

Nari Adalat and Mahila Panchayats: India's Efforts to Integrate Intersectional-Feminism within the Alternate Justice System

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Introduction

The pursuit of equality by women is impeded by perpetuating patriarchal, cultural, and caste norms. Despite the existence of comprehensive legal frameworks, the constitutional commitment to equality remains elusive for women. In practice, gender bias pervades the entire justice system. Various intersecting factors, including tradition, caste, religion, and culture, collectively obstruct the realisation of women's rights in the Indian context.

The emergence of 'women's courts' or 'Nari Adalat' in contemporary India represents a noteworthy development, serving as specialised alternative dispute-resolution (“ADR”) forums for addressing women's marital and familial issues at the grassroots level. Nari Adalat is a gender-sensitive and innovative solution by the Ministry of Human Resource Development in India to further women's rights, especially in light of rising cases of violence against women. Nari Adalats have comprehensive jurisdiction to investigate and resolve a wide spectrum of issues faced by women.

This article underscores the distinctive attributes of these Nari Adalats, critically examining their efficacy in dispensing justice to those seeking their assistance. By analysing statistical data to strengthen its arguments, this paper advocates for legislative instruments to facilitate transformative justice to ensure equal representation for women within adjudicatory systems. Through this analysis, this paper endeavours to contribute to the ongoing discourse of using legislative instruments to pave the way for gender justice.

The Evolution of Nari Adalats in India

The Nari Adalat is a court for and by women to service their needs. Nari Adalats engage with legal pluralism while ensuring the advancement of women's human rights and empowering them with solutions tailored to their specific issues.

In India, especially in rural India, women face issues pertaining to familial abuse and sexual assault (among others), which require considerable economic resources and emotional capacity to address via courts. These Nari Adalats, functioning in tandem with local authorities, engage in quick dispute resolution to address the deep-rooted problems that manifest in the everyday lives of women. Thus, Nari Adalats introduced a new legal dimension into the existing framework of state law, legal aid services, local adjudicatory systems, as well as informal family and community mediation.

Nari Adalats are a relatively recent phenomenon, though their roots can be found in the “*Mahila Samakhya*” programme initiated by the Central Government to spread awareness and empower women at district levels. By establishing a secure and non-threatening environment for women to articulate their concerns, Nari Adalats, part of the two-pronged “*Mission Shakti*”, serve as the next step in empowering women through ADR. These courts provide women with a platform to negotiate satisfactory resolutions with spouses and family members or to explore avenues to extricate themselves from challenging circumstances. The mechanism acts as an informal dispute resolution for domestic conflicts where recourse to the judiciary is inaccessible or inefficient. The courts are typically run by non-governmental organisations with financial backing from governmental or semi-governmental entities such as the State Women's Commissions and Legal Aid Societies.

Nari Adalats, operating as women collectives, function via a structured process designed to empower women and address their grievances at the grassroots level. Comprising committed and trained women, these collectives, typically consisting of 7 to 11 members, first undergo extensive training in women-related issues, laws, and social dynamics. They then proceed to identify and tackle a range of socio-economic, cultural, and rights-related challenges faced by women in their communities. Central to their approach is the provision of alternative dispute resolution mechanisms (such as mediation) aimed at providing quicker and more accessible solutions as compared to traditional legal processes. Additionally, Nari Adalats engage in public awareness campaigns to educate the community about legal rights and entitlements under various government schemes. They also gather feedback to enhance the effectiveness of these programs and services. While members do not receive monetary compensation, logistical support such as covering meeting expenses and providing identification badges or uniforms, is

provided by the Ministry. This integrated approach underscores the vital role of Nari Adalats in empowering women, fostering community engagement, and facilitating access to justice.

