



Case Study

A Study of Nari Adalats (Women's Courts) and Caste Panchayats in Gujarat

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Towards Inclusive Governance

Promoting participation of disadvantaged groups in Asia-Pacific

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Introduction

“We came to the courts and are trapped...
We have come mid-way and are stuck..
My sisters, find me a way out...
We fear the courts, we fear the police...
My sisters, find me a way out....”

The energetic and voluble ‘judges’ of the Nari Adalat sing this song during review meetings, imitating the tone of the victims who come to them – often members of their *sangh* (collective) - and reminding themselves through the song that they have a special place in the hearts of these victims – and in the arena of gender justice.

Decentralized, local, alternative dispute-resolution systems in the realm of social justice have, in India, developed from the traditional and existing forums of village *Panchs*, caste *Panchayats* and *Gynati Panchayats* into more recent platforms focused on ‘justice for women’ such as *Nari Adalats*. The *Nari Adalats* emerged in the mid-nineties from a rural women’s collective as a spontaneous response and reaction to domestic violence and gender abuse, but it is necessary to track their legal and socio-political lineage through the women’s movement and within the ambit of judicial reforms in India.

Towards social justice: A brief glimpse into efforts made to institutionalize alternative and decentralized forms of justice delivery and dispute resolution

In the late 19th century, the Indian Government under British rule constituted *Panchayati Adalats* in the rural areas, which were mandated as decentralized judicial tribunals to hear small cases at the local level. The formal legal and judicial system, however, adopted the British model of adjudication, with its insistence on procedural technicalities and adherence to adversarial systems of litigation. Nevertheless, until independence, the regulation of family relationships during the British regime was devolved to religious, caste and community heads. After independence, interestingly, it was proposed by the Gandhians and Socialists within the ruling Congress that modern courts should be replaced by traditional *Panchayats*. However, this was not acceptable to everybody, not least Dr. Ambedkar, the author of the Indian Constitution. In 1950, the concept of a *Nyay Panchayat* was revived once again to ensure a more decentralized and locally acceptable form of justice deliverance. Unlike the traditional *Panchayats*, *Nyay Panchayats* were designed to apply statutory laws rather than indigenous norms. Under the *Nyay Panchayats*, decisions were taken by the majority rule and not unanimously, as in the traditional *Panchayats*. Their membership was also chosen by popular election from geographical constituencies, rather than through the nomination of upper-caste men. In essence, they were meant to combine the formality of official law with the political malleability of caste tribunals. This combination failed, and within a decade the system had collapsed.

Efforts to set up a Legal Service Authority also began in 1950. However, it took the socio-political and legal turmoil of the Emergency to trigger real progress. The late 1970s

marked a discernible shift from legal centralism, and the potential merits of legal pluralism became more apparent. It became clear that social conduct was regulated by the multiple interaction of normative orders and notions of popular justice, community justice and distributive justice. Attempts were made to institutionalize all of these, albeit outside the formal legal system – and, in fact, often in opposition to it. *Thus, post-Emergency, the dominant theme of legal reform was translated into sponsoring relatively informal, conciliatory, and alternative institutions alongside the formal judicial mechanism. The early 1980s saw a concerted effort to promote a more indigenous character within the justice dispensing system, and to provide alternatives to the Anglo-Saxon models of adjudication.* These efforts led to the introduction of Public Interest Litigation (early 1980s), the Legal Services Authority (1987), *Lok Adalats* (1982) and Family Courts (1984). The Family Courts, which are civil in nature, were instituted in particular to promote conciliation and to handle the increasing number of marital disputes/conflicts quickly. Normally established in areas of 10 lakh population, they can also be established in less-populated areas in consultation with the High Court. Some States have also set up matrimonial courts. However, the latter – like the Family Courts – suffer from delays, a low quality of conciliation, and compromise the rights of women within marriage because of the need to conciliate.

The introduction of *Lok Adalats* added a new chapter to the Indian justice-dispensing system of this country and succeeded in providing a supplementary forum for litigants for the conciliatory settlement of their disputes. They have become increasingly widespread, but tend to attract cases which require arbitration – a huge number of cases relate to accidents, arbitration between government departments, local service providers, etc. It is interesting that just as the concept of *Nari Adalats* began in Gujarat with the Mahila Samakhya Society (MSS), there is reason to believe that the term “Lok Adalat” was adapted from the *Lok Adalats* run by a voluntary organization working with tribals in Rangpur Ashram, South Gujarat.

The Legal Service Authority was enacted to give a statutory basis to legal aid programmes throughout India in a uniform way. However, the Act was only enforced a decade after its enactment, in 1995, and free legal aid only became a functional service in 1998. Post-Emergency, it has been the Public Interest Litigation Act which to a large extent has become the symbolic vehicle through which the dispossessed and the oppressed have begun to understand the judicial system as an instrument of socio-economic change, and which has given rise to a measure of social justice.

The Journey Towards Gender Justice

It is interesting, but not surprising, that the move to introduce judicial reforms in the late seventies and early eighties was paralleled by the events that led to the contemporary women's movement in India. Even in 1975, the International Year of Women, the subversion of justice in the now-famous Mathura rape case provided further evidence of the need for the nascent women's movement. The failure and inadequacies of the criminal justice system triggered the first assertive anti-rape campaign in India. The protests and demands for justice that marked the years preceding the Declaration of Emergency saw women take to the streets and spearhead the price-rise movement, as well as participate extensively in the land reform movement, peasant movements, etc. By the time the Emergency ended, and the anti-rape campaign began, the women's movement had begun to take on a more assertive and organized form. Women no longer merely participated in other political movements, but themselves began to engage with women's and development issues through various platforms. In 1985, the Government of India constituted the Department of Women and Children and in 1986, the National Education Policy demonstrated a level of progressiveness with the policy of "Education for Women's Equality". The Mahila Samakhya Programme, which began in three States, was a direct consequence of this policy. It was influenced by the realization that equality and equity for women could not evolve only from the economic development of poor women, but had to stem from a process of socio-political empowerment which made women themselves the main agents of their own transformation. By the late 1980s, government-sponsored initiatives such as the Women's Development Programme in Rajasthan, the Mahila Samakhya Society in Karnataka, Uttar Pradesh and Gujarat, and civil society interventions such as Rural SEWA, Kutch Mahila Vikas Sangathan, MYRADA etc., had begun to raise the critical consciousness of rural women about their condition and position in society. *The feminist agenda in India was redefined and enriched by thousands of rural women who embarked on a complex journey, questioning the notions of both rural development without women and of feminism without rural development. Incidents of domestic violence, marital abuse and other forms of gender-based violence were brought into the public eye through this mass mobilization, which took different forms in different Indian States.*

The National Commission for Women (NCW) was constituted in 1992. Responding to the increase in reporting of violence by women, the NCW evolved the concept of the *Parivaic Mahila Lok Adalats* (an amalgamation of sorts of the Family Courts and the *Lok Adalats*) for the rapid disposal of women's cases. These exist as a concept and are invoked by civil society groups but are not a vibrant mechanism – instead they have become a scheme and a 'project' to be implemented by women's groups.

Women's human rights have increasingly become a critical point of action. In 1993, women's groups persuaded the World Conference on Human Rights to declare women's rights to be human rights. In 1995, the Fourth United Nations World Conference - the 'Platform For Action' - defined violence against women as one of the 12 key areas for action by governments. After much deliberation, India became a signatory to the Convention on Elimination of All forms of Discrimination Against Women (CEDAW).

It is critical to understand here that despite the global influence of international treaties on the issue of gender-based violence and India's own legislative, judicial and institutional reforms, these would have been ineffectual had they not been accompanied by the huge grassroots movement to empower rural women. From their initial emphasis on shelters,

counselling and social services, the women's movement's focus moved to influencing national laws against domestic violence, enhancing the criminal justice response and raising public consciousness on the issue of violence against women. The evolution and subsequent spread of the *Nari Adalat* concept by rural women's collectives carries with it a vibrant socio-political legacy, and has created a fertile socio-legal landscape and conditions within which marginalized rural women continue to contest established notions of gender justice.

