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An Alternative Justice System for Women

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Several initiatives have been undertaken by the Mahila Samakhya Programme to empower rural marginalised women. Rigorous process-oriented interventions are made to enable community women emerge as defenders and activists of women's rights. Some of these women run the *Nari Adalat*, a forum to seek justice for women. This paper focuses on the emergence, structure, operational processes, effectiveness and limitations of *Nari Adalats* run by illiterate or semi-literate women of rural India.

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INTRODUCTION

“Justice denied anywhere diminishes justice everywhere” (Martin Luther King, Jr., American Baptist Minister and Civil-Rights Leader, 1929–1968). By the same token, justice denied to women diminishes justice to all. The UN Women's ‘Progress of the World's Women 2011–2012’ states that despite 139 countries guaranteeing gender equality in their constitutions, the ground reality shows that these laws exist only on paper.

The principles of social, economic and political justice are enshrined in the Preamble of the Indian Constitution. While the Constitution and substantive laws set the normative framework, procedural laws facilitate enforcement. Despite the enactment of protective laws for women, there are several lacunae in the content and procedural aspects of these laws (Nigam, 2005). Inadequate laws and loopholes in legislative frameworks, poor enforcement and vast implementation gaps and lack of voice for a large section of women are three important barriers to attaining justice

(*Nagaland Post*, 2010). According to the National Family Health Survey (2005-2006), only one-in-four abused women of India had ever sought help. Even in cases when they do seek help, justice is not always forthcoming. Data gathered by the National Crime Record Bureau (NCRB) suggests that not only crime against women in India is increasing, but the conviction rate is also falling. In 2005, while 1.55 lakh cases of crimes against women were registered across India, the conviction rate was only 19.8 percent. Similarly in 2006, the number of cases registered increased to 1.64 lakh, but convictions declined to 17.5 percent and, in 2007, the conviction rate went down to 14.9 percent against 1.85 lakh registered cases.

Globally rape and domestic violence account for about 5 percent of the total disease burden on women in the age range of 15–44 years (World Health Organization Report 2002). Violence against women embraces ‘exploitation, discrimination, upholding of unequal economic and social structures, the creation of an atmosphere of terror, threat or reprisal, and all forms of religio-cultural and political violence’ (Kelkar, 1992).

In the 1990s, the Government of India (GoI) became a signatory to several key international and regional conventions and treaties and endorsed the rights based development goals contained in the resulting consensus documents. These include declarations of the Vienna Declaration and Programme of Action (1993); Convention on Elimination of All Forms of Discrimination Against Women (1979); International Conference on Population and Development (1994); Fourth UN World Conference on Women, Beijing (1995); and the UN Millennium Declaration (2000).

The details of the action plans to ensure the implementation of the policies on which India has signed is still elusive. However, the Mahila Samakhyas (MS) initiatives for empowering women and forming collectives are noteworthy. This paper is based on the MS initiatives to deal with cases of domestic violence by creating structures that are gender sensitive, inexpensive, accessible and community based.

As per the UN Women Annual Report (2011–12), justice is out of reach for millions of women who want an accessible and responsive justice system. Interviews with several women across different countries reveal that women want an end to the impunity with which the crimes are committed against them and want the process of seeking justice to be dignified and empowering.

The *Nari Adalat* (NA) is an innovative initiative that has emerged as a community response to the injustice and domestic violence faced by

women. It came about with the implementation of the Mahila Samakhya Programme initiated by the GoI for the empowerment of women. This programme which started in 1989 in the three states of India, namely, Uttar Pradesh (U.P.), Gujarat and Karnataka, sought to bring basic change in the status of women through social engineering under the New Education Policy (NPE, 1986). The programme targeted the most marginalised sections of society living in the interiors of rural India. It aimed at empowering women through education. The programme was also directed at creating time and space for women to reflect, critically analyse their life situations and enhance their capabilities to take charge of their lives. Process oriented approach was key to the programme.

Research Methodology

Barring a participatory research carried out by the ICRW (International Center for Research on Women) in 2002, MS Annual Reports and a few media reports, there are not many systematic researches on the NAs. When the study was conducted, 30 NAs were operational in 12 districts of U.P. Primary data was gathered through the observation of NA processes at two NAs of U.P.: Saharanpur and Sitapur. Unstructured interviews were conducted with 20 MS functionaries, 20 village women activists and 10 applicants.