The Need for Nari Adalats

The growing rate of violence and offences against women prompted the Indian government to seek out solutions to mitigate such issues. This led to the setting up of various alternative dispute resolution systems such as the 'Nyaya Panchayats' through the 42nd Amendment to the Indian Constitution and 'Lok Adalats' through the Legal Services Authorities Act 1987. This, in conjunction with rising feminist activity in the 1980s, led to the implementation of various laws such as Section 304-B,¹ and the amendment of Section 376² of the Indian Penal Code, to increase the penalties for rape and better protect the privacy of victims. Section 498A of the Criminal Procedure Code³ which dealt with dowry harassment, and the Protection of Women from Domestic Violence Act⁴ were both enacted in 2005. Despite the implementation of such legislation, aimed at protecting women, the majority of women experiencing abuse could not seek effective legal recourse. This is due to the various challenges faced by women during the implementation stage; largely stemming from the lack of financial allocation for enforcement. While certain state administrations have been allocated partial funds by the central government, the majority have not, resulting in a widespread failure to appoint dedicated 'protection officers' as mandated by the legislation. Consequently, many states have opted to assign these responsibilities to existing officials without relieving them of their present duties.⁵

The structure of Indian society is such that women experiencing any marital issue or distress usually address it with their family, including their natal family, who dissuade them from officially reporting any such issues.⁶ As a result, legal recourse is usually seen as the last resort for women after alternative avenues have been exhausted. Cultural norms in India further discourage bringing family disputes to court, as family matters are considered to be private and confidential, confined within the bounds of family. This, coupled with the widespread

¹ Indian Penal Code 1860, s 304-B.

² Indian Penal Code 1860, s 376.

³ The Code of Criminal Procedure 1973, s 498A (India).

⁴ The Protection of Women from Domestic Violence Act, 2005 (India).

⁵ Bhumiika Jhamb, "The missing link in the Domestic Violence Act." (2011), *Economic and Political Weekly*, <https://www.jstor.org/stable/23017848>

⁶ Ameeta Kalokhe, 'Domestic violence against women in India: A Systematic Review of a Decade of Quantitative Studies', (2017) 12 *GPH* < <https://pubmed.ncbi.nlm.nih.gov/26886155/>> accessed 20 February 2024.

scepticism of the efficacy of courts, delays in redressal, financial constraints, court fees, and bribes influencing decisions, only impedes women from seeking legal recourse.⁷ This established the need for local platforms to ensure the speedy delivery of gender-based justice. This need was filled by the implementation of Mahila Adalats which were largely run by NGOs.⁸ Subsequently, this system was formalised and implemented as part of ‘*Mission Shakti*’ by the central government via the establishment of Nari Adalat.⁹

Need for Female Representation in ADR

An obstacle to addressing gender-based disputes has been the fact that there exists a predominantly male-dominated judiciary, which adheres to patriarchal values and standards while dealing with issues centred around women. It has been observed that in judgments wherein women were deemed worthy of sympathy on account of being the “fairer sex,” they were expected to conform to stringent standards of feminine propriety to be worthy of the justice afforded to them.¹⁰ The oft-paternalistic tendency of the judicial system, and the emphasis on reconciliation among parties, leads to a vacuum in the recourse available for women.¹¹ The main motivation of Nari Adalats is not to seek immediate reconciliation of both parties, but to provide immediate recourse to the aggrieved.

A woman-led panel might also be better at understanding the deep-rooted problems and their causes when dealing with sensitive topics. The need for gender equality not only in terms of rights but also via representation is evident. Although female representation in the judiciary is on the rise, the truth remains that the system is rooted in patriarchal values. Moreover, the judicial system is inaccessible, overburdened and plagued with delays, leading to an inefficacy in managing time-sensitive issues concerning female safety. This calls for an increase in

⁷Roma Mukherjee, ‘*Women, Law, and Free Legal Aid in India*’ [1998] *The Journal of Legal Pluralism and Unofficial Law* 101.

