

# Local and Customary Forums: Adapting and Innovating Rules of Formal Law

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## Abstract

Research studies and common experience have shown that women suffering violence rarely engage with formal institutions such as courts and police stations without the support of their family and community elders. The entry into a formal institution is often planned following the advice of a worldly wise uncle, a local leader, a relative in the local police station, a woman activist or a caste elder. It is the strength of these conversations which determine women's relationships with the formal law. There is emerging evidence about the different forums that are involved in negotiating laws against domestic violence such as political party offices, gram panchayats, caste panchayats, counselling centres and women's groups. These spaces are often referred to as non-state agencies or local and customary forums. Often the terms that animate these local forums are counselling, panchayati settlement and compromise as against the lexicon of decrees, orders and awards obtained in the formal legal system. While a bond-paper settlement is looked down upon as a document that has no validity in the courts, it becomes an important device to 'settle' issues in the local forums. This article seeks to understand the practices of these forums that not only mediate women's access to the formal institutions but also hear cases in their own offices. On a parallel track, the article examines the interconnected ways in which the formal legal system and local forums relate to each other. Even as formal law makes no allowance for the

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verdicts of the local forums, the imagination of the local and customary as quick, effective and flexible has been a desirable ideal for its own functioning.

### **Keywords**

Legal pluralism, local forums, domestic violence, lok adalat

### **Introduction**

A close examination of the processes of formal law gives us a sense of exclusions that women face in formal institutions. Migrant and homeless women, those in unprotected employment, without the regular documents of identity, and women who are not wives are barred on the grounds of jurisdiction alone. The law bars entry to many women at the admission stage itself. For those who manage to enter the legal process, they have other hurdles to cross. Often, one sees the woman being worn out through vexatious petitions, repeated adjournments and a system which does not recognise her suffering. At the end of the trial, there is no guarantee that the particular judge is convinced about the woman's case to grant her the relief that she seeks. After all she may not have the right evidence to establish a fool proof case. Some women may achieve certain victories by stumbling upon a compromise settlement. The process of litigation is not only protracted and expensive but also unpredictable in its outcomes. Such limitations of the formal law in the cases of women and domestic violence are well-documented (Andhra Pradesh Civil Liberties Committee 1991; Geetha et al. 2000; ICRW 2000).

Yet, there seem to be ways in which women negotiate distress in their lives. Not all may want to rush to courts and police stations but seek other ways of speaking about their grievance. They may keep away from the formal institutions due to lack of resources or to seek a softer solution. Research studies (Anveshi 2003) and common experience have also shown that women rarely walk into these institutions without the support of their family and community elders. In disputes of the family, the entry into a formal institution is often planned following the advice of a worldly wise uncle, a local leader, a relative in the local police station, a woman activist or a caste elder. It is the strength of these conversations

which determine women's relationships with the law. There is emerging evidence about the different forums that are involved in negotiating laws against domestic violence such as political party offices, gram panchayats, caste panchayats, counselling centres and women's groups. This article seeks to understand the practices of these forums that not only mediate women's access to formal institutions but also settle the issues in their own offices. They are often referred to as non-state agencies or local and customary forums. One of the proposals of this article is that the laws made for the protection of women are adapted and interpreted in such forums too.

As of now, there is very little documentation and conceptualisation of the practices of these forums. Whatever little information is available, refers to the caste panchayats existing in pre-British and colonial India, their inimitable style of speedy and flexible disposal of cases albeit in a chaotic way, and their gradual disappearance with the entry of the formal legal system (Cohn 1987; Gallanter 1977).<sup>1</sup> In current times, occasionally one gets to hear of the decisions of a rural caste panchayat in the media and more often than not their decisions refer to an enforcement of caste and gender inequalities. They are reported in such a way that they represent a pre-modern practice, which is unbelievable and ridiculous, and marked with arbitrariness and ad hocism.

To begin with, there is a deep suspicion of the local and customary forums of dispute resolution for at least two reasons. One, that they are either absent, a thing of the past or if they are present, are opportunistic and keen on making money. Two, local forums are largely understood to be limited to the caste panchayats alone. The discourse of the local forum in current times is powerfully dominated by the violent and authoritarian practices of the Jat caste associations and their verdicts, in the states of Haryana, Rajasthan and Delhi. These caste associations have drawn publicity for their regulation of inter-caste affairs, marital alliances and women's sexuality. It is theorised that there is a resurgence of these caste panchayats in northern India in contemporary times and that their authority is being used against men and women who are renegotiating traditional authority structures (Chowdhry 2004: 40; Dhagamwar 2003). Their deployment of coercive sanctions have gone beyond the regular boycott and ex-communication models and have included mass mobilisations and abetment of serious offences like murder and sexual assault.<sup>2</sup> An

issue to be noted is that this type of caste association seems to be specific to some states of northern India and has not been found in other regions.

On the issue of resurgence, Kripa Anant Pur documents the vitality with which customary caste councils have evolved into newer forms in rural Karnataka, albeit of a non-sensational and non-violent variety (Anant Pur and Moore 2007). Anant Pur argues against the theory of displacement of the customary panchayats and instead finds that not much attention has been paid to their work and involvement in local rural governance. She describes the customary village councils as involved in organising religious activities, dispute resolutions, providing social services and support, taking up developmental activities and also influencing the elections to the gram panchayat. In dispute resolution, the councils not only arbitrate disputes but also help maintain local law and order, thus playing a key role in the internal regulation of villages. If one persists, one then finds tracks opening through the key words of alternate dispute resolution, leading to some diverse examples: the Nari Adalats run by the Mahila Samakhya project in Gujarat, the Shakha courts run by the regional political party Shiv Sena in Maharashtra and tribal councils.