WOMEN, VIOLENCE AND THE FORMAL JUSTICE SYSTEM

Although homes are safe havens for families, they have also been spaces for maximum incidences of injustice in terms of discrimination in resources and opportunities (IIM, 2010-11; Kelkar, 2011), curtailing freedom and choices, and sexual abuse (ICASO, 2007). Though all this comes under the purview of the Protection of Women from Domestic Violence Act (PWDA), 2005, the stakes for demanding justice against domestic violence can be very high for women.

The structures of NA acquire greater significance as the formal justice systems are inaccessible to rural women for many reasons. First, women may be reluctant to disclose incidences of exploitation and violation of rights. As quoted in Mahila Samakhya (2011) '*ghar ki bat ghar mein rahani chahiye*' (whatever happens inside the home should remain inside the home). Second, women are inhibited by the intimidating environment around the law enforcement agencies, for example, the police, lawyers and the judiciary (NCW, 2000). Third, women are very often discouraged from registering cases of domestic violence and rape and are instead subjected to

humiliating questions (Mahila Samakhya, 2011). Fourth, registering cases of harassment and violence at home under section 498A has consequences of arrest, intimidation and lodging of criminal cases against family members. Thus women, who file FIRs under 498A are usually ostracised by society and the burden of blame of indicting her own family members, is placed upon the woman herself (NCW, 2000).

Complications within the existing formal justice systems have led to the emergence of community-level arbitration and dispute resolution systems. *Shalishis* in West Bengal are popular and effective systems for resolving conflicts and ensuring justice (Das and Maru, 2011; Shramajibee Mahila Samity, 2003). Elected *panchayats* (local self-governance) and caste *panchayats* are also systems of resolution. However, these community justice systems may not always be fair as the arbitration and punishment is derived from culturally determined values and systems. Often these community spaces are not democratic in selection of its core team and are occupied by men of influence whose decisions may not be in the interest of the weaker sections of society, for example, women and marginalised sections of society. In the last few years, India has witnessed many unfair decisions of *khap* and caste *panchayats* and inimical to the interests of women (*Indian Express*, 2012; Kumar, 2012). In this backdrop, NAs have demonstrated a more democratic community-based justice system that is friendly to women and free of cost.

Emergence of the *Nari Adalat*

In order to understand the emergence of the NA, it is important to understand the process-oriented approach of the MS that mandates social engineering as an important tool for empowerment of women and the marginalised. The process begins with the selection of a *sahyogini*, a female community based worker. *Sahyoginis* are educated on the feminist perspectives of patriarchy and trained in community mobilisation processes. These *sahyoginis* facilitate the formation of women collectives at the village level called *sanghas*. Women are encouraged to talk about the issues concerning their lives, be it health, children's education, domestic violence, family disputes, *panchayat* processes, discrimination in the implementation of government schemes, and so on. Through these processes women learn to analyse patriarchy and how the existing laws, rituals, practices and social customs reinforce women's secondary position in society. The *sahyogini* facilitates the discussion and analysis of cases of abuse, domestic violence and discrimination. All this leads to enhanced self-esteem, self-confidence,

negotiation skills and the desire to change their destiny. *Sangha* members are exposed to intensive trainings, study tours and interactions with the administration. Gradually, women start assuming leadership roles and seek opportunities to exercise their legal, political, economic and human rights (Sharma and Vinayek, 2002).

The *sahyoginis* and *sangha* women, often supported by MS senior functionaries, analyse the cases within the feminist perspective. The *sangha* members counsel clients and suggest strategies to deal with their problems. In difficult cases, MS district level functionaries also intervene. However, most of the cases are very demanding and time consuming. A *sahyogini* reported “it is a great difficulty for us... we are torn between conducting the meeting or handling the case” (Mahila Samakhya, 1994). The MS functionaries gradually realised that the cases did not receive the requisite time and attention. Hence, NAs were established as an alternative system of justice. It is important to note that NAs are allowed to function by the MS only after strong community mobilisation processes have taken place and when the *sangha* becomes strong enough to understand women’s issues and acquire the ability to arbitrate within a feminist perspective.

Constitution of the *Nari Adalat*

The NA consists of a core team of about 10–20 selected *sangha* women. The selected women should have a feminist perspective, high commitment to gender justice, good analytical skills, balanced logical thinking, skills to articulate and above all willingness to prioritise the work of NA over their personal agenda and personal commitments (Mahila Samakhya, 2007; 2011). Care is taken that at least one or two members of the selected core team are educated enough to read documents and write judgments. As gender and women’s issues cut across caste and class, the core group works amicably most of the time.