The Mahila Samakhya Society

The Mahila Samakhya Society (MSS or Mahila Samakhya) is an autonomous registered society sponsored and supported by the Ministry of Human Resource Development, Department of Education. As mentioned earlier, it was initiated in 1989 as a movement for women's equality in three States – Karnataka, Gujarat and Uttar Pradesh. *Mahila Samakhya* straddles the dual identities of being both a government programme and a voluntary movement. It adopts or sheds either of these identities based on its strategic interests and its position on different issues and programmes. The programme in Gujarat covers 7 districts in the State – Vadodara, Sabarkantha, Banaskantha, Panchmahal, Surendranagar and Dang – with *mahila sanghs* (women's groups) in 38 blocks:] and 1621 villages. Its total membership is 44,500 women in about 1553 *mahila sanghs*. It has a three-tiered structure, beginning with the village-level groups, who conglomerate at the block level to form what is called a *mahasangh* – a block-level federation. The *mahasanghs* federate at the district level to form a district *mahasangh*". For almost a decade after the programme's inception, it focused on setting up the village-level structure of *mahila sanghs*. However, since 2001 it has been forming block-level federations. The *mahila sanghs* nominate women into responsible positions within the *mahasangh*; these women are then allocated sector-specific responsibilities and invested with programmatic powers in the areas of education, social justice, livelihoods etc. The programme is a cadre-based intervention and its dynamic volunteers are its nerve centre. Women animators at the village level are called *Sakhis*, while a senior volunteer who manages a cluster of 10 village groups is called the *Sahyogini*. The *Sahyoginis* – semi-educated, trained rural women – are the 'bridge' between the programme staff and the rural volunteers; they translate mission documents into grassroots action, and integrate the ideas, dreams, thoughts, frustrations and aspirations of the rural members into programme strategies. The *Nari Adalat* grew out of the combined anger, aspirations, ideas and strategies of the *Sakhis*, *Sahyoginis*, coordinators and resource teams of Vaghodia Block in the District of Vadodara. Today, the concept has taken root in 19 blocks in Gujarat, as well as the *Mahila Samakhya* districts in other Indian States. Not all of these are called *Nari Adalats* – in Gujarat itself they are variously known as *Mahila Manch* (Women's Platform), and *Mahila Panch* (Women's Governance).

While *Nari Adalat* was the particular nomenclature given to women's courts, different versions of the same concept, with different names, were simultaneously mushrooming in different parts of the State and Country. In an effort to broaden and validate the patterns in our findings in this study, we have included two other women's organizations which have also sponsored women-run 'courts' and legal redress mechanisms. One is SWATI, an organization working with rural women on issues of women's empowerment in Surendranagar – also a *Mahila Samakhya* district - and which supports *Nari Adalats* in two blocks of the district – Patdi and Lakhtar. The second organization is Kutch Mahila Vikas

Sangathan (KMVS), a membership-based organization of 15,000 rural women which was initiated alongside *Mahila Samakhya*. They too established, in the 1990s and with the *Sangathans* of two blocks (Mundra and Abdasa), fora for gender justice run by women”.

Nari Adalats

A decade after the concept of local women’s courts, run entirely by volunteers, took root, the *Nari Adalats* stand today at a critical crossroads of the grassroots women’s movement in India. The increased participation of women in the public arena and in the sphere of political governance has been accompanied by increased entitlements to legal rights for women. It has also been accompanied by an increased rate of violence against women, in both the private and the public spheres. This phenomenon has led to an increase of alternative courts such as the *Nari Adalats* which attempt to carry constitutional rights to the poor and in particular to victims of gender violence. Such forms of redress have not been constrained by legal particularities surrounding rules of evidence and procedures. Rather, they have given priority to approaches that are practical and gender-sensitive. In this ‘home-grown’ arena of social justice, proper law is not really an issue; cost is not an issue; venue is not an issue; and the most complicated cases of fact and law are resolved in a few days. Methods of enforcement are built into settled agreements. The informality of these procedures has meant that the ‘clients’ are not intimidated by the system. The alternative courts seem to have created opportunities for developing meaningful relationships not only with the complainant, but also with the defendant – that is, both the violator and larger society.

Operating as informal, conciliatory, non-adversarial ‘courts’ with complete lay participation, the *Nari Adalats* and their variations have initiated a new regime of justice for women. Reflecting the approach to which Justice Bhagwati aspired when instituting the concept of *Lok Adalats*, these women’s courts are “manned [sic] by people with the thoughts, customs, habits, attitudes, and values of those who sit before them”. As the International Centre for Research on Women reported after its study of the MSS *Nari Adalats* in 1999:

The women leaders of the *Nari Adalats* use knowledge of local practices, customs, and social networks to gather evidence and negotiate agreements. They adjust meetings to the rhythms of life, and use state symbols such as vehicles to establish authority if necessary.

This research also documented the innovative ways in which *Nari Adalat* activists have used their local knowledge to reshape and reinterpret community idioms, phrases and beliefs to create new perspectives and persuade the community to adopt them.

It is important to question whether the *Nari Adalats’* attempt to mirror the values and attitudes of those for whom they adjudicate has led to the administration of justice becoming a subversion of human rights - or whether they have, in fact, indigenized the formality of official law and justice, in the process demystifying it and making it more easily accepted.

The *Nari Adalats* function largely like an ‘OPD’: finding collective ‘listenership’ from a

group of empathetic women is very important for the complainants, who are mostly women. Typically, large numbers of *sangh* women are present at the proceedings; they are proactive witnesses to the arguments, agreements and stand by to ensure compliance. When assessing the extent of injustice to which the victim has been subjected, they retain their emphasis on ascertaining the rights of women *within* the framework of marriage, rather than outside it. Even as they generate social pressure on the offender – mostly the aggrieved woman’s marital family and spouse - and quite often use the law enforcement system informally to intimidate a defiant violator, they acknowledge that maintaining the home and family is critical to their core understanding of gender justice. *Their priority is to ‘find a solution’ for the woman within the ambit of social justice rather than applying more generic principles of judicial procedure or human rights.* The *Nari Adalats* are thus a combination of indigenous norms based on a social understanding of women’s rights and the statutory principles governing them.

Who accesses the Nari Adalats?

As well as analyzing the profile of women and men who come to the *Nari Adalats* through their documented records, the study team also met 30 *Nari Adalat* ‘clients’ to understand who is accessing this system, and who may not be. It also to understand the perceptions, expectations and experiences of these clients.

The *Nari Adalat* are clearly petitioned mostly by women who are being beaten, physically and psychologically abused and harassed in their marital homes for reasons ranging from dowries to the birth of daughters; who are subjected to aspersions regarding their fidelity; who face ‘unreasonable’ behaviour from spouses who are often also alcoholic; whose husbands are bigamous etc. Those who are sure that they want a separation come to seek help with gaining custody of their children, their rightful share in the property and a return of the assets that belong to them. 89 percent of the cases that have come to the *Nari Adalats* in the past decade belong primarily to these categories. In the *Mahila Samakhya* and *Swati Nari Adalats*, approximately 92 percent of the ‘clients’ are *sangh* members or are brought by *sangh* members; in Kutch, 70 percent of the cases are those of members of the *sangathan* or brought by them. *Nearly 35 percent of the women whose cases are heard by the Nari Adalats of Mahila Samakhya go there having already knocked on the doors of the traditional Panch.* Having failed to obtain a resolution from the *Panch* or, worse still, received an unjust verdict, they go to the *Nari Adalats*. By and large, women and families who are economically vulnerable and are not bound by the censure of the traditional *Panchayat* use the *Nari Adalat* mechanism, although there are of course exceptions, including an instance of the Government’s chief district revenue officer’s wife petitioning the Surendranagar *Mahila Samakhya*’s *Nari Adalat*.