One is forced to ask if this lack of information points to their non-existence or do they indicate a marginalisation of their existence? Here, for conceptual clarity, one turns to the relatively new discipline of legal pluralism which foregrounds the contexts of non-Western law and how it is consistently abandoned in the face of the universal principles and apparatuses of the formal legal system. In contrast to the anthropological studies of indigenous dispute resolution systems of colonial and pre-colonial times, legal pluralism seeks to understand the complex ways in which local practices and the formal law compete, co-exist and incorporate each other in contemporary societies (Benda-Beckmann 2002; Chiba 1993; Santos 2006). Research studies in the countries of Africa and the Far East have shown a resurgence and reconfiguration of the local and customary practices especially in contexts where the formal legal system itself is going through a crisis. It is argued that the state selectively allows for an informal devolution of implementation of the law (Eckert 2004). That such a delegation not only critically impinges on each other's constitution and jurisdiction, but also effects the very definition of rules and legality (ibid.: 53).

## Structure of the Article

In undertaking a project like this, one is faced with the difficulty of assessing the work of local forums in a city like Hyderabad which has several scores of them. There are no 'records' to fall back upon to testify to their volume of work or the quality of their interventions. There is also no uniformity of practice or methods across the local forums.<sup>3</sup> One gets to hear about their good and bad decisions, wisdom, drunkenness, competitiveness, and so on. But it drives home the point that they exist and that they arbitrate. In contrast, the study of formal institutions allows access to various levels of court records which include judgements, statistics and witnessing of performances of judges, lawyers and litigants. Here in the case of local forums, except for what the *Peddamanushulu* or leaders say, there is not much to verify and counter-check.

In a context where the methods and practices of the formal law are much discussed, how does one even comprehend the methods and practices deployed by these forums? Is there something called a 'local practice' which is distinct and independent of formal law? What is the quality of resolution/relief of the 'compromise-settlement' produced in these forums? How do legal institutions such as police stations and courts acknowledge the work carried out in these forums?

In the first and second sections, I shall present a brief description of the local forums in Addagutta basti in Secunderabad, the disputes that they undertake and the settlements that they propose. Most research studies on local and customary forums point to the single fact that these forums largely service the rural constituency and the poorer people of urban society. It is observed that women from upwardly mobile caste groups and the dominant castes prefer to approach another class of mediators such as lawyers/psychiatric offices or go directly to courts and police stations. One finds the local forums to have an active involvement in dispute resolution among the poorer of the SC constituency and the less dominant Backward Caste sections. As a lawyer practising in the family courts in Hyderabad, I often find that it is poor women belonging to the Scheduled Castes and the less affluent Backward Class castes who recount experiences of making use of these forums.<sup>4</sup>

Often the terms that animate local forums are counselling, panchayati settlement and compromise as against the lexicon of decrees, orders and awards obtained in the formal legal system. Terms such as compromise

and settlement are often seen as inadequate and compromising women's rights compared to the justice of formal law. It is well known that police stations and courts pressurise women to reconcile and compromise on complaints of domestic violence. Activists on domestic violence have often commented that this procedure is used to intimidate women against pursuing their cases (Dave and Solanki 2001; Hengsara Hakkina Sangha 1999; Mitra 2000). While this is so, it can also not be denied that women seek the help of the police to 'compromise' their cases and seek a wide variety of reliefs such as separate residence, return of *streedhan*, reprimand of in-laws, mutual consent divorce, and so on.<sup>5</sup> The element of persuasion, undue force and coercion cannot be ruled out as factors that produce the settlement. Compromise and settlement, despite their problematic profile, comprise the language of arbitration in local forums. The way they are instrumentalised is always in shadow and their content is never discussed in its complexity.<sup>6</sup> A bond-paper settlement is looked down upon as a document that has no validity in the courts. Yet these documents abound and serve a function and are used extensively in the local forums. The third section explores and discusses the cases that come to the panchayatis and the methods used by the local forums in their arbitrations.

In the final section, by way of conclusion, I examine the interconnected ways in which the formal legal system and local forums relate to each other. Even as formal law makes no allowance for the verdicts of the local forums, the perception of the local and customary as quick, effective and flexible has always been a desirable ideal. This sentiment is expressed in the formal legal system's accounts of itself, in the Law Commission reports and while proposing reforms to the judiciary.<sup>7</sup> Reference to the local repeatedly comes in the formal law's frustration about its institutions when it confronts the phenomenal backlog of cases, and how even simple cases are tried using the cumbersome codes of evidence and procedure.

