dependents of the victim is diverted to different destination. Most of the time the amount is distributed between the middlemen themselves and the victim's family received a peanut amount. It is distributed between those who use their influential position (e.g. Panch) to pressurize suspect to submit to this extra legal mechanism. Even the custom of serving the community member with drinks and food in gratitude has distorted terrifically and became a huge obligation which sometimes consumes the major part of the amount given under Mautana.

In the ancient times this custom was limited to some specific tribes, but today the custom of Mautana has been adopted by large number of communities in the region. As per the old custom of the Bhil tribes, to claim Mautana it is not essential that the accused has caused the death of the victim or is any way responsible for his death. It is sufficient that the body of the victim has been recovered from the accused property — be it a farm, house, or any other property of the accused. Cases of natural death, suicide or accident are also covered under the custom of Mautana. Even in-laws of married women demands Mautana from her parents if her death has took place in her natal home.

Last Year news published in the Udaipur Times<sup>2</sup> shocked the conscience of the society where after the death of the fifty-five year old lady (Pai Village, Udaipur District) who committed suicide by setting herself on fire, the relatives along with the village persons from Falasiya village in hundreds of number mostly armed with weapons reached Pai village to claim Mautana from the In-laws, alleging that they killed her. The police conducted lathi charge and arrested as many as seventy tribal armed with weapon under s.384 of Indian Penal Code to ease the tense situation<sup>3</sup>. But the incident has risen very big question, is Mautana legal or else the state administration is sleeping.

In another similar incident the body of child named Rahul was kept hanging over the tree for 11 days because the settlement amount under the Mautana has not been paid. List is not exhaustive; an incident reported by the news channel stated that corpse left hanging in Nichli Anjani village of Sirohi District of Rajasthan State for more than a Year because the unjust demand of Mautana was not met. In this case the victim visited his married sister's house to meet her and on his way to return somebody killed him. Not knowing who the real culprit is the family members of the deceased demanded Mautana from the sister's In-laws as the death was caused during his visit to their house. So it is basically a no fault liability which is veiled under ancient Pratha.

This Pratha in present form includes death caused by any reason under any circumstances for example if death is caused while the victim is crossing from the property of other, by any means- be it by snake biting or because of falling of tree etc., the owner has to give the Mautana even though he is not at fault. It has super ceded the principal of tortious "no Fault liability" developed by the court in the Rayland v. Fletcher Case where the liability of the owner arise when he keeps or collect something which is of such a nature that if escape cause harm to others and thus his duty is to keep that dangerous thing in his control. The liability under Mautana is akin to the Principal developed by Justice Bhagwati In M.C Mehta & Ors v. Union of India where only the Enterprises engaged in Hazardous and Inherently dangerous activities are put under the scanner of absolute liability.

The question here is whether such customs prevailing in some rural area of Rajasthan in this 21<sup>st</sup> century needs to be reformed or should be completely banned. Is it amounts to parallel adjudicatory institution and against the spirit of legal jurisprudence or is allowed under the legal framework of our country. "Murder" or "Rash or Negligent act" are criminal wrong defined under Indian Penal Code and are not compoundable under the scheme of S.320 of Criminal Procedure Code and thus punishment is the only remedy mandated under deterrent theory of punishment. But development of new principal of compensation to victim and incorporation of the S.357A and S.357B (Victim Compensation Scheme) in Crpc in the year 2010 by amendment has raised a serious question. Isn't Mautana seems to follows this principal of compensation to victim and hence can be justified if proper judicial course is followed. But given the huge pendency of cases, low conviction rate and delay in providing justice, isn't a local mechanism under the supervision of the local self government (i.e. Panchayat) can be talked as ADR Alternative Dispute Redressal Mechanism although it is not strictly what is mandated again under Order X Rule 1A and S.89 of Code of Civil Procedure but still has certain elements of new legal Jurisprudence, Which is in favour of providing some

<sup>1</sup> Mautana; available at ; <http://www.insightsonindia.com/2014/10/06/insights-current-events-06-october-2014/>

<sup>2</sup> Mautana: 70 Tribal Detained for attacking, Sohail Khan, February 22, 2016

<sup>3</sup> Mautana: 70 Tribal Detained for attacking, available at: <http://udaipurtimes.com/mautana-70-tribal-detained-for-attacking/>; (last modified Feb, 23)

compensation to the victim of the crime apart from giving the culprit the requisite punishment under the law. But some element of coercion and burning of house and destroying of property allowed under this Pratha should be seriously checked. No one can be allowed to take law in his hand, no matter what justification he proposes. The Judicial system in our country is robust, independent and impartial and further more it is pro-active to provide justice to the poor and vulnerable section of the society.

## **6. CONCLUSION:**

Nothing Concrete can be said about the steps taken by the Government of the state as far as effectiveness of curbing this Practice is concerned but the Courts are Vigilant enough to tackle this menace. The State High Court of Rajasthan has thrashed the state Government of Rajasthan for not doing anything Concrete to rectify the Practice of Mautana. The Court finds to its dismay that although the incidents of Mautana has reported to be registered in the police stations of tribal areas where the Mautana is practiced but so far there is no reference of even single conviction . Court ask the Government to show effective progress in this direction otherwise the court will be forced to announce the State backward and ineffective in bringing out appropriate legislation for curbing the atrocities committed on Victim.<sup>4</sup>

Icing on the cake is the statements by the elected representatives from Rajasthan legislative assembly. As reported by the news channel the state Tribal Area Development minister when asked about the legality and continuance of the Mautana Pratha openly advocated and justified it by saying that it's an ancient custom and should be continued. But on the other hand the report published on 18<sup>th</sup> March shows that 16 Panchayat Heads of Ambapura village of Banswara district has taken vow to curb this menace and not to allow demand under Mautana in their area.

The Stand of the government is not clear. Abrupt changes in the social practices is not easily accepted by the communities and may lead to outburst of anger in one form or another and on the same time vote bank politics may make the situation more worse. The changes should come from within then only it can be effectively implemented and will be long lasting. What needs to be done is to create a consultation forum or a discussion forum with the members from the same community who is against this tradition in the present form. The judicial mechanism should be advocated and argument in favour of Mautana should be rebutted by showing the real picture where the compensation amount does not reach to the victim's family but consumed by the middle men.

The NGO, Lawyers, Law Graduates and Government machinery has to work together at the grass root level. The victim should be provided immediately relief through statutory mechanism. The cases reported under Mautana should be heard and decided on the priority basis in the court and time should be fixed to provide monetary compensation to the victim under S.357B CrPC i.e. Victim compensation scheme and the tribal should be encouraged to follow judicial approach by the Layers, Panchayat and local leaders.

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4. Available at: <https://indiankanoon.org/doc/105060650/> (Last Modified 23, Feb)

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