This observation seems to indicate that those families and women who can afford to prefer to go to the formal courts. There does seem to be a direct correlation between an increase in court use and economic development. While this requires a more thorough study, we did find that the higher the economic security of families/communities, the more litigious they seem to become, preferring to, and of course being able to afford to, go to the courts. Inversely, in areas of extreme poverty, the hold of the *Gynati Panchayats* over the community is decidedly higher. However, as the normative control of the community decreases amongst those poor communities which are upwardly mobile and/or where community norms become diffused due to economic exigencies/opportunities - as amongst the Rathwas of Vaghodia, the Vankars of Morbi or the Maheshwaris of Mundra -

the community's, and in particular women's, willingness to become litigious seems to increase, even though the cost, time and shame attached to going to the police or courts remain. The *Nari Adalats* seem to be the most accessible option for women from these communities. However, it is also quite clear that economic considerations alone do not decide whether a woman will come to the Nari Adalat or go to court, even though they may be a critical factor.

The shared gender identity of the 'client' and the 'judge', the comfort of being in an environment which resembles your own extended family of mother, aunts, sisters and elders but which is more encouraging and emancipated, the non-intimidating space and the culture of communication without fear – all these elements of the *Nari Adalats* have a value which goes far beyond economic considerations for a woman who is battered and lost. It would seem that women who come to the *Nari Adalats* want resolution more than justice. Their concerns are dominated by the practicalities of where they will stay, who will feed them and their children and the impact of their return to their parental home on their brother or on their sister's chances of getting married. Apart from a vindication of their rights, they require an urgent implementation of remedies and protection against the dominance of their marital home and the vulnerabilities of returning to their parental home or living alone. We found that there is also an implicit expectation by the aggrieved when approaching the *Nari Adalat* that they will receive a decision through this system which fits in with socially accepted norms, but that they will also be able to access the formal legal and judicial system with the support of the *Nari Adalat*, if necessary.

The popularity of the Nari Adalats also lies in the relatively high sense of control that the petitioner experiences there in comparison with the traditional Panchs and the courts. Cost, time and venue are critical aspects in sponsoring a sense of control within the woman. The Nari Adalats, on average, take 3-8 months to resolve a case.

The process does not cost the petitioner much more than a thousand rupees - although this varies a little between *Nari Adalats*. In the *Nari Adalats* of SWATI, clients are charged a fee of Rs. 500. In KMVS' *Nari Adalats*, they are charged a one-off fee of Rs. 100. In *Mahila Samakhya Nari Adalats*, meanwhile, the client is not charged, and instead has to pay for the travel and transport of the *Nari Adalat* members when they make visits to the petitioner's home for investigation, interrogation or counselling. One of the factors contributing to the client's sense of control is the fact that she can go to the *Nari Adalat* alone, without being accompanied by any member of her family (the traditional *Panchayats* would insist that she be accompanied by a male family member), or by a lawyer as would be the case in the formal system. In fact, the *Nari Adalat* places the client at the centre of the negotiations.

The experiences of some of *Nari Adalat's* clients after the outcome of their cases are enlightening, and provide critical feedback about alternate dispute resolution mechanisms such as these. Almost all of the clients the study team met were unanimous in their praise for the empowering way in which *Nari Adalats* had approached their issues, despite the fact that not all of them had received satisfying outcomes. However, their experiences also threw up some critical observations about the impact of the system's informality on the outcome:

- The lack of formal and standard legal documentation, especially while executing divorces or settling maintenance amounts, had posed serious problems (this issue has,

however, recently been resolved with the MSS *Nari Adalat* executing a court divorce in all cases);

- The absence of even a basic understanding of legal procedures and provisions meant that the client was not provided with information on the laws, nor empowered to make informed choices vis-a-vis the outcome. The legal provisions were often far more progressive and women-centred than some of the resolutions provided by the *Nari Adalat*;
- The inability of the system to comprehend, and interpret revenue and legal documents held by the client – such as property documents – and the absence of a support mechanism (such as lawyers) meant that the advice or resolutions provided by the *Nari Adalat* were left vulnerable to legal dispute, and the client was sent back and forth between the *Nari Adalat* and the court;
- The *Nari Adalat* system operates entirely through the will and courage of the MSS volunteers and *sangh* members. This makes the system personality-oriented to a large extent – in the presence of dynamic members of the *Nari Adalat*, the system is taken more seriously. This ensures better follow-ups, a more resolute and caring environment. However, the opposite is also true: in the absence of dynamic members, a positive outcome is less likely;
- In the absence of any legitimate mandate or structured partnership with State enforcement agencies or the formal judicial system, the ‘fear’ inspired in the violator by the *Nari Adalat* is short-lived. While the vast pressure of an active *Nari Adalat* means that compliance by the violator is high, there is a perception that this compliance is with a social group, not with an institution or system, and it is not necessarily sustainable.

There are no obvious caste, class or religious hierarchies in the judicial process of the *Nari Adalats*. Higher-caste women do not seem to be restrained by the fact that women from the underprivileged caste will preside over their case. Neither are women from the economically and socially weaker caste hindered by the fact that they might act against the interest of an upper-caste man. However, in the interest of both the ‘client’ and the ‘judges’, the women of *Nari Adalats* do make strategic alignments to ensure that during the proceedings of a higher-caste person, higher-caste members of the *maha sangh* are present in larger numbers. A similar alignment is made in the case of lower-caste people. Essentially, through the act of aligning and supporting women of a different/higher caste, *Nari Adalat* women claim to be confident in contesting patriarchal claims across castes.

However, it was consistently observed that Nari Adalat members were more constrained in taking harsh or objective stands if the complainant and the defendant belonged to the same caste or the same village as them. In this situation, contesting their own community might jeopardize their own survival as a member of that community. This goes back to the fact that, in an attempt to strengthen their identity as a women’s collective, *the Nari Adalats have refrained from fundamentally challenging or even questioning basic caste, religion or class structures within their society.* Thus, while overt caste, class or religious prejudices do not emerge easily, and there is in fact a conscious attempt by the more aware *Sahyoginis* and organizational members who accompany the court processes to retain ‘objectivity’ during the case deliberations, inherent social conditioning and prejudices do shape the outcomes or processes – just as they do in the formal courts or in the traditional *Panchayats* (see Box 1).

Box 1

A Vasava boy fell in love with a Brahmin girl, and the parents brought this case to the *Nari Adalat*. The Vasava boy, who was both alcoholic and unemployed, was ostensibly

harassing the girl and coercing her to marry him. The *Nari Adalat* counselled both the boy and the girl. At the behest of the girl's parents, they made attempts to convince the boy to end the relationship. In fact, members of the *Nari Adalat* even beat him up, called on the police to put him in the lock-up for a day because of his drinking and 'protected' the girl from the relationship. Whilst there was visible pride in the *Nari Adalat* that they had saved a girl from the harassment of this Vasava boy, the question remained whether they would have shown the same persistence and influence if the situation had been between a Brahmin or Patel boy and a Vasava girl. During discussions, MSS *sangh* members reflected and acknowledged that the caste of the boy was indeed a factor in the way that they proceeded.