While the Lok Adalat is a direct example of the incorporation of the 'local and customary' in the institutional structure of formal law, there are other ways in which the formal law is constituted by these local forums. What are the contents of this constitution? This article tries to explore the operative legal order that is at work which combines the resources and practices of the formal and the local forums. What are the

specific ways in which the formal and the non-formal constitute each other? Section 89 of the Civil Procedure Code was amended in 2002 to encourage litigants to consider arbitration/mediation/conciliation of their disputes. The Family Courts Act, 1984, and the Gram Nyayalayas Act, 2009, have specific sections which include 'settlement' as a step in the proceedings. The Protection of Women from Domestic Violence Act has introduced a new legal category called Service Provider which recognises the role of community organisations and women's groups in mediating between the women and the formal system. I propose here that the practices of the local forums not only inhere in these forums but also structure the reforms in the formal legal system itself.

### *Local Forums in Addagutta Basti*

Addagutta is one of the largest bastis in the city of Hyderabad<sup>8</sup> with a population close to 70,000. The residents of the basti proudly state that they are drawn from all districts of the state, from other states such as Tamil Nadu and Karnataka and include all castes. The bulk of the people are involved in servicing the needs of the Secunderabad railway station, the government hospital, the vegetable market and a large number of production, fabrication and service units located around the basti. Women work as domestic help in the neighbouring colonies, and many of them are also involved in making beedis, leaf plates, brooms, and so on.

There exists a wide range of local forums which are a mix of caste associations as well as other organisations. Each caste has its own caste association. Some of them are the units of state-wide associations<sup>9</sup> while others are connected with the mainstream political parties and state organisations such as the Madiga Reservation Porata Samithi (MRPS). Jan Sangharsh Samithi was established in the late 1970s to protect the Addagutta hut dwellers from eviction and demolition, while the other associations such as the Arundhatiya Sewa Sangham came up in the late 1980s to access government schemes such as low-interest loans, house sites and other welfare schemes. All these associations are registered, have letterheads and hold elections for office bearers.

The leaders are involved in demanding and negotiating with the local MRO's office, the police station, the party representatives, corporators

and ward members. Jan Sangharsh Samithi and Addagutta Founders and Developers Association act as brokers in securing land deals for the people in Addagutta and in the city too. These associations draw members from the caste associations as well. While some of them are clear in their identity as caste associations, the others describe themselves as developmental or welfare organisations. The leaders clarified that they do not limit themselves to the disputes of one caste only but are open to solving disputes among all castes. Addagutta basti has about 50 women's self-help groups. Some of the women in these groups have emerged as leaders and are sought after too. There are others who do not belong to any of the above associations but have developed a reputation of being effective arbitrators in local disputes.

A common thread that runs through the activities of all these organisations is their consistent involvement in problem solving and organising panchayatis in the basti. Not all panchayatis are held in the basti itself. In cases, where an Addagutta girl is given to another basti or a village, the leaders from here go to the other basti for conducting the panchayati. The parties have to bear the travel and other expenses which vary from considerable to nominal amounts. The issue of earning incomes from organising panchayatis came up often in the discussion. Some charge a 'commission' in all cases except family disputes. Others responded that no lawyer or policeman will intervene in a dispute unless there is some remuneration. Why should a caste association be expected to deliver free services?<sup>10</sup> In response to the question, if their panchayatis were similar to the earlier panchayatis or the ones in villages, Yadagiri the president of the Yerukala Sangham, said:

The panchayats have become very commercial. Earlier they used to be effective and respected as their job was to uphold *kulam maryada* and *kattubaatu* (caste honour, customs and traditions), which are idealistic principles. But today there is no such requirement. Caste sanghams are effective in the villages and not so much in the cities. Today's caste sanghams are driven by commercial interests. They seek money from both the parties. Unless there is cash they are not inspired to intervene in the matter.<sup>11</sup>

Many leaders also referred to how these panchayats are different from the ones in the villages. That they have become 'commercial' was



a common refrain. Even as they spoke about commercialisation, corruption and ineffectiveness of their work, the discussion moved into how they manage hundreds of cases that come to them. Disputes in Addagutta basti, they say, are numerous: petty land grabbing, where one encroaches upon the courtyard of the other, drunken disputes, abuse and manhandling, witchcraft, water and electricity connections, theft and cheating and disputes in the family. The leaders said that the local police do not take action on these disputes unless the leaders themselves are present.<sup>12</sup> Several times, the police are known to have sent back the parties to resolve it in their caste panchayat.<sup>13</sup> It is with a certain pride that the leaders state that the local police station cannot function without their services.

In their opinion, women's issues in the family constitute the majority of the problems that come before the Sangham. The more serious of the cases are inter-caste marriages and they add that Addagutta has many stories of such elopements. The leaders find that the panchayati is crucial in negotiating to keep the boy from getting arrested. If the girl's family decides to approach the police, then the case will be registered either as rape or kidnapping which are serious offences involving long litigation and possible jail terms. The Madiga leaders recall that in the face of such threats, they have performed many difficult marriages incurring risk to themselves.<sup>14</sup>

## **The Bond-paper Panchayati**

In the following section, I shall discuss the methods used by the Addagutta local forums in arbitrating disputes by specifically referring to some of the cases.<sup>15</sup>

One does not hear the Addagutta leaders making any dramatic statements about women's empowerment or the violence that they face in their homes. The leaders set themselves apart from the processes of formal law and declare that their efforts are more towards building relationships by advising and counselling both parties about their respective faults. They refer to the formal law as a system that breaks relationships. However, the leaders have a grudging awareness of the special laws enacted for women, women police stations and family courts that were

set up for them. Even as they express a general disbelief about the effectiveness of these laws, they are also aware of the effects of these laws on their own work. One way to assess this is the way they deploy the threat of registering a criminal case against the husband in the panchayati.