Training is central to the building of their consciousness, sensitisation to women’s issues and building legal awareness (ICRW, 2002). Though most of the members of the NA have never attained any formal education, they undergo legal literacy trainings and several refresher courses as well. A training manual *Nyay ki Seedhi* was developed in Saharanpur district. Innovative games and methodologies were developed and the curriculum was made in a manner that even illiterate women could be given legal literacy (Mahila Samakhya, 1998).

NA members go through a six-tier training process. The training consists of important acts and laws related to women’s issues as well as how to use

them in the context of their socio-political realities. In the first tier, NA members are trained on legal processes and the levels of law enforcing machinery through which the criminal cases undergo. The second tier consists of marriage laws and other laws concerning women. The third tier is a refresher course and review of the first and second tiers. The fourth tier comprises laws relating to special marriage acts, separation, crimes against women and prostitution. The fifth tier deals with laws related to land rights, property tax, property rights, inheritance and so on. The last tier is again a refresher course. The modules are regularly updated.

Most of the trainings are held at the district level. The period of training varies; generally the duration of a training programme is approximately one year. These women start participating in NAs after 2–3 levels of the training sessions are completed. A core legal team of MS functionaries are present when the NA is held and provide on the job support and guidance as per requirement. Difficult cases are resolved in consultation with the district level workers. Lawyers also assist applicants to file their cases at the police stations if they cannot be resolved by the NAs.

Since 2007, the MS is educating the *sangha* and NA members on various new acts such as the PWA 2005 and the Right to Information Act. Organisations like ‘Marg’ and ‘Jagori’ regularly impart legal literacy training to village women. Renowned feminist lawyers such as Flavia Agnes and Arvind Jain are regularly invited to train district level functionaries.

Operational Processes of the *Nari Adalat*

The NA sessions are conducted on a fixed date, time and venue every month. In U.P., the venue for the NA is usually a public space such as a temple, the premises of block level government buildings or even the space beneath a banyan tree. The cases brought before the NA are related to issues of dowry, trafficking, alimony, alcoholism, violence, property disputes, sexual harassment at home and the workplace, discrimination in wages, rape, separation and domestic violence. It is observed that 80 percent of the cases are related to domestic violence and have been resolved successfully (Mahila Samakhya, 2005).

The rules, regulations and operational mechanisms of NAs vary across the different districts of U.P. For example, the NA at the Pisawan block of Sitapur was held only once a month in the initial years; it is now held four times in a month. With an increase in the number of cases, the core team set aside two days — 14th and 15th of every month — for the registration of

cases and two days — 29th and 30th — for hearing, arbitration and judgment. On the day of the registration, case details are taken and strategies to deal with the case are discussed and developed. The work related to the case is divided among members. While some of the members visit the complainant's village to collect or verify the facts of the case, others visit the village of the defender. Information is also gathered from the police and the *Pradhan*, if necessary. Following these visits, both parties are summoned to appear before the NA on the decided date and time.

In due course of time, the NA has grown into a structure that is both respected and feared. It also acts as a pressure group. Sometimes pressure is put on the parties through the *panchayat* or other locally influential people to appear before the NA. If the party does not appear, the NA members decide the case in absentia or go to the location of the other party for resolution. The arbitration is conducted in public. The *Pradhan* and police officials are also invited, depending on the requirement of the case.

The audience actively participate in the arbitration process. The NA facilitates a mutually satisfactory decision between both the parties. Some cases may need more than one hearing. The final judgement is written on a stamp paper and signed by both the parties. A copy of the document is given to both the parties. The implementation of the judgement and follow-up is also a critical part of the NA operational processes. The major responsibility for the implementation of the judgement is on the *sangha* women, the community and the witnesses who are signatories of the judgement. There is a regular follow up by the NA members and *sahyoginis*. In case of non-compliance of judgement, cases are brought back by the petitioner or *sangha* members to the NA. The witnesses and both the parties are recalled and arbitration takes place all over again.

Several cases of property disputes have also been handled effectively by the NA. In Chitrakoot, the NA brought justice to a woman whose access road to her house was blocked by a socially stronger upper caste neighbour. Similar cases were resolved in Saharanpur, Sitapur and Varanasi districts as well.