10 percent (363 out of 3514) of the cases that have come before the *Nari Adalats* are from the minority community – primarily different communities of Muslims, who are also governed by Shari'a laws. Different sects and communities within the Muslim communities are attached to *Jamaats*, but the extent of the influence of the *Jamaats* over the communities is not uniform. Neither are all of the *Jamaats* well organized to handle cases of domestic violence, marital disputes, etc. Muslim women accessing systems such as the *Nari Adalats* belong largely to communities whose traditional systems of governance and influence are relatively weak. How do the *Nari Adalats* handle the issue of dual minority – that of women who belong to a minority religion? How do they reconcile issues of gender justice with personal laws? What are the contradictions that they face? How do they proceed with the application of law – do they draw upon the personal laws or on the constitutional law? Or do they draw upon both, based on circumstances?

While *Mahila Samakhya* in Baroda and in Surendranagar had a very small number of cases from Muslim women, *Mahila Samakhya* in Rajkot and *Kutch Mahila Vikas Sangathan* in Kutch received 90 percent of the total number of cases from Muslim women in the six *Nari Adalats* studied. The *Nari Adalats* of Kutch, which were more strongly integrated with the formal legal and judicial mechanism and were familiar with the personal laws, discussed the merits of both sets of laws with the client before arriving at a decision on, say, maintenance. They reported that, in majority of cases, the defendant preferred to abide by constitutional law. On further investigation, it was observed that this preference did not stem from any specific option that the client or defendant were exercising, but was governed by the decision of the lawyers of the defendants, who influenced them to abide by the constitutional provisions as they would be to the defendant's advantage. In fact, we found that the legal fraternity retained their clientèle and advantage by thus influencing them to stay within the constitutional framework.

The MSS *Nari Adalat* in Wankaner has developed an extremely collaborative and cordial working relationship with the *Syed Jamaat* of the region and its leader (who is also a political leader). In this instance, the *Nari Adalat* is called upon to arbitrate cases which come before the *Jamaat*, and it is gradually moving towards handling additional cases to those which are related to women and violence. As most of the *Nari Adalat* women in this case are Muslim women themselves, and because of their 'partnership' with the *Jamaats*, the *Nari Adalat* is again familiar with the personal laws. It also consciously follows principles of Shari'a laws. However, there was an absence of studied dialogue or public discussion amongst the women of the *sangh* or the *Nari Adalat* on the various merits and drawbacks for women of both the personal and common law. It seems that they function according to what comes naturally to them, or would attract the maximum acceptance from society.

The dialectic of being 'Just' and 'Right'

It is necessary to understand how, without the constraints and rigidity of legislated procedures and norms, the alternative 'courts' remain consistent with the dual need to be both 'just' and 'right'. How is 'right' defined in a gender context within both the *Nari Adalats* and the caste *Panchayats*? Is there a gender difference in the way 'just' and 'right' are defined in the two structures – one largely patriarchal, one leaning towards the feminist?

In the formal justice mechanism, legal and judicial procedural requirements – the rules of evidence, for instance – have to be 'right' in order for the administration of justice to become possible. The act of justice can only follow the primary requirement for the legal and judicial procedures to be 'right'. Similarly, in the *Gynati Panchayats*, justice can be achieved only if the social norms, procedures and behaviour are perceived to be 'right'. Justice will be denied to those who have not conformed with the 'right' social behaviour, even if they have been victims of gross injustice. However, for the *Nari Adalats*, the act of a woman seeking justice and the circumstantial evidence that she is a victim of injustice are themselves 'right' – in terms of procedure – and trigger a movement towards justice. Take the *Nari Adalat* case of a woman who was raped by her father-in-law. Until the historic Domestic Violence Act becomes operational, she had to be proved 'right' by the rules of evidence before the formal judicial system could be 'just' towards her. The *Gynati Panchayat*, on the other hand, found the accusation itself a violation of social behaviour on the part of the woman – and therefore 'wrong' - and declared her mentally deranged. She could move out of the marriage by paying a separation amount, or she could choose to remain in the marriage and be 'justifiably' further harassed for being a 'mentally unfit' wife. In the *Nari Adalat*, however, she was given the benefit of the doubt; she was scrutinized for the sincerity of her expression, her courage, the vulnerability of her circumstances at home, the responses and reputation of the marital family. All of these factors were assessed through a strong network of social relationships, and assessments by the *Nari Adalat* members. Once these were judged to be 'right', the administration of justice was undertaken. Here, the need to be just is assumed at the beginning of the process. This triggers the process of justice, which includes the confirmation of what is 'right'.

The *Nari Adalats* do not concern themselves with providing a verdict and punitive action. Instead, they are concerned with being 'just' - making the man compensate the woman in a manner that protects her rights but, more importantly, facilitates a change in her situation towards a more violence-free life. In deciding how the violation should be compensated for, they concentrate again on the circumstances rather than on a stipulated, well-laid-out norm or law. If a man has to pay maintenance, the formal system would abide by the stipulated minimum provision. The *Gynati Panchayat* or *Jamaat* also follow stated norms which are reviewed from time to time. The *Nari Adalats*, on the other hand, consider the circumstances of the man, his ability to pay and the needs of the woman – which may result in less than the statutory provision. In many ways, this is a more humanitarian way of securing rights and ensuring compliance. While the traditional *Panchs* are also well positioned to consider the specificities of each case, and to be 'just' and 'right', they operate opportunistically, through the lens of patriarchy and the need to maintain and propagate its premises. At the same time, the formal justice-delivery mechanism, while armed with a set of fairly progressive provisions for women, operates through antiquated

procedural requirements and the system works for those who can gain from delays. It therefore allows a recalcitrant violator to take advantage of the technical complexities. Thus, despite being best positioned to be 'just' to women seeking justice, the formal justice system often fails to balance the 'right' with the 'just'.

In the see-saw act between being 'just' and being 'right', the Nari Adalats, however, can also falter. Their relatively low understanding of the laws, legal provisions and procedures, coupled with unconscious slips into patriarchal ways of judging and seeing – both of which were evident during the study – can make them vulnerable to the same faults as both the Gynati Panchayat and the formal justice system.

Nari Adalats – Justice for Women or Women for Gender Justice?

An analysis of the 3514 cases received and handled by 6 women's courts reveal that all of the cases pertain to marital disputes and to gender-based violence – primarily domestic violence. The dominant image of the Nari Adalats remains that of a forum where women facing violence within marriage can seek 'support' or 'justice'. However, while more than 89 percent of the cases pertain to marital disputes and violence within the marital home, the Nari Adalats no longer deal only with women victims. In 20 percent of the cases (714 out of 3514), men have approached the Nari Adalats for justice. The reasons for this vary. In the main, men who believe that their 'errant' wives can be 'straightened out' by the women of the Nari Adalat have tended to file complaints against their wives. In addition, where women have filed charges of harassment against their husbands and applied to the formal courts for maintenance, the Nari Adalats have been approached by their husbands, in the hope that that if their wives are persuaded by the Nari Adalats to withdraw their court cases, then they can perhaps get away with paying less maintenance, as well as protecting themselves from the time and money costs of litigation.

The *Nari Adalats* look at the specificities of each case, often also taking into consideration the economic condition of the man before deciding on a maintenance amount. They do not apply the legal provision for maintenance or facilitate a court dispensation uniformly. *While maintaining and protecting the rights of the women, they arrive at what most of their 'clients' perceive as pragmatic and implementable solutions to the problem, often to the satisfaction of both parties. However, this could mean a 'lesser' verdict than that the courts may offer through the more progressive legislated provisions for women. Indeed, in some cases, where women are more aware of the laws, and are more determined to seek justice rather than resolution, they do approach the courts directly.* In addition, and ironically, the defendant husbands approach the *Nari Adalats* which belong to their socio-economic milieu in the hope that they may give a more considerate verdict. While this has extended the 'client base' of the *Nari Adalats* to men, and to that extent gradually exploded the popular perception that they work only in the interests of women, it does raise a more fundamental question about the reasons for their departure from the formal legal provisions. Are the *Nari Adalats* fully aware of the legal provisions, are they governed primarily by them, and do they interpret these within the overall context and specificities of the case? Or are they, like the *Gynati Panchs*, governed by a set of normative rules and laws determined by their socio-political contexts? The answer lies somewhere in between. For instance, on issues of maintenance, the *Nari Adalats* demonstrated a greater awareness on the legal provisions and, more often than not, they ensured that their verdicts were aligned with these provisions. The statutory principles are used, but they are interpreted according to circumstances.