⁸ Mahila Samakshya, *Joint Review Mission*, (Joint Review Mission No. 4, 2013). <https://www.education.gov.in/sites/upload_files/mhrd/files/upload_document/AideMemo_MSJRM2013_Formated.pdf>.

⁹ Ministry of Women and Child Development, ‘*Government to implement the component of "Nari Adalat" in a phased manner under Mission Shakti*’ (2023) <<https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1983148#:~:text=As%20per%20the%20cost%20norms,Adalat%20during%20FY%202023%2D24>> accessed 20 February 2024.

¹⁰ Patricia Uberoi, ‘*When is a Marriage Not a Marriage? Sex, Sacrament and Contract in Hindu Marriage.*’ (In *Social Reform, Sexuality and the State*, 319-346, Sage Publications), 1996.

¹¹ Sylvia Vatuk, ‘*Where will she go? What will she do?*’ *Paternalism Toward Women in the Administration of Muslim Personal Law in Contemporary India*’ (Bloomington: Indiana University Press, 226-238), 2021.

women's participation in the conflict resolution processes to promote more effective engagement in contributing to a comprehensive understanding of the issues while dealing with any gender-based crimes.

An informal and non-binding method of dispute resolution offers a middle ground in a patriarchal society where women are often encouraged to keep matters private and not bring disrepute to the family. According to a recent study by the International Centre for Research on Women ("ICRW"), feminist ADR or reformed informal justice systems specifically created to address women's problems are the only effective means of preventing intimate partner abuse.¹² This study also reveals that the vast majority of women prefer informal justice mechanisms.¹³ This is because women-led panels understand the conflicts and issues that impact the household and community while engaging in meaningful dialogue with the victim. Furthermore, the solutions suggested are also in line with an understanding of the hurdles that one might have to face when dealing with such societal norms.

Examining the Efficacy of the Nari Adalat System

One of the major pitfalls of Nari Adalats as an ADR framework is the lack of uniformity in the composition of the panels which might differ from state to state, reflecting the cultural distinctiveness of Indian states.¹⁴ Furthermore, although these Adalats function akin to a quasi-judicial body and receive state funding, they have not received any official state recognition.¹⁵ While providing the option to resort to civil courts later, the Adalats maintain a primary focus on familial issues and property-related disputes outside the formal legal system, offering 'social justice' as an alternative to 'legal justice'. In essence, Nari Adalats present an ADR alternative to family courts. Nari Adalats offer a congenial space for victims to speak freely about their issues. Yet, these forums are unable to legally enforce agreements, relegating claimants' circumstances to the mercy of conservative Indian social values. The success of these Adalats

¹² Brian Heilman, Nastasia Paul-Gera, Tina Musuya, Sara Siebert, *'Whose Justice? Whose Alternative? Locating Women's Voice and Agency in Alternate Dispute Resolution Responses to Intimate Partner Violence'* (ICRW, 1-28), 2016.

¹³ Ibid.

¹⁴ Sabiha Hussain, *'Shariat Courts and Women's Rights in India'* (*'Womens Movement's Engagement with Law: Existing Contradictions And Emerging Challenges'* organised by Centre for Women's Development Studies, New Delhi, March 2006.)

¹⁵ Sushma Iyenger, *'A Study of Nari Adalats (Women's Courts) and Caste Panchayats in Gujarat'* (NewsReach, July-August 2010) < <https://www.pradan.net/sampark/wp-content/uploads/2019/08/A-Study-of-Nari-Adalats-and-Caste-Panchayats-in-Gujarat-By-SUSHMA-IYENGAR.pdf> >

in achieving lasting reconciliations remains uncertain. The non-binding nature of such decisions leaves scope for legal intervention and drawn-out legal proceedings.¹⁶