Babu and his wife belonged to the Chakali (washerman) caste. One of their problems was that they did not have children after six years of marriage. The wife was also having some health problems. Babu was unsure about what to do. Meanwhile the wife went to her natal home complaining of harassment from her mother-in-law. There, the wife approached a women's group called Sonia Mahila Sangham to speak to her husband. Babu was summoned to meet the Mahila Sangham women wherein they demanded that he should return all the wife's articles and also pay some compensation in return for a divorce. They threatened him with a police case. Babu did not want police cases. He decided to deliver all his wife's belongings including gold, household articles and sarees and also gave her some money as compensation. In the presence of the women's group and all the relatives the case was settled and the divorce was recorded on bond paper.

Rather than the efficacy of the law, belief in the corruption and uncertainty of the formal legal system are the main planks on which the leaders conduct the panchayati. 'That you will be trapped for the next five years running around the courts is a common caution given to an arrogant husband'. Among the leaders, there is an astute understanding of the ways in which police stations or the courts work and the resources that the common man has to mobilise to seek the protection of the law. Their contacts with the local police station and the revenue offices are crucial to their work as 'leaders'. Many of them often say that the policeman not only extracts money from both the parties but also dupes them in the process. They point out in rather indirect ways that the law is unsuitable for issues of the family, that the law cannot cement relationships and that it only breaks them and makes the dispute worse.

The local forums work with an intimate knowledge of the case. At the outset, these forums do not go into the tedious business of determining and establishing the facts of the case as in the case of formal law. They arrive at the panchayati with 'knowledge' of the case. Since there are no formal rules of gaining this knowledge, the content of how this is gained is often unexamined. While formal law gains this through the examination of witnesses and documents in the trial, the 'familiarity' with a case

in the local forums is variously derived from being present in the community, from speaking to all the parties concerned and from the power that accrues through the respect that they enjoy in the community. That the leaders use their status and networks in the community to gain this familiarity is an important factor.<sup>16</sup> Similarly, the different levels of work that go into organising a panchayati and securing its outcomes also appear deceptively simple.

The leaders say that they have to keep assessing the actions of the parties. The following is an account narrated by Uppalaiah<sup>17</sup> who was the leader in this panchayati:

There were many quarrels between the husband and wife. First, the girl complained that she was being ill treated and so she wanted a separate residence. The husband obliged and set up a separate house. Later, the girl refused to sleep with him. The boy insisted, got angry and broke her jaw. So she returned to her natal home in Jangaon, went to a government hospital for treatment. Her father hinted that he may go to the police station. The boy's parents wanted to settle the matter in the panchayati. Word was sent to the girl and her family that they should come for the panchayati. The girl's family did not want to attend the panchayati, and instead promised that the girl will soon return. The boy's parents do not want to accept the girl without a panchayati. They feel that the girl is quarrelsome and unstable in her mind. They are worried that she may try to kill herself in a fit of anger. If such a thing happens, they may be trapped in a bigger offence like murder.<sup>18</sup>

Uppalaiah was unsure about the girl's integrity. He thought that the girl's family was not keen to attend the panchayati and instead was trying to register a police complaint in Jangaon police station. He was worried that the girl went to a government hospital and not a private doctor for treatment. He felt that her family was building evidence to file a case. In his schema of things, going to a government hospital for treatment indicates a criminal case in the offing. Several deductions and persuasions are deployed to conduct a successful panchayati. The panchayati is a delicate see-saw between going to the formal law and settling it here itself. Instead what is represented popularly is the 'speedy and flexible' process in local forums which is misleading as it implies non-application of mind and arbitrariness.

Most of the agreements in the panchayati are recorded on non-judicial stamp paper of different denominations, popularly known as bond paper.

The terms of the agreement are drafted and signed by both parties as well as the main leaders who attended the panchayati.

Bottu Narsing Rao, founding member of Jan Sangharsh Committee, recounts how he settled one of the cases that came to him:

A BC boy eloped with a SC girl, married her in the temple town of Yadagirigutta,<sup>19</sup> and returned to Addagutta basti a few days later. Very soon he quarrelled with her and pulled off her mangalsutram. The girl's family came to my house. We all knew about this elopement and their return. We spoke to the boy and told him that it was not fair. We also threatened him. Then we got Bond paper and wrote on it that if there was a separation, the boy's property of one room would be given to the girl. Both the boy's and girl's signatures were taken on the bond paper, and all the leaders also signed on the bond paper. After that they have been living together quite well. Today they have three children.

The condition that the property of one room will be transferred to the girl in case of separation was a crucial one. With this condition, the case was settled. The first question that comes to one's mind is the legality of the settlement and the enforceability of it. One may quickly say that such a document carries no legal value. But, perhaps one should pause here and gauge the weight of a document according to the context in which it is written. The bond-paper settlement seems to forge an in-between space between the enforceable and non-enforceable. It is a document which creates a local liability and accountability and because of its thin legal value, it is not stringent enough to intimidate the other party. To illustrate the use of the document, here is another case:<sup>20</sup>

Aruna and her husband belonged to the SC caste and were living apart for the past two years. Aruna approached the police who advised her that the problem will get worse if she filed a case. The husband, who earned ₹ 3000 as a compounder in a hospital, thought that Aruna was arrogant and should stop working. Aruna was keen to join her husband and persuaded her relatives to conduct panchayati. It took about six months for her to organise the panchayati.