In specific cases, the *Nari Adalats* departed from legal principles, taking into consideration various aspects of the case to arrive at an enforceable decision. However, with regard to issues concerning the custody of children, it was observed that the *Nari Adalat* women in all three districts studied were not fully cognizant with the laws and therefore social norms and their own conditioned responses prevailed – in a majority of cases, custody of sons, even those below the age of 5, was awarded to the fathers and the custody of daughters to the mothers.

While all six women's courts studied were embedded within a larger movement for women's empowerment, and consisted of interventions by organizations of women, the study revealed that none of them received, or proactively took up, a single case of sexual harassment; nor did they hear sex workers' cases, or cases dealing with women's labour contracts, female foeticide, women victims of inter-caste or communal violence and disputes, etc. While acknowledging that these forms of gender-based violence and exploitation were endemic, the *Nari Adalats* had clearly developed and acquired the image of a local, informal 'family court', whose predominant role is to protect the rights of the woman within the framework of marriage. While a more active and conscious will to counter acts of gender-based violence outside the family exists, *the lack of a clear institutional mandate, the absence of well-crafted links with the formal structures, and an inadequate understanding of the legal and judicial procedures and systems has ensured that only 5 percent (169 cases out of 3514) of the cases seen by Nari Adalats deal with rape, homicide, sexual harassment, etc.* Similarly, while there is a demand for action on, and a consciousness of, the issue of women's rights to inheritance, only 4 percent of the *Nari Adalat* cases pertain to this issue (see Annex 1). These figures, however, are not only an indication of the scope or abilities of the *Nari Adalats*, but are equally related to low levels of reporting in cases of rape and the very low levels of women's willingness to litigate over inheritance entitlements.

Thus, while the *Nari Adalats* enjoy a high level of credibility within their own collectives, and in the blocks or *talukas* in their geographical regions, they have yet to move towards a more comprehensive form of gender justice, or to become a more generic social justice mechanism governed by women. However, it would be unfair to view this lack of development in isolation. The situation of the *Nari Adalats* needs to be seen within the wider context of the women's movement – in particular the grassroots rural women's movement both in Gujarat and the rest of India.

The upsurge in the emancipation of rural women in India over the past decade and a half has been phenomenal. However, this emancipation and its manifestation in numerous acts of assertion and challenges to the patriarchal socio-political structures have not come without a cost - that of peace within the domestic sphere. The fact that women have entered the public arena and asserted their right to public space has been met with violent reactions and resistance within the private sphere. There is a disconnect between male expectations and women's aspirations, a colossal mismatch between the pace at which women's attitudes to men and themselves are changing and that at which men's attitudes are changing. While a daughter's circle of freedom is expanding, her life as a daughter-in-law has reverted to what it was a decade ago. The incidence of violence against women, particularly domestic violence and disputes, continues to rise dangerously, even as women assert their right to expression and freedom. However, disputes and violence within the home are no longer shrouded in silence – they are announced and reported, and resolutions are sought with newfound confidence. That the *Nari Adalats*, Legal Aid Centres and the Family Counselling Centres of the Ministry of Social Empowerment all report an increase in cases each year is some indication of this.

However, the rural women's movement has focused largely on rural women's ability to question *their* milieu and *their own* conditioning, to counter barriers to *their own* empowerment within the family or within the patriarchal polity of their village and to consolidate *their* role as decision-makers in development. Rural women have organized

themselves to achieve these agendas across caste/community and religious lines. By refraining from taking up issues of gender-based violence across these lines, they have chosen to maintain the gender identity of women across communities, and suppress any overt alignment of women with men of their caste/religion. Yet by creating constituencies of women within geographical areas – *Sanghs, mahasanghs, Sangathans* etc. – they have unwittingly created a process in which women from given villages and areas do not necessarily draw women from outside their milieu - whether these are migrant labour women or sex workers - into their fold.

While the rural women's movement has improved rural women's abilities to organize themselves as collectives, to form pressure groups within their regions and to express and assert their rights within the family, the movement's willingness to take up gender issues outside its ambit – be they violations of pre-natal sex determination tests, the rights of sex workers, the violation of labour laws to the detriment of women or the trafficking of women - have been relatively low. The *Nari Adalats* merely reflect the pattern which exists within the wider grassroots rural women's movement in different parts of India, including Gujarat.

Interface with the Traditional *Panch*

The study team met with 11 traditional *Panch* members from as many communities in four districts of Gujarat. Two were dalit communities (Vankars, and Maheshwaris), two were cattle herder communities (Rabaris and Bharwads), one was a tribal community (Rathwas), one was an upper-caste farming community (Bhanushalis) and five were Muslim communities (Memons, Mansuri, Kasbas, Ker and Mokarsi). The decision-making structure and norms of the Memons are aligned to a state-wide and national structure; the Rabaris, Bharwards, Vankars and Maheshwaris are more regional, with their sphere of influence and community structure covering a large cluster of villages (ranging from 20-80); the Bhanushalis are a smaller, more homogeneous community, with a relatively monolithic multi-tiered decision-making structure which stretches from the villages to Mumbai. However, the Rathwas, Mansuri, Kasba Ker and Mansuri are far more localized; despite the community being spread across villages, the *Panch* members have limited areas of influence which often do not extend beyond the villages or a small cluster of villages.

The Nari Adalats, it would seem, have emerged more as an alternative to the patriarchal caste Panchayats than as a decentralized alternative to the formal judicial system. While the Panchayats protect the patriarchal social order of the community, the Nari Adalats protect the rights of women within that social order. In doing so, they have neatly appropriated the format of the Gynati/Jati Panchayats in more ways than one. The Gynati Panch draws its presence and power from a shared caste identity; the Nari Adalat firmly maintains a shared gender identity. The 'lay' participation of members of the caste community during the 'hearings' is used to build social pressure against violators of well-established patriarchal social norms – mostly women - and to influence as well as validate the verdict. The Nari Adalat executes a similar tactic to pressurize violators of women's rights – mostly men – to establish a new social order. Both systems believe in naming and shaming to increase the visibility of the violation and to extend the message behind the verdict to the rest of the community. In addition, just as the Gynat Panch uses the public square to shame the 'violateur', the Nari Adalats have also, in different ways, found strategic public spaces in which to conduct their 'cases' and to place the guilty male under the public scrutiny of women from neighbouring villages and regions.

Interestingly, the study found that the *Nari Adalats* and the *Gynat Panchs* sometimes produced similar responses to completely opposite situations. In about 50 percent of the cases where the man was the aggrieved party and where *Nari Adalat* women established that the man was 'wronged' by the woman, the women retreated into conditioned positions of 'matriarchs in court', with their 'maternal instincts' governing the verdict and decision-making. **As judges, the *Nari Adalat* respond according to their emotions, with responses to male complaints/victims being fairly gendered.** In fact, it was interesting to observe that the attitude of the *Nari Adalats* towards men was completely adversarial where they were defendants, but when a man was the aggrieved party, his perceived vulnerability would draw a fairly maternal response. For instance, in Rajkot District a woman lying about her husband's impotence to escape a bad marriage was given a punishment which had no parallel to similar instances where men had used their wife's 'sterility' as a reason for adultery and abuse (see Box 2). This response is similar to that of members of the *Nat Panch* (whose attempts to be just and fair towards 'passive' and 'vulnerable' women wronged by their husbands at times translate into patriarchal

protectionism.