However, it must be noted that Nari Adalats may inadvertently reproduce cultural norms.¹⁷ The bubble in which rural conflicts are addressed is restricted by stereotypical mindsets and regressive ideologies, thereby impeding gender equality. Though these Adalats are held in collaboration with NGOs and state-run entities, the ability of the panels on these Adalats to override cultural assumptions while dealing with gender-based issues is a significant determinant in the success of this framework.¹⁸ The focus of Nari Adalats is not to solve an issue at any cost but to provide a viable forum for potential settlement as a result of which there exists no tangible means to assess the success of this mechanism in the works.¹⁹

The intricate framework within which Adalats function is emphasised by larger social concerns of discrimination, gender prejudice, and women's property rights. Governmental and non-governmental organisations continue to face difficulties in their endeavour to reform society as a whole. The Adalats prioritise addressing significant societal issues and improving individual women's lives within the constraints of a patriarchal society.

Although this system received legal recognition in 2022, the framework of Nari Adalats as a dispute resolution mechanism was prevalent in South India before this as a means to achieve family justice and protect women. Although no official statistical analysis has been done on the outcomes of Nari Adalats across India, interviews conducted at a micro-scale across different Nari Adalats show a great degree of satisfaction with the outcome, especially for domestic issues.²⁰ The intersectional furtherance of women's rights across religions and castes has been exemplified in the Nari Adalat system and governmental recognition of these systems via *Mission Shakti* extends greater legitimacy to this ADR mechanism.

¹⁶ Sushma Iyenger, 'A Study of Nari Adalats (Women's Courts) and Caste Panchayats in Gujarat' (NewsReach, July-August 2010) < <https://www.pradan.net/sampark/wp-content/uploads/2019/08/A-Study-of-Nari-Adalats-and-Caste-Panchayats-in-Gujarat-By-SUSHMA-IYENGAR.pdf> >

¹⁷ Shalini Grover, 'Marriage, Love, Caste and Kinship Support: Lived Experiences of the Urban Poor in India. New Delhi' (Social Science Press), 2011.

¹⁸ Srimati Basu, 'Judges of Normality: Mediating Marriage in the Family Courts of Kolkata, India', (University of Chicago Press), 2013.

¹⁹ *Supra*, 11.

²⁰ Manju Agarwal and Kakul Hai, 'Women Courts: An Alternative Justice System for Women' [2016] (The Indian Journal of Social Work) <<https://journals.tiss.edu/ijsw/index.php/ijsw/article/viewFile/122/121>>.

In addition to legal consequences, one of the most powerful weapons in the hands of Nari Adalats is the element of social accountability. Shame has been weaponised by these organisations and deemed as a consequence fit for abusers. Thus, Nari Adalats act as a means of empowerment against the brutalities faced by women and provides a safe space for subdued women to address the abuse encountered in their day-to-day lives. The localised and non-contentious forum provided by Nari Adalats provides for adequate privacy, but the shame within the community itself acts as an effective punitive mechanism to prevent domestic or sexual violence.

With legitimacy extended to this system via *Mission Shakti*, the organisations may be able to effectuate legal consequences and penalise abuse in a much more effective manner. With governmental funding in place, there now exists economic incentives to further this form of dispute resolution. Such funding contributes to the affordability of this system, thereby making it a more viable solution for dispute resolution in rural areas. However, concerns about governmental involvement in informal mechanisms like this may raise concerns about institutional bigotry trickling down to these systems.

International Women-Centric ADR Systems

The extent of female participation in ADR mechanisms has been looked into and acknowledged by several international organisations such as the United Nations. In the Security Council Resolution 1325 on Women, Peace and Security, the United Nations recognised the role of women in peace-making, which was later adopted in 2000.²¹ The United Nations has also made active efforts in funding and involving women in the conflict resolution and mediation process, such as the Peace Huts initiative in Liberia.²² Peace huts in Liberia are an example of how women-run alternative dispute resolution mechanisms can be better suited while dealing with gender-based issues.²³

²¹ United Nations Security Council (Meeting No. 4213) Security Council Resolution 1325 on Women, Peace and Security (31 October 2000).