On a Sunday afternoon the panchayati was organised in the courtyard of Pochamma temple. There was a long discussion for two hours about the merits of Aruna retaining her job. Except her husband almost everyone decided that Aruna should work and supplement the income. The husband's parents were

resentful that Aruna humiliated them by calling for this panchayati. Some of the husband's relatives said that Aruna's mother interfered too much. Aruna's mother retaliated and spoke about how she was insulted. At this point the husband's side got up to leave.

With a lot of persuasion the leaders from Aruna's side placated both sides and reminded everybody that they have arrived here for a settlement and that the marriage should be saved. The leaders reminded the husband's family that if this issue was not settled, there will be unnecessary police action and other consequences. The husband was reprimanded that he should not be foolish in these days when the price of rice was ₹ 40 a kilo. The panchayati was settled and a note was prepared that the husband and wife will not quarrel and that Aruna will join her husband the same day.

Often, the local forums make use of agreements drafted on bond paper to secure a compromise. The document gains validity especially in cases where the affected person does not have clear-cut rights either to ownership or to possession of moveable and immoveable property. Women's complaints of violence in the family seem to encourage bond-paper practice, especially where they seek a written assurance for the good conduct of the husband. The bond-paper agreement becomes a strategy in maintaining peace in the family. In Babu's case, the bond paper recorded a divorce settlement. In Aruna's case, it carried the terms of good behaviour of the husband and wife.

In the elopement case, the transfer of property may never take place. One would be mistaken if one sees that as the only outcome. The settlement is outside the legal system and yet works effectively as the laws against domestic violence. The bond paper is a document which enables property transfers, divorce settlements, conditions of women's return to the marital home, good behaviour and thus acquires the strength to regulate cases which are not amenable to laws or for which the formal system has no time.

One can surmise that the objective of conducting a panchayati is to seek a resolution to the dispute. The quality of this 'resolution' is different from what is offered in formal law. In analysing the processes of the Nari Adalats in Gujarat, it was found that the women leaders handle cases by striving to gain what they believe to be the best outcome, given the various factors that shape a woman's life in the village.<sup>21</sup> The local forums therefore have the responsibility of rendering a decision which exceeds

the confines of who is right and who is wrong. It seems to be more of an effort to see what is possible given the existing circumstances and the resources available. Since the decision is not limited to the ascertainment of right and wrong, it necessitates the demand to appease both parties, something which is not so familiar to formal law.

Manemma lived with her two children in a room in her brother-in-law's house for the last eighteen years. Her husband married another woman and lived in a different locality. But Manemma continued to live in her brother-in-law's compound, paid the tax and invested in a water tap for her room and the relationship was quite cordial. After some years the brother-in-law decided to demolish the existing house and reconstruct a new one. In lieu of the single room, the brother-in-law offered to give a two room house to Manemma on the condition that the house will be shared with the second wife of her husband. Manemma found the offer insulting and sought the help of a women's group.<sup>22</sup>

The panchayati resolved that Manemma should vacate her brother-in-law's house and share the two-room tenement with the second wife's family. On the face of it, the verdict is troubling because of the way in which the first and the second wives are put on par. Angry with this verdict, when Manemma went to the formal law and that too under a special legislation such as the Domestic Violence Act, the Magistrate asked her if she had the documents required to prove that she lived there for 18 years. Despite the laudable objective of the formal law in upholding the wife's right to the matrimonial home, it often gets nullified by the law's insistence on rules of procedure and evidence. The right to the matrimonial home is predicated in documents informed by the law's of possession and ownership. Jewellery and cash are transacted in marriages not as a contract but in the register of trust.<sup>23</sup> Manemma lived in her brother-in-law's house in a relationship of trust which is hard to decode into a legal category. Formal law gets stymied if the complainant comes without the requisite proof. Except dismissing the case, it has no mandate or capacity to offer any other resolution to such a case.

Very often, women do not have the requisite documents demanded by formal law when they seek maintenance, right to matrimonial home, return of *streedhan* or protection from violence. Yet, these disputes require adjudication failing which they may give rise to a larger problem

of law and order. It is in this context that the local forum provides its services. It decides the feasibilities of going to the law, or if the dispute is amenable, it gives a decision. In cases where going to the formal law becomes mandatory, they facilitate access. This points to how these forums function as local mediators to decide an entry to the formal legal institutions and in the process regulate and manage disputes in the basti. It is imperative for the local forums to resemble the law and yet devise different strategies of gaining familiarity to the case and enforcing accountability from the parties. The accountability is local and depends on the coercive force that issues from the public hearing of the dispute coupled with the respect and status of the leaders who conduct the panchayati.

### *The Local within the Formal Legal System*

There is no formal acknowledgement of the work of the local forums in the accounts of the formal legal system. The local forum is invoked in its traditional conception of the rural caste panchayat as a speedy, informal and flexible system of justice. Formal law requires either dismissal of customary practices in the realm of family laws<sup>24</sup> or evidence to prove the existence of the customary practice. But to see this as the formal law's only position on the local and customary may not adequately cover the ground. It is argued here that a different engagement with the practices of the local and customary can be seen in the formal law's assessment and critique of its institutional practices. It finds the quality of local dispute resolution as worth emulating to address its own problems of delay and arrears and the cumbersome procedures of its own institutions. There have been a series of efforts by the judiciary to incorporate the 'speed and flexibility' of the local forums.