Box 2

In Upleta block, the *Nari Adalat* was petitioned by a man who said that his wife was seeking separation on the grounds that he was impotent. He wanted the *Nari Adalat* to counsel her and bring about a reconciliation. The *Nari Adalat* members first ensured that the man and woman were medically tested and found that both were normal. The *Nari Adalat* women were outraged that a **man** had been wrongly accused of being impotent and charged the woman with a penalty of Rs. 500 for her accusation as well as ordering a reconciliation. In itself, the case was not significant; the significance lies in the fact that *Nari Adalats* regularly hear cases where a woman is repeatedly harassed by her husband and marital family on the grounds of a 'sterility' which has similarly proved to be nonexistent. A detailed analysis of this type of case in the *Nari Adalats* of Rajkot District revealed that no man had ever been penalized for his accusation of sterility. It was not obvious to the *Nari Adalat* women that their inherent gender bias and the value attached to a man's sexuality and masculinity had influenced a sexist and inconsistent pattern of 'judgements'.

However, the similarities between *Nari Adalats* and *Gynati Panchayats* end there. The costs and expenses involved in the *Gynati Panchayats*, which meet when they are appealed to or are 'moved' by a complainant from their caste/religion/sect, are extremely high. The complainant has to bear the costs of bringing different members together to a common venue and feeding them and of the public meetings that ensue. These of course vary from community to community, although the pattern is similar, especially amongst the Hindu caste and tribal communities studied. Apart from the abovementioned costs, the transaction costs include a 'cut' which goes to the *Panchayat* – especially if it executes a divorce or separation which entails one of the partner families paying a stipulated amount to the other family, depending on which family or partner is declared 'guilty' by the *Panchayat*. In the Bharwad community, for instance, if a woman is declared sterile by her husband and seeks a separation, then her family has to pay a separation amount to the man on the grounds of her 'sterility' – and 50-60 percent of that amount is taken by the Bharwad *Panchayat*. The situation is similar where a man suspects his wife of infidelity and seeks a separation.

The mounting transaction costs of the *Gynati Panchayats*, the lack of interest or care they increasingly display when trying to find a resolution, the speed with which a separation is executed for their financial gain and the existence of alternative dispute resolution systems such as the *Nari Adalats*, *Mahila Panchs* etc., have all contributed to the diminished credibility of the *Gynati Panchs* in Gujarat. *Even men seeking justice in marital matters are becoming more willing to approach the Nari Adalats, despite the perception that they are biased towards women, or the Family Counselling Centres run by the State Social Welfare Board, rather than their caste Panchayats.*

The decreased power of the *Gynati Panchs* over the community is, however, attributed to a number of reasons other than their ineffectiveness and tendency to extort. *It is argued that the urbanization of villages, the nuclearization of families and outmigration into towns have all led to the breakdown of the Gynati Panchayat's ability to 'govern by control'.* However, we found that caste or tribal communities whose livelihoods continue to be

closely linked to and dependent on common property resources, migrant communities who tend to live in close proximity for long periods in alien environments (not migrant labour), communities with relatively small populations, or those living in remote, marginalized geographical regions, are those where the traditional *Panchs* still retain a considerable hold over the community. In two regions where the *Nari Adalats* operate – the cattle-herding Rabari community of Sayla, Surendranagar, and the tribal community of Rathwas in Choto Udaipur - both prevent their women from bringing issues to the *Nari Adalat*. The *Nari Adalats* of Sayla and Pavi Jatpur observed that, despite their strong rapport with the communities, and despite the fact that the *Mahila Samakhya sanghs* comprised women from this community, women with issues of domestic violence or other gender-based violence issues would only seek resolution or justice from the traditional *Panch*.

Traditional *Panchayats* vary greatly in their normative principles and methods for protecting the rights of women. They accordingly also differ in how they address issues of women and violence or other forms of gender-based violence. This depends greatly on whether they have a relatively progressive history regarding these issues; the overall status of women's education within their community; the upward mobility of youth in the community; and the proximity of their 'lead families' to cosmopolitan influences. Each of the seven traditional *Panchs/Jamaats* studied seem to have developed differently in order to accommodate women's interests better within their own frameworks, and they also respond differently to the *Nari Adalats*. Those *Panchs* with a better institutional framework, and which seem to have more well-laid-out procedures for protecting women, have no need for or interest in the *Nari Adalats*. Despite being as regressive as most other *Panchs* on the issue of women's rights, they maintain their credibility with both women and men in the community because of their emphasis on the welfare of both women and the poor. This is particularly true of the *Jamaats* in all five Muslim communities that were studied.

Where the traditional *Panch* is faced with a fragmented community – primarily due to shifts in livelihoods, education and location - and is less able to overcome the diminishment of its role in community governance, we found that willingness to accept the *Nari Adalats* was considerably higher. The Vankars of Morbi Talua, Rajkot District, for instance, not only invited the *Mahila Manch* of Morbi to initiate its *Nari Adalat* from their premises, but continue to play an active role in sending cases to the *Nari Adalat* of this block – where 90 percent of the *Mahila Manch* members belong to the Vankar community. Similarly, the Maheshwari community in the Mundra block of Kutch District is extremely responsive to the Mundra *Sangathan's Nari Adalat*, encouraging its women to seek redress with the *Nari Adalat* and cooperating with the processes and procedures laid down by the *Sangathan* during the case 'hearings'. The traditional *Panchs* of these communities have gradually ceased to police or enforce caste laws and norms. Instead, they have restricted their role to that of community bonders – celebrating symbolic assertions of caste identity and setting broad directions for the social behaviour of members of the community.

However, in communities such as the Rathwas of Chota Udaipur, where the *Panch* continues to exert a significant hold over the community but is disorganized and localized, the decision-making process of the *Panch* is hijacked by village-level political leaders from within the community, or by power-holders from better-off tribal communities such as the Nayaks. Women in these communities are perhaps the most disadvantaged, in terms of their low levels of access to justice or resolution outside the community and an absence of well-organized 'caring' mechanisms within the community.

Box 3 - The Memon Jammaat of Idar, Sabarkantha

The Memon community of Idar Taluka, Sabarkantha, takes pride in the claim that in their region not a single case of marital dispute or violence against women has reached the courts – every case goes before the *Jamaat*. Every year they receive 50-60 cases on average, most of which end in reconciliation. Without a letter of permission from the higher office of the *Jamaat* in the district, no marriage - *nikaah* – can be solemnized. If marital disputes or acts of violence against women are brought to their notice, the *Jamaat* members counsel both parties. If there is a reconciliation, the *Jamaat* members follow up by visiting the couple to ensure that the relationship has improved, and if the reconciliation efforts fail in the lower *Jamaat*, then the case is sent up to the head office in the district for further intervention. The pressure to succumb to the reconciliation process is extremely high, and there is a penalty if one of the partners does not comply with the process initiated by the *Jamaat*. Second marriages are not possible unless the settlement with the first wife has been finalized. If a divorce is clearly mutual, the couple has to pay a token amount of Rs. 12.50 to the *Jamaat*. In addition, in the case of a divorce, the *Jamaat* pays an amount of Rs. 500 to the woman. Thus, as in most established community mechanisms, there is a strong emphasis on protecting women who are economically or socially vulnerable, and well-executed processes to ensure protection – a strategy which contributes to the overall influence and credibility of the *Jamaat* in the community. Although the community actively discourages women from seeking help outside its own mechanisms of redress, and resists any collaboration with *Nari Adalats*, it has made a small attempt to redefine its patriarchal structure by establishing a woman to oversee the *nikaah* ceremonies and procedures and to take care of ‘women’s interests’.