²² Florence Wullo Anfaara, "To Include or Not to Include: Men and the Liberian Women's Peace Hut Initiatives Towards Transformational Justice", (Africa Western Collaborations Day), 2020 <https://africa.unwomen.org/sites/default/files/Field%20Office%20Africa/Images/Publications/2020/Systematization%20Report%20June%202019_final_web.pdf>.

²³ UN Women, *An Account of Support Provided by UN Women* (An Account of Support Provided by UN Women, 2009-2018) <https://africa.unwomen.org/sites/default/files/Field%20Office%20Africa/Images/Publications/2020/Systematization%20Report%20June%202019_final_web.pdf>.

UN Women, previously known as the United Nations Development Fund for Women (“UNIFEM”), started working in Liberia in collaboration with the Ministry of Gender and Development (“MGCSP”) around 2004. They have actively contributed to the formulation of strategies, policies, and legislation aimed at integrating gender into national development, ensuring the protection of women and fostering their economic empowerment. The Peace Hut initiative is a formidable example of such an empowering initiative. Between 2008 and 2011, UN Women in Liberia aligned its efforts with the Global Strategic Framework and the West Africa Sub-Regional Strategic Plan, focusing on key thematic areas. One of the core objectives while implementing these plans included improving women’s participation in leadership and peace-making, and allowing for gender equality in national and local development planning, enhancing women's economic empowerment while combating violence against women and girls.

UN Women’s collaboration with the Peace Huts was a key step in implementing the aforementioned plans to improve community engagement and create awareness. These Peace Huts, as defined by UN Women, are community centres led by women, serving various purposes such as providing counselling for individuals affected by the civil war, mediating local disputes, acting as watchdogs over the police and justice services, preventing gender-based violence and referring such victims to support services. These Peace Huts exemplify the importance of enforcement in achieving lasting solutions when addressing gender-based issues. Enhancing access to education, skills training, and opportunities during and after negotiations has proven to be an effective strategy in addressing gender-based violence concerns. The steps taken by Peace Huts in collaboration with UN Women to create awareness about women’s rights also became a key component when deciding solutions to any issues presented by women. Increased education and awareness of one’s rights allowed for the negotiations to be more concrete and well-suited to women’s needs rather than focusing solely on familial units. These Peace Huts act as a contemporary example of a women-led, community-based conflict resolution mechanism, contributing significantly to fostering dialogue, mediation, and justice-seeking within the community.

‘*Shalish*’ in Bangladesh used to be the equivalent of Nyaya Panchayats in India, i.e. a grassroots-level alternate dispute resolution mechanism. The rules of the *Shalish* framework were such that the composition used to be all male. The elite status of members of the *Shalish*

is what gave the traditional *Shalish* its power and authority. Defying the *Shalish* would mean defying the male village elders. Such *Shalish* focused on maintaining the integrity of the familial unit rather than focusing on individual concerns. Women in Bangladeshi society similar to that of Indian society were encouraged to compromise and settle the problems within the family as seeking legal recourse was considered to bring dishonour to the family. The bias towards men as preferred members of the *Shalish* combined with the patriarchal narratives of a woman's sexuality, made it difficult for women to seek justice for gender-based issues. This gap in access to speedy justice was echoed during the feminist movement in Bangladesh, which led to the reformation of the *Shalish* system and allowed for women jurors on the panel. The reformed *Shalish* framework in Bangladesh is completely NGO-administered and does not have a direct governmental affiliation. They share an indirect relationship with the government through the Union Parishad members as they are legally allowed to arbitrate family disputes and hold village courts based on the framework of a *Shalish*.²⁴ Though these *Shalish* deal with all types of issues and not just gender-based or caste-based issues, the involvement of women in such systems has greatly helped in allowing women to access an informal yet speedy dispute resolution system. The *Shalish*'s efficacy is strengthened by its recognition by the UN as an effective dispute-resolution mechanism.