The state's efforts to decentralise its operations and depart from the adversarial system is evidenced in the institution of Nyaya Panchayats in the early years after Independence, the Lok Adalats in 1982, the introduction of counselling, conciliation and flexibility of procedure in family courts in 1984 and presently, the adoption of conciliatory as well as an adversarial procedure in the establishment of the Gram Nyayalayas.

Family courts were set up with the express intention of departing from the procedural tangles of the Civil Procedure Code and allowing for conciliation. The Lok Adalat is another direct example of this process.<sup>25</sup> There is an ongoing discussion on whether the setting up of the Lok Adalat and the Gram Nyayalayas are the state's ways of displacing the local forums. Whether this can be concluded so directly is not clear. Perhaps the Lok Adalat has been instituted to relieve the courts of arrears of those cases which are amenable to compromise and settlement. Srimati Basu (2006: 65) in her comparative study of family courts, police grievance cells and the community mediation centres in Kolkata points out how the semi-autonomous community mediation centre deploys legal provisions both by circumventing them as well as by incorporating community sanctions. Basu aptly describes it as an unofficial venue in a formidably official setting. One thus sees that the Lok Adalat is formal, yet not as formal as the court.

The fact that local and customary forums are found primarily in bastis/slums points to an informal delegation of powers of adjudication and regulation to the local forums. These are disputes among people who do not easily lend themselves to procedures of jurisdiction and evidence. Like Manemma, they do not stand a chance in formal courts. This explains the wide array of local forums which work so effortlessly alongside the law, invisible and yet influential, adapting and innovating strategies, to enable governance of such populations, resulting in a delegation of regulation and adjudication of a different order. Julia Eckert's (2004) analysis of the Shiva Sena courts is one of the few studies that problematises the pluralism of legal orders in the urban context. Eckert found that the courts conducted by the Shiv Sena were precisely located within those spaces opened by the promises of the state as well as the inefficiency and inaccessibility of state services. Instead of seeing such initiatives as parallel or autonomous of the state and formal law, Eckert argues that the Sena's efforts at adjudication are actually well integrated into the formal legal order, that the Sena courts do not contest the validity of state law. They do not name an alternative normative order as more valid or legitimate and do not, for example, refer to religious law or other sources of legitimate ideas of justice. The norms that are explicitly and most regularly espoused by the Sena courts are those of pragmatism, common sense and efficacy, a perspective found among the leaders of Addagutta basti too.



To understand the work of the local forums only as providing cheap and local resolutions would be to miss the larger agenda of the formal law. Their work foregrounds a critique of the formal legal system about its lack of resources to arbitrate in a majority of cases. Their presence also reveals that the laws legislated for the protection of women produce different practices, distinct from those of the courtrooms. In an odd case or two, they even surpass the verdicts of the formal legal system.

## **Conclusion**

I shall conclude by recounting Jyoti's divorce case that was settled in the Lok Adalat in 2008. Jyoti had filed for divorce, permanent custody of her child and maintenance for her child. In an out of court settlement, the husband proposed that he will accept divorce but not maintenance. He agreed to settle if she set aside her maintenance claims. Jyoti was torn between settling the matter and giving him a tough fight. But a tough fight entailed the work of visitation rights and also taking leave from her office. Finally, she decided that it was better to settle the matter. A compromise memo was filed that she would forego her claim of maintenance in lieu of a divorce and permanent custody of her child.

The Judge at the Lok Adalat, examined the terms of compromise and pointedly asked the husband why he made no financial settlement for his wife and child. The husband said that he was unemployed because of family problems. The Judge then asked Jyoti why she was foregoing all her claims. Jyoti replied that her husband had refused to give any money, that she was helpless and had no energy to fight. The Judge sternly looked at the husband and said: 'We cannot punish you. You are going away without giving anything to the child. Society will call you an evil man. More importantly God will not forgive you'.

With these words, he signed the Compromise Memo and pronounced divorce. Jyoti and I had tears in our eyes. The Judge had morally indicted the husband.<sup>26</sup> It somehow offset the emptiness of the pronouncement of the divorce. The Lok Adalat is the state's effort to be the local forum. Perhaps it is this effort which allows the Judge here to speak differently, to not only recognise the suffering of women but also the formal law's limited capacities to address it.<sup>27</sup>