The *Nari Adalats* have evolved different strategies in different areas in line with the varying perspectives and credibility of the *Gynati Panchayats* (**Annex 2**). A common strategy adopted by all of the *Nari Adalats* has been to formally invite the traditional *Panchayats* to the hearings – or, at least, to involve some of their leaders informally. In cases where the complainant comes to the *Nari Adalat* having reached an impasse in the *Gynati Panchayat*, the *Nari Adalats* have by and large chosen to involve some of the *Panchayat agevans* (leaders) in the meetings. The *Nari Adalats* are also at times treated as a ‘higher court’ by the women of the *sanghs* – who first succumb to family and community pressure and take their issues to the *Gynati Panchayats*. When the verdict of the *Panchayat* is perceived as unfair, they bring the issue to the *Nari Adalat* for higher intervention. In such cases, the *Nari Adalat* involves the *Gynati Panchayat* both by meeting with it in its own space, and by demanding an explanation of its verdict. Here, the *Nari Adalats* use the power of the State – and the fact that they are a government-sponsored programme – to ensure enforcement. Weaker traditional *Panchs* comply; those like the *Bharwads* will not. In some cases, the *Nari Adalats* accept the reconciliation verdict of the caste *Panchayat*, or the *Nari Adalat* and the *Panchayat* may conclude cases in consensus with each other. While acknowledging that the verdict may not be ideal, the *Nari Adalats* claim that they often

accept reconciliation as the only option, primarily because of the absence of a safe shelter for the victim. Our study revealed that the outcome in 49 percent of the cases relating to marital abuse/disputes and domestic violence is reconciliation. However, while the lack of safe alternative domestic arrangements for a victim does seem to be a predominant consideration in finalizing the outcome of cases for all of the *Nari Adalats* – leading to more reconciliations than may be appropriate - the weight given to sustaining the family and marriage framework is equally strong.

Box 4 - The Rabari Panch of Sayla, Surendranagar

This *Panch* is part of a structured and layered governing council for the community. The *Panch* has jurisdiction over 72 Rabari villages. It is further divided into 4 sub-sections of 18 villages each, with two members from every sub-section constituting the *Panch*. This is perhaps one of the most organized and active *Panchs* in Gujarat, in terms of its normative interventions within the community. Like Rabari *Panchs* from other regions, this *Panch* has its own 54-clause constitution and has developed a vigilance system to ensure that the constitution is not violated. If violations do occur, the *Panch* acts swiftly, invoking well-laid-out acts of penalty and punishment. It takes a particularly harsh view of any member of the community seeking redress from either the formal courts or from any other alternate dispute resolution systems such as the *Nari Adalats* or *Mahila Panchs*. As one of the members of the *Panchayat* stated: “We do not have to go by any other constitutional laws – we have our own constitution – and anyone who cannot abide by it, must face excommunication from the community”. This *Panch* is also predominantly faced with marital disputes and breaches of marital or engagement contracts, which they resolve with a mix of opportunism and a token concern for the woman’s economic rights. If a man wants to reject his first wife and marry again, he has to pay .3 million rupees – half of which goes to the *Panch*, with a major part of the remaining amount going to the woman’s parents or family and a small portion being made available to the woman herself. If a woman is widowed, the *Panch* facilitates the transfer of the woman’s share of assets from her in-laws, and again draws a portion of it as a transaction cost. The rules are quite clear – if a woman chooses to seek ‘protection’ from the *Panch*, it provides it - on its own terms. However, if she chooses to contest the *Panch*’s authority or to ignore it by seeking justice elsewhere, she loses her status of ‘victim’ within the community and faces a wide range of penalties.

Ongoing efforts to engage and influence the *Gynati Panchs* are therefore made by the *Nari Adalats*, although these efforts are neither structured nor consistent. Interestingly, the traditional *Panchs* have reciprocated in some cases by inviting *sangh* members into their fora when handling a case. 15-20 members of the MSS in all three districts, but especially Vadodara and Rajkot districts, are regularly invited to sit in on the *Panch*. However, it is also evident that the invitation to *Nari Adalat* members does not extend to all cases seen by the *Panchs*, but is limited to those where a marital dispute or complex gender problem is involved. The invited members are seen as credible and accepted ‘experts’ who are expected to understand and advise the concerned woman and help the *Panch* to take a fair view of the case. We also observed a certain degree of helplessness on the part of traditional *Panch* members who did not have the ‘expertise’ to ‘handle’ the ‘new age’ rural

woman – a creature alien to their own conditioned consciousness - and therefore had to draw upon the experience of the *Nari Adalat* women . This is in itself an achievement on the part of the *Nari Adalats*, and suggests a level of comfort between the traditional *Panchayat* and the *Nari Adalat* women – the members of both of which, after all, belong to the same socio-political and economic milieu. While there is therefore a growing openness on the part of the *Panchayats* to be influenced, the *Nari Adalats* have yet to design a more systematic way of changing perspectives and building capacities within the younger members of the *Gynati Panchayats*. *The Nari Adalat women seem to vacillate between pride in being invited to the traditional Panchayats - interpreting this as evidence of an increase in their influence within the community - and a sense of the futility of influencing the traditional Panchayats, which are themselves on the decline.* Nevertheless, 8-10 women from the *Mahila Samakhya sangh* membership who are also on *Nari Adalat* councils are also permanent members of their caste *Panchayats*, and are silently transforming the patriarchal modes of decision-making within the *Panchs* from within.

However, the relationship between Gynati Panchayats and the Nari Adalats is not just about interface and influence. The question is whether the Gynati Panchayats have been confronted and challenged by the Nari Adalats. Have the Nari Adalats been able to diminish the control and fear-inducing tactics of the community leaders? Have they been able to contest patriarchy? While the Nari Adalats have dealt with some interesting cases where they were able to challenge the perspective, procedures and verdict of the caste Panchayats (see Box 5), members were unanimous in their opinion that they have largely chosen the path of cooperation rather than confrontation vis-a-vis the caste Panchayats.

Box 5 - The caste *Panchayat* learns gender budgeting the hard way

The Chotila *Mahila Manch* made history when it compelled the Koli caste *Panchayat* with a partisan crowd of 1500 community participants to argue its case for 12 hours at a stretch. A Koli woman, harassed and beaten by her husband, sought a divorce. The husband petitioned the *Panch* to intervene. The *Panch* - like most traditional *Panchs* today, which do not resist divorce but instead extract a separation settlement amount from the harassed woman and retain a substantial amount themselves – decided on a sum of Rs. 2 lakhs to be paid by the woman if she wanted a divorce. The calculation included all the costs incurred on her by her husband during their 7 years of marriage: food, clothing, housing, medicines etc. The *Nari Adalat* members, who had ‘invited themselves’ to be witnesses to the case, sprang into action. As a group, they stood up, placed the defending woman in the centre of the group to protect her from physical harassment, walked together to the centre of the square and declared that the calculations were incorrect. They forced the *Panch* to detail every expense in its calculation. They went on to enumerate in detail all the tasks and activities she had performed for her husband and marital family and, in a public act of gender budgeting, invited the participants to place a monetary value on all of the tasks undertaken over the past 7 years. Many arguments ensued, but at the end of the day the valuation was complete. It amounted to 7 lakhs! The *Mahila Manch* members asked the Koli *Panch* to oblige the man to pay the 7 lakhs to his wife or they would file a case of harassment. The stunned *Panch* members called three more sessions, could not resolve the case, withdrew and advised the couple to take the case to the *Mahila Manch* for resolution.

The Sayla *Mahila Manch*, for instance, saw many cases of extortion and exploitation faced by women in the ‘courts’ of the Bharwads. It was clear that some of the decisions could be

challenged legally. However, it was equally clear that it had never occurred to the *Mahila Manch* members to challenge the decision of the traditional *Panchayats* or drag them to court. Their own layered caste identity held them back. While all of the *Nari Adalats* detested the patriarchal verdicts of their caste *Panchayats*, when asked whether there was intrinsic value in such a mechanism, most felt that a traditional *Panchayat* as a community system per se did have inherent value for the community. In an increasingly homogenized world, the *Panchayat* reflected their diversity and governed the broad arena of interpersonal social and, more importantly, economic relationships.