The process steps of the NA reflect what has been labeled as 'restorative justice' (Marshall, 1994). He had suggested that crimes can be reduced by strengthening bonds of inter-dependency and holding offenders accountable. The process of restorative justice involves all stakeholders to resolve the case collectively. It also suggests involving families of both the offender and the victim as well as any member of

the community who can influence the judgement or contribute in the prevention of its recurrence. The NA arbitration processes also reflect the model of retributive justice by accessing their inherent wisdom of 'what will work'.

OUTCOMES

Observations and available documents clearly indicate that the NAs have positively impacted the socio-political and family environment of women. It is also important to reiterate here that the success of the NA is largely a consolidation of the MS processes initiated at the grassroots level with the formation of the *sanghas*. It supports the feminist theory of building a critical mass of women within the community (Walker, 1990) who can challenge the oppressive norms, beliefs and attitudes of any community to affect social change.

Regular sensitisation programmes conducted for adolescent boys and men, administrative officials, police and elected members of the *panchayat* have greatly benefitted in influencing the mindset of the community in support of justice for women. Documented case studies are evidence to this (Mahila Samakhya, 2008; 2009; 2010).

Even though the NA has no legal sanctity, it has become an instrument for seeking justice. People now perceive the NA as a forum managed by gender sensitive people and can be assured of a fair trial. Mobility, access and control over resources, exercising choices and decision-making are important criteria for empowerment (UNDP, 2007). In recognition of their work, nine *sangha* women of U.P. were among the 100 women from India nominated for the Nobel Peace Prize, 2005 (Mahila Samakhya, 2005).

The process of empowerment has increased the self-esteem and confidence of women. They have started raising issues in *panchayats* and performing the role of *Pradhans* very effectively (Vinayak and Sharma, 2002). A petitioner at the NA said, "----earlier I had attempted suicide, but now I have gained strength to live" (ICRW, 2002). Though there is no quantitative data to support the claim, in-group discussions with *sangha* women in Varanasi before the Dutch Review Mission in 2003 categorically revealed that suicide rates had gone down significantly. A *sangha* woman told members of the Mission that before the MS came to their district, "women will go to the railway line crossing behind their village to die. But now we have desire to live as our problems are listened to and also sorted out."

The case of a 50-year-old Phulmati of Bhakuraha village of Sitapur shows how public opinion and actions are influenced in favour of women due to the intervention and sensitisation processes of the NA. Phulmati, a widow, was thrown out of her marital home and declared characterless. One day, she eloped with a man, Gopamau (Mahila Samakhya, 2008). They both went underground due to fear of society. NA members found her and got their relationship approved in public, which otherwise would have faced public condemnation, violence or even honour killing.

The *Sangha* and NA women are raising their voices against traditional social practices and local rituals that demean and undermine the status of women, for example, widows in Varanasi who were condemned and considered inauspicious. These widows are now encouraged to participate in all weddings conducted in their homes (Mahila Samakhya, 1993; 1994; 2001). A major revolution was triggered during *Nagpanchami* in Sitapur, Gorakhpur and Allahabad when the tradition of beating up a doll and discarding it in a pond was replaced with a doll on a swing, symbolising the importance of taking care of women. The *pundits* in religious places like Naimisharanya in Sitapur were forced to install huge swings after much opposition and negotiation (Mahila Samakhya, 2001; 2002; 2003; 2004). Many MS functionaries have done away with the ritual of *Kanyadan* (giving away of a daughter to the bridegroom's family), an auspicious ceremony observed during Hindu weddings, which has implications for the objectification of women and parents relinquishing all rights over their daughter. The police and NA network with each other.

Sharda of Charthawal block, District Muzaffarnagar, got her husband behind bars for making raw liquor. Although brutally beaten by her husband, she is not afraid to get him jailed again.

Twelve case studies of women brought before the NA were studied (ICRW, 2002). Of these, ten reported that they were living happily after the NA intervened. The remaining two ended in divorce.

Violence on women has reduced more than 75 percent in the blocks where the *sangha* is strong and the NA is functioning regularly. Cases have drastically reduced from these villages (Saphia –District Coordinator, Mahila Samakhya, Sitapur).

The media has extensively covered stories on how the NA and *sangha* women were actively breaking liquor dens in Abdulpur village in Muzffarnagar. As a result villages located in these few blocks have seen reduced violence against women. These models can be replicated by the government and other NGOs for larger impact. Initially most of the cases brought to the NAs were by the lower castes or strata of society; however,

as the success of the NA became widespread, people from the upper strata have also started registering cases.