## Notes

1. Several studies have pointed to how the local forums of dispute resolution, especially the caste panchayats, were de-legitimised and marginalised after the institution of formal law in the colonial period. Village studies in post-Independence India meticulously documented the nature of the juridical authority in rural India, especially north India. They focused on the hierarchy of caste panchayats and their authority in intra-caste disputes, the sole and independent authority which they enjoyed in spite of formal law, the altogether different ways in which they conducted their panchayatis, and subsequently the gradual erosion of this authority with the introduction of the newer structures of local governance.
2. In April 2010, the Additional District and Sessions Court, Karnal, held seven people guilty and sentenced them to death. Following this verdict, there was a massive mobilisation of khap panchayats in Delhi on 13 April 2010 condemning the judgement and conveying to the state that caste and family honour are above the law.
3. Baxi and Gallanter (1979) make a similar observation about assessing the work of Nyaya Panchayats.
4. In her case study of Nari Adalats, Sushma Iyengar (2007: 11) also observes that the upwardly mobile castes reach out to the formal law with relative ease compared to the SC and Backward Castes. The few other studies that attest to monetary considerations and a fear of inaccessibility of the formal institutions are Moore (1993) and Holden (2003).
5. For a more detailed discussion on this aspect, see Suneetha and Nagaraj (2006).
6. It can also be argued that there are no reliable data about the contents of compromise settlements arrived at in police stations and the extent to which women's interests are secured in the process.
7. Several Law Commission of India reports such as the 14th Report (Reform of Judicial Administration), 77th Report (Delay and Arrears in Trial Courts), 114th Report (Gram Nyayalaya), 124th Report (The High Court Arrears: A Fresh Look), 129th Report (Urban Litigation: Mediation as Alternative to Adjudication), 222nd Report (Need for Justice Dispensation through ADR), 221st Report (Need for Speedy Justice: Some Suggestions), 230th Report (Reforms in the Judiciary: Some Suggestions) unfailingly have a reference to the 'ancient dispute resolution' system of the country. The Gram Nyayalaya report discusses local and customary practices in greater detail.
8. Hyderabad consists of the twin cities of Secunderabad and Hyderabad. Addagutta is located in Secunderabad.

9. Among the Backward Class castes, the Padamshali (weaver) caste association has offices across the state, a large head office in Hyderabad which has hostels, a reading room, a marriage bureau, a marriage function hall and also runs several activities such as organising Swayamvaras and counselling activities. They also have smaller units in those areas where there is a sizeable Padmashali population. The Mudiraj caste also has a head office and marriage halls in the city. Most castes among the Backward Class castes have head offices and formal/informal marriage bureaus. Their members are often called for dispute resolutions.
10. Interview with G. Mallesh, President, Adi Jambava Arundhatiya Sangham.
11. Interview with S. Yadagiri, President of Yerukala Sangham as well as of Addagutta Founders and Developers Association. This interview also tells us how the functions of these associations are different from the functions exercised by the Jat caste associations of Haryana.
12. Eckert observes the same fact about the Shiv Sena courts and the reliance of the police on these courts.
13. One of the reasons Adi Jambava Arundhatiya Sangham was set up was to procure caste certificates for Madiga people. G. Mallesh, the President of this Sangham, explained the difficulties of not only getting caste certificates for their people but also regulating the cheating that was rampant. So, now there is a system for getting these certificates. Before applying to the Mandal Revenue Officer's (MRO) office for a certificate, the applicant applies to his kula sangham for a certificate that he/she is a member of that caste. The MRO's office, G. Mallesh states with pride, does not issue a caste certificate unless it is accompanied by a certificate from the kula sangham. The practice is fool proof as the *basti kula sangham* knows of who is an SC and who is not.
14. In these narrations about inter-caste marriages, their emphasis was more on the ensuing criminal cases rather than on caste transgressions.
15. I conducted most of these interviews in the months of October to December 2007.
16. This is also indicated in analysing the decisions of the verdicts given in Nari Adalats.
17. Interview with Uppalaiah, a senior member of the Adi Jambava Arundhatiya Sangham, Addagutta basti.
18. Interview with Sooramma in Addagutta basti.
19. Most couples who elope or run away go to this temple town to get married.
20. This was a panchayati that took place in Nagamayyakunta, Hyderabad.
21. A similar example can be drawn from the Nari Adalats of Gujarat instituted as part of the Mahila Samakhya Programme widely acknowledged as an alternate dispute resolution centre. The Nari Adalats came up in the

mid-1990s as an alternative to the traditional caste panchayats in Gujarat. The Nari Adalat is informal and non-adversarial in its constitution and conciliatory in its approach. The women arbitrators in these courts draw resources from the complex networks of relationships within the community as well as from the signs, symbols and institutions of the state. They locate themselves in government compounds and use penal provisions like Section 498A and the police stations to negotiate agreements between the husband and wife. While they started as an alternative to traditional panchayats, they soon saw themselves as an alternative to the practices of the formal legal system itself. Unlike the Addagutta leaders who are not pro-women, the Nari Adalat women see themselves as primarily protecting women's rights. See Krishnamurthy (2009) and Iyengar (2007).

22. Unwilling to accept the verdict of the panchayat, Manemma petitioned under the Domestic Violence Act seeking her right to the matrimonial home. The Magistrate who heard the case asked her for documents that she had indeed lived there for 18 years. Except the ration card issued to her 6 years back there was no document for Manemma to show. Her case was dismissed for lack of evidence. In the meantime, the offer of the one room also lapsed for various reasons. Manemma now lives with her two children in her mother's home.
23. It is interesting to see how Section 406 IPC, dealing with the penal offence of criminal breach of trust, is used to get back the woman's belongings from the husband.
24. There are several detailed critiques of how the Anglo-Hindu law was codified in the colonial period and how the English courts eliminated a wide range of local and customary practices using the principle of English law. Several practices that endowed women with rights of property were set aside during this period on the ground that they diverged from the standard of proof required by the Anglo-Hindu law (Agnes 2001).
25. In Andhra Pradesh, Lok Adalats are generally huge halls erected not in the main building of court complexes but set apart from it. The seating arrangements are different and even though a judge presides in these courts, he is in plain clothes, designated as Secretary and does not occupy an elevated chair. Disputes can be settled and recorded in the Lok Adalat without resorting to trial procedures. The Secretary generally counsels both the parties about the travails of resorting to a trial and the gains in settling the matter quickly.
26. In a courtroom, how the judge conducts herself is as important as the judgments that she delivers. Several times, we have heard of judges advising women about their roles and responsibilities. But we also have judges who reprimand men when they fail to perform their role as the carers of women and children in the family. Such reprimands have a certain discursive value

for the scores of men and women sitting in the courtroom. It is in this register that the violence and inequality of the domestic space gets addressed in a courtroom.