Suggestions and Recommendations

To improve Nari Adalats, several key areas require attention. First and foremost, standardisation of panel composition across states is essential to ensure fairness and consistency in the adjudication process. Guidelines should be established for the selection of panel members, with representation from diverse backgrounds and expertise in gender issues being mandated. This will enhance the credibility and effectiveness of Nari Adalats in addressing the complex needs of women from various socio-cultural contexts.

Secondly, Nari Adalats would benefit from official recognition from the state, which would elevate their status and integration within the formal justice system. This recognition could lead to better coordination with state institutions, including training opportunities and financial support, thereby strengthening the capacity of Nari Adalats to serve women in need.

²⁴ Fauzia Erfan Ahmed, Jyotsana Parajuli, and Anna-Lucia Feldman, '*Domestic Violence and Social Change: Feminist Informal Justice Systems in India and Bangladesh*', (The Lakshmi Mittal and Family, South Asia Institute, Harvard University), 2017

Additionally, enhanced training programs focusing on gender sensitivity, intersectionality, and cultural competency are necessary for panel members to effectively address the multifaceted challenges faced by women.

Thirdly, while Nari Adalats primarily focus on mediation and compromise, there is a need for mechanisms to enforce agreements reached within these forums. Collaboration with local law enforcement agencies or the establishment of follow-up procedures can ensure compliance with decisions made in Nari Adalats, thereby enhancing their efficacy in delivering justice. Moreover, expanding the jurisdiction of Nari Adalats to address a broader range of issues, such as property disputes and violence against women in public spaces will increase their relevance and impact in promoting gender justice.

Lastly, collaboration with NGOs and international agencies is crucial for sustainable funding and support for Nari Adalats. This partnership can facilitate knowledge exchange, capacity-building, and resource mobilisation to strengthen the effectiveness of these forums. Additionally, public awareness campaigns are needed to promote the role and importance of Nari Adalats in providing accessible and gender-sensitive justice. By implementing these recommendations, Nari Adalats can further empower women and contribute to gender equality within the Indian justice system.

Drawing insights from the comparison with *Shalish* in Bangladesh and Peace Huts in Liberia, Nari Adalats can enhance their effectiveness by incorporating women's participation as jurors or panel members, ensuring a balanced and inclusive decision-making process akin to that of the reformed *Shalish*. Additionally, striving to become community-led initiatives, similar to Peace Huts, can empower local women to take ownership of dispute resolution processes, fostering trust, increasing accessibility, and promoting sustainability by aligning solutions with community needs. Nari Adalats should evolve into multi-purpose centres, inspired by the multifunctional approach of Peace Huts, offering not only dispute resolution services, but also counselling, education, and awareness-raising activities to address underlying social issues contributing to gender-based conflicts. Moreover, forging partnerships with international organisations, akin to the collaboration between UN Women and Peace Huts, can provide access to funding, technical support, and best practices, enhancing capacity-building efforts and facilitating knowledge exchange on gender-sensitive dispute resolution. By adopting these recommendations, Nari Adalats can strengthen their role as effective mechanisms for

promoting gender justice and empowering women within the Indian context, drawing valuable lessons from international experiences in ADR.

Conclusion

The examination of Nari Adalat within the broader context of ADR systems sheds light on the multifaceted challenges and opportunities in promoting gender justice in India. Despite the existence of comprehensive legal frameworks, women's access to justice remains constrained by entrenched patriarchal norms and structural inequalities. Looking ahead, Nari Adalats have the potential to serve as effective mechanisms for empowering women and promoting gender equality within the Indian justice system. By incorporating these recommendations and drawing insights from international experiences, Nari Adalats can evolve into a comprehensive platform for advancing women's rights and fostering inclusive and sustainable development. As India continues its journey towards gender justice, Nari Adalats stands as a beacon of hope, offering innovative solutions tailored to the specific needs and challenges faced by women across the country.

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