Whereas in the *Gynati Panchs* women are subject to the application of discriminatory social rules and 'laws', today the relatively 'fair' justice of a rights-based legal system is discriminatory in its application of judicial procedure. The success and limitations of the *Nari Adalats* lies in the fact that they position themselves between the discriminatory norms of the traditional *Panchayats* and a formal and antiquated justice-dispensing system. They do not challenge the social order fundamentally, nor do they apply the statutory provisions fully. They interpret both to redefine a pro-women social order. They are more flexible in their judicial propriety than the formal system or the *Gynati Panchayats* – both of which have well-laid-out procedural protocol - and they are considerably cheaper and faster than either. We will come back to this point later when we discuss the *Nari Adalats'* rights-based approach.

An Alternative Justice-Dispensing Mechanism?

Domestic violence is not restricted to any one branch of the law – it is civil in nature but often requires the combined applications of civil, criminal and even medical law. In dealing with domestic violence, the formal legal and judicial system has relied primarily on the criminal justice system, which has inherent limitations in dealing with domestic violence cases. These include the victim's extreme vulnerability faced with the law-enforcement system, the complex rules of evidence, the risk of incomplete solutions that don't deal with maintenance, custody etc. – all of which create multiple avenues through which an abused woman has to seek justice. Hopefully, however, the domestic violence Act of 2005 - when it becomes operational - will be better able to address these lacunae, as it fundamentally links, for the first time, domestic violence with the right to property.

The above apart, outmoded procedural laws have in any case provided enormous scope for delaying tactics by the legal and judicial fraternity. As of December 2005, pendency in the High Courts has increased from 27.57 lakh cases in 1999 to 35.21 lakh cases in 2005 and in the subordinate courts it increased during that period from 2 Crores to 2.56 Crores. It has also led to a distinct disdain for the lower courts – one reason why filings of court cases are so few compared with other nations/societies. As Galanter says:

the hesitant use of courts and lawyers is neither that the courts are congested, nor is it the absence of 'legal literacy' amongst the masses in our country – it is because the lawyers and courts are able to deliver so little in the way of remedy, protection or vindication that alternative justice dispensing systems are relatively more popular. For those who require vindication and prompt implementation of remedies and protection against dominant parties – as in cases of domestic violence – the system works very haltingly.

All of this has ensured that the fight against injustice is overtaken by an even more painful fight for justice. To expect a physically, emotionally and economically abused woman to seek justice through a system in which most would prefer not to litigate is a travesty of hope. The situation has also made the increasingly progressive provisions of law for women seem hollow. This question has vexed the women's movement at a macro level and voluntary movements such as the *Nari Adalats* at the local level: how can we reconcile the methods of access and application of the progressive nature of our legal reforms with the regressive nature of our judicial system?

It is now recognized and acknowledged that victims of domestic violence require a plurality of socio-legal remedies to ensure that they can live in a more secure physical, emotional, psychological, economic and social environment. They are not only victims of crime, but also and primarily victims of their family milieu. However, the formal judicial system - or even its constituted informal mechanisms such as the *Lok Adalats* and Family Courts - are often inherently inadequate to address the multiple dimensions of the issue. Time and again, it has been found that solutions have not necessarily been found through an application of the human rights framework alone, precisely because of its exclusive focus on the individual violation; in fact, the outcome of a violation and its resolution are inextricably linked to a wider, more complex web of socio-cultural considerations. The cases which come before the *Nari Adalats*, and before all similar mechanisms across India, deal with extremely specific situations of suffering and human rights violations. This is particularly so when the primary 'clients' are abused women who are economically

marginalized and belong to traditional rural communities. While the application of human rights through the formal justice system has been effective in ensuring resistance to acts of gender-based abuse and violence, has it equally effectively prevented or reduced the victim's oppression?

Clearly, strategies for victims have to go beyond legal interventions to encompass confidence-building measures, the restoration of filial relationships, the mobilization of community support and the education of the victim about her rights as an individual and within the family. No one system can achieve all of these. Multiple systems of support and plural forms of resolution and justice delivery with a gender justice perspective are necessary to address the complexities of domestic violence cases. The question is whether the *Nari Adalats* are embedded enough in the system to qualify as one of the plural mechanisms existing in the arena of gender justice - or whether they merely occupy a temporary space created by the numerous shortcomings of both the traditional *Panchayats* and the formal judicial system. Is the *Nari Adalat* a *supplementary* forum which focuses on pre-litigation conciliation and settlements, or is it a *complementary* system which has defined an equally just, and perhaps more culturally acceptable, way of dealing with the issues of women's rights?

These questions were posed to at least 70 *Nara Adalat* leaders in three different *Mahila Samakhya* districts. They consistently and systematically charted both the merits and drawbacks for women of both the mainstream justice system and the *Nari Adalats*. Interestingly, while the *Nari Adalats* seem to have emerged initially as an alternative to the traditional *Panchs*, today they judge their achievements and failures in comparison with the formal justice system - much as the numerous self-help rural women's groups in the country, which emerged in reaction to exploitation by traditional moneylenders, today make the mainstream banks their points of reference.

The *Nari Adalat*, its members believe, is an institutionalized and yet informal 'space' - rather than a system - which is fear-free and barrier-free. The members take pride in their subjectivity and make no claims to be objective; their focus is exclusively on women's rights, and they make no claims to understand human rights *sans* women's rights. They are committed to bringing acts of domestic violence and gender abuse into the public sphere, to resolving situations of violence and to removing women from violent circumstances. *They do not exist as a pre-litigation conciliatory forum to reduce the workload of the formal courts. They undertake conciliation partly because they believe in restoring the rights of women within the context of their marital life, and partly because they believe that, in the lack of coparcenary property rights, an abused woman's move away from the marital home makes her equally vulnerable in the natal home.*

It must be stated here, though, that for the *Nari Adalats* to be accepted as a parallel institution and retain their values, approach and methods, they require an authorized institutional mandate - they are presently perceived as being too informal and 'voluntary'. They need to evolve a more standardized form of documenting records and evidence. They need a more comprehensive and systematic understanding of the formal legal and judicial system, as well as the human rights framework, so as to engagement with other forms of justice delivery for women. Finally, they need to learn ways of introducing a public discussion on social justice based on rights rather than merely on reconciliation or responsibility.

Clearly, the *Nari Adalats* would like to develop into, and be accepted as, a complementary

system to the mainstream. However, some of the abovementioned drawbacks of the concept and its operations need to be addressed at a broader level. However, some of the abovementioned drawbacks of the concept and its operations need to be addressed at a broader level before the *Nari Adalats* can be incorporated into a pluralistic legal framework. It is important, however, that the *Nari Adalats* do not lose their character and become a decentralized justice deliverance mechanism like the *Lok Adalats*. In addition, trying to formalize or mainstream the *Nari Adalat* system through the more recently resurrected concepts of the *Gram Nyayalaya* or the *Nyaya Panchayats* is to run the risk of making them into formal systems with informal and local customs – with all the bureaucracy of the former and the “ad hocism” of the latter. As Jayshree, the dynamic and perhaps most experienced member of the Vadodara Mahaila Samakhya, put it:

We should not sacrifice our specific spaces in an effort to overcome our limitations, and end up becoming a more gender neutral space with an illusion of greater influence! We must not sacrifice women’s rights in the larger interest of ‘human rights’!

While the mainstream justice delivery mechanism must and will view women’s rights as a fundamental part of human rights, there is validity in the *Nari Adalats’* emphasis on interpreting human rights through what is easily accepted and understood from the context of women’s everyday experiences of abuse and violation.