27. I cite this case as one of those instances where the judge felt dissatisfied with the settlement. In the Lok Adalat, it is a common practice for the judge to ask if the woman had received maintenance and if all her belongings were returned. In a 'formal case', such a question is never asked as it follows the maxim that only what is proved can be awarded.

## References

- Agnes, Flavia. 2001. 'Colonial Rule and Subversion of Rights', in Flavia Agnes (ed.), *Law and Gender Inequality: The Politics of Women's Rights in India*, pp. 41–57. New Delhi: Oxford University Press.
- Anant Pur, Kripa and Mick Moore. 2007. *Ambiguous Institutions: Traditional Governance and Local Democracy in Rural India*. UK: Institute of Development Studies.
- Andhra Pradesh Civil Liberties Committee. 1991. *Violence against Women in Andhra Pradesh*. Vijayawada: Swechcha.
- Anveshi. 2003. *Institutional Responses to Domestic Violence: A Study of Police Stations, Courts, Counseling Centres and Hospitals*. Hyderabad: Anveshi Research Centre for Women's Studies.
- Basu, Srimati. 2006. 'Playing off Courts: The Negotiation of Divorce and Violence in Plural Legal Settings in Kolkatta', *Journal of Legal Pluralism*, 52: 41–75.
- Benda-Beckmann, Franz von. 2002. 'Who's afraid of Legal Pluralism?', *Journal of Legal Pluralism*, 47: 1–44.
- Chiba, Masaji. 1993. 'Legal Pluralism in Sri Lankan Society: Toward a General Theory of Non-Western Law', *Journal of Legal Pluralism*, 33: 131–143.
- Chowdhry, Prem. 2004. 'Caste Panchayats and the Politics of Marriage in Haryana', *Contributions to Indian Sociology*, 38(1): 1–42.
- Cohn, Bernard S. 1987. 'Some Notes on Law and Change in North India', in Bernard S. Cohn, *An Anthropologist among the Historians and Other Essays*, pp. 554–574. New Delhi: Oxford University Press.
- Dave, Anjali and Gopika Solanki. 2001. *Journey from Violence to Crime, A Study of Domestic Violence in the City of Mumbai*. Mumbai: Tata Institute of Social Sciences.
- Dhagamwar, Vasudha. 2003. 'Invasion of Criminal Law by Religion, Custom and Family Law', *Economic and Political Weekly*, 38(15): 1483–1492.
- Eckert, Julia. 2004. 'Urban Governance and Emergent Forms of Legal Pluralism in Mumbai', *Journal of Legal Pluralism*, 50: 29–60.

- Gallanter, Marc. 1977. 'The Displacement of Traditional Law in Modern India', in Marc Gallanter (ed.), *Law and Society in Modern India*, pp. 15–36. New Delhi: Oxford University Press.
- Geetha Devi, Meghna Raghunandan, Renuka and Shobhana of Vimochana. 2000. 'Getting away with Murder: How Law Courts and Police Fail Victims of Domestic Violence', *Manushi*, 1(117): 31–41.
- Hengsara Hakkina Sangha. 1999. *Patterns and Trends of Domestic Violence: A Study of Organizational Data in Bangalore*. Bangalore: India.
- Holden, Livia S. 2003. 'Custom and Law Practices in Central India', *South Asia Research*, 23(2): 47–74.
- ICRW. 2000. *Domestic Violence in India: A Summary Report of Four Record Studies*. Washington, DC: ICRW.
- Iyengar, Sushma. 2007. *Case Study: A Study of Nari Adalats (Women's Courts) and Caste Panchayats in Gujarat*. Bangkok, Thailand: United Nations Development Programme.
- Krishnamurthy, Mekhala. 2009. *Between 'Community' and 'State': An Ethnographic Glimpse of Nari Adalats in Rural Gujarat*. Paper presented at the Law and Social Science Network Inaugural Conference, Jawaharlal Nehru University, Delhi.
- Mitra, Nishi. 2000. *Domestic Violence as a Public Issue: A Review of Responses*. Mumbai: Unit for Women's Studies, TISS.
- Moore, Erin P. 1993. 'Gender, Power and Legal Pluralism: Rajasthan, India', *American Ethnologist*, 20(3): 522–542.
- Santos, Boaventura de Sousa. 2006. 'Legal Pluralism in Mozambique', *Law and Society Review*, 40(1): 39–75.
- Suneetha, A. and Vasudha Nagaraj. 2006. 'A Difficult Match: Women's Actions and Legal Institutions in the Face of Domestic Violence', *Economic and Political Weekly*, 41(41): 4355–4362.