Hurdles, Limitations and Sustainability Issues

Functioning as an NA member is not without complexities and conflicts. Women face tremendous opposition from family, community, *panchayats*; often leading to increased violence and rejection. For example, when women started raising their voices against violence, a MS functionary was raped in Saharanpur (Mahila Samakhya Review Report, 1992-93). Opposing violence and injustice becomes all the more difficult when the administration and police support the party with vested interests. For example, the son of Shrimati Angoori, President of Women's Federation at Muzaffarnagar, was wrongly convicted for crimes he had never committed by the opposite party in connivance with police. (Mahila Samakhya District Report, 2008).

Jinnati from Sitapur district was an active MS *sangha* woman. She was killed by her husband during the eight month of her pregnancy as he suspected that she was carrying the child of another man. All *sangha* women remained silent as Jinnati was suspected to be an infidel and no complaint was lodged against the husband. It took the MS functionaries many months to make the *sangha* women realise that the husband deserved to be punished for the crime. He was ultimately convicted and the *sangha* women took collective responsibility of Jinnati's children.

Working for the NA has economic implications on the earnings of women as they are not paid for work related to the NA. On the contrary, they have to sacrifice their daily wages on the days they go for NA work. For example, in some districts like Saharanpur, women are not even paid conveyance by the MS. A token amount of Rupees 10–30/- is charged as case registration fees. The petitioner, however, is expected to pay for the conveyance and other expenditures incurred by the team.

Another limitation is that most of the NA members are illiterate or semi-illiterate and therefore find documentation difficult. They are unable to refer to legal books for clarifications during case resolution.

The NA members themselves have deep-rooted patriarchal belief systems (refer Box 3 for the case of Jinnati). Awarding more stringent punishment to women for infidelity than to men for the same crime (ICRW, 2002) reflects their patriarchal value base. It is also observed that the NA members find arbitration more difficult when cases belong to their own family, village or caste, as these are also spaces of emotional, social and economic support to the activists. Hence, challenging the structures of

caste and social systems in one's own family or community is much more difficult (ICRW, 2002).

Currently, the follow-up mechanisms of the NA is weak; systematic planning is required to ensure that the larger discourse on violence is addressed and maintained along with sustaining the efforts of the NA in case resolution (UNDP, 2007).

Men are sporadically involved in case discussions during arbitration proceedings. As of now, most of the meetings are attended by women. For a more sustainable and speedier social change in favour of equality between sexes, men need to be equally involved in the dialogue on violence against women and become proactive members in its elimination.

The NA has no legal sanctity, as it is not a formal part of the nation's judicial system. There is a debate if any effort in this direction will facilitate or destroy the structure.

Despite these limitations and hurdles, NAs are functioning very effectively and have been observed as the most effective community response to domestic violence (ICRW, 2002).

CONCLUSION

The research into community-based responses reveal that one of the primary features of such innovative programmes is the ability to transform one woman's private complaint into a community-wide concern. As per the ICRW study, these methods of addressing domestic violence offer lessons for communities all over the globe.

Similar initiatives have emerged at various other Mahila Samakhya in different states and districts such as Uttarakhand, Gujarat, Andhra Pradesh, Karnataka, and so on. As mentioned above, Shailishi in West Bengal is a similar initiative. The ICRW study compared the initiatives of Shailishi in West Bengal, Mahila Panch in Gujarat, Sahara Sangh in Uttarakhand, and the NA of Saharanpur, U.P. The study concluded that these alternative justice forums evolved due to "woman-friendly nature and procedures of the legal system, the problems of access and expense and the discomfort with a justice based on proof for dealing with sensitive and complex issues such as violence". The study observed these forums to be informal, accessible to women, sensitive to their issues, flexible and acceptable to the community. The study further concludes that "Each of these responses has evolved spontaneously and as an effective method to

deal with the issue of domestic violence and yet, each follows similar steps and procedures in the process of case resolution.”

Researchers found that the common perception of the NA among community members is that they are transparent, non-partisan, and ‘justice’ is ensured. The NA is effective as it reaches out to the community to create an enabling environment of justice for women. Support from a critical mass with feminist ideology created by the MS also plays an important role in the effectiveness of NAs.

It is a challenge to balance and negotiate contradictions between the rights based ideal solution and the pragmatic community based solution for women; redefine boundaries for women as well as abide by the cultural norms without creating much conflict; give ownership to community for gender justice as well as challenge it for exploitative norms and values. These alternative forums are gradually gaining success and clearly indicate that social accountability is more effective than mere legal punishment.

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