

Adjudicating Litigotiation: A Snapshot of Cases filed in the Family Court of Mumbai between 2010-2014

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Abstract

How does litigation fare in Indian courts? How long do cases last and how are they disposed? Do men and women litigate equally and do they receive equal justice? In this paper, I offer a statistical 'snapshot' of litigation in the Family Court of Mumbai during the 5 year period between 2010-2014. Using data extracted from about 32000 cases made available online by the Family Court, I was able to arrive at indicative figures for the gender distribution of litigants, average disposal times, the manner of disposal, and the primary grounds of seeking relief.

The data presented in this paper indicates that family courts today largely serve as venues for what Marc Galanter has, in the American context, termed 'Litigotiation'ⁱⁱ – the “strategic pursuit of (mediated) resolution through mobilizing the court process”. The data also reveals latent patterns of discrimination in the adjudication of women’s economic rights.

This paper is offered as a modest demonstration of the potential that methodologies of jurimetrics, elsewhere titled “digital humanities” can offer to Indian legal research.

Introduction

For the greater part, Indian legal scholarship has remained quite bereft of jurimetrics - quantitative studies about the working of courts. A part of the problem is, of course, owing to the difficulty in obtaining statistics of any kind about the working of courts in India. The Indian judiciary, unlike its counterparts in some Western countries seems either too short-staffed or disinterested (possibly both) in conducting systematic studies of its own processes, save a horrified fascination with mounting figures of ‘pendency’ of cases. Even the few instances where courts produce ‘Annual Reports’ – which would be ideal vehicles for disclosure and stock-taking based on statistical data – these frequently turn into hagiographies of sitting judges and distinguished members of the bar. Such is in fact the template set by the Annual Reports of the Supreme Court of India – which at least from the volumes available online, resemble little more than high school yearbooks, complete with grinning group photos of sitting judges of the class of that year, and opening with a foreword by the headboy – the Hon’ble Chief Justice.ⁱⁱⁱ

The Bi-Annual Report of the Delhi High Court does significantly better on this count and supplies readers with lively infographics about the number of filings and disposals usefully disaggregated by category.^{iv} Again the accent here is on displaying the current pendency of cases, and the report is instructive about little else such as the *manner* in which these cases were disposed, the *gender* of litigants, the amount of time cases typically take etc – data which would have bearing on the quality and character of the justice delivery mechanism in the country. ^v At the very least, such data could serve as valuable aides to judicial policy making^{vi} and could even open up new enquiries into postcolonial jurisprudence, judicial process and the sociology of law.

The absence of officially produced statistics has therefore understandably constrained the development of a legal scholarship founded on statistics. One only has to imagine the discipline of economics in India, unfed by officially commissioned statistics, in order to appreciate the magnitude of the impact that a similar dearth in judicial statistics might have on scholarship.

That however is only one aspect of the matter, the other side to which is the heavy preoccupation of Indian legal scholars, myself included, with “normative law and doctrinal research” to the exclusion of other modes of inquiry. Upendra Baxi’s caustic remark that “The Indian academic lawyer operates only at the cybernetic central point of the normative legal system, namely the appellate court system”^{vii} rings as true today as it did the day it was written

30 years ago. So a generalized aversion towards the domain of the empirical among legal scholars has also contributed in some measure to the neglect of jurimetrics in India.

Primarily though, jurimetrics is a field that is premised on the existence of an entire infrastructure of IT in courts – hitherto lacking in India. Fortunately the increasing uptake of Information and Communications Technology (ICT) among the courts in India offers the potential of overcoming this infrastructural hurdle. Over the past two decades the Indian state has been assembling a robust ICT infrastructure under the agency of the National Informatics Corporation (NIC). So far, the NIC's engagement with the judiciary has been limited to disseminating judgments and orders of the higher judiciary. However the decentralized organizational setup of the NIC occasionally yields jurimetric treasures – rare lower court websites which offer richer details than others. A case in point is the website of the Maharashtra Judiciary upon which my research in this paper is based

The NIC has produced an exceptional website for the Maharashtra Judiciary which provides both judgments and metadata pertaining to thousands of cases decided by the lower courts in that state. By serially downloading and aggregating information for all Mumbai family court cases from 2010-2014 I was able to arrive at some interesting data about litigation in the family court presented in this paper.

This paper is aimed at two sets of audiences. Firstly, it is pitched at scholars interested in Family Law. In the past decade there have been at least four very eminent ethnographic surveys of Family Courts in India by Flavia Agnes^{viii}(West Bengal), the Ekta Trust(Madurai)^{ix}, Srimati Basu^x (Kolkata) and Gopika Solanki^{xi} (Mumbai). The present study should be read as carrying forward the work of these important predecessors.

Secondly, this paper is also pitched more broadly at anyone interested in the functioning of India's courts. While family courts are only one small subset of the justice delivery apparatus in India, I would argue that due to the quotidian nature of the issues they adjudicate upon, they form one of the chief sites at which the civil justice delivery mechanism enters into commerce with the ordinary citizen. So the conclusions emerging from this study could be read as being more than merely narrowly topical, and being metaphoric of the manner in which dispute resolution takes place in contemporary India.

I open this paper with a methodology section explaining the process by which the data for this paper was obtained. I then offer some background information about family courts in India and the Mumbai family court. This is followed by the body of my paper in which I provide data about 1) The total volume of cases handled by the court during the 5 year period of this study 2) The major enactments invoked in Family Court and the reliefs sought 3) the manner of disposal of cases 4) the average disposal time of cases and the number of hearings they typically entail 5) a gender breakup of litigants and how men and women fare differently in the family court. I then conclude the paper with some remarks about the various findings.

Methodology

The Family Court of Mumbai classifies all cases filed before it primarily into 7 types of Petitions^{xvi}:

1. Petition A: Divorce, annulment, judicial separation and restitution under all personal laws.
2. Petition B: Injunctions/Marital Property Suits/Declaratory Suits under the Specific Relief Act^{xvii}
3. Petition C: Applications for Maintenance under the Hindu adoption and Maintenance Act (henceforth "HAMA").

4. Petition D: Guardianship/Custody issues both under the Guardians and Wards Act as well as the personal laws.
5. Petition E: Petitions for maintenance under Section 125 of the Code of Criminal Procedure (henceforth “CrPC”)
6. Petition ER: Recovery of Arrears/Execution petitions for Maintenance orders granted under S. 125 CrPC and
7. Petition F: Mutual Consent Divorce under all personal laws (interestingly, including uncodified Muslim Law)

For each of these petition types, the website of the Maharashtra Judiciary permits visitors to access lists of all cases that are either currently ‘Pending’ or have been ‘Disposed’ by the court in any year. By sequentially retrieving these lists from the years 2010-2014, I was able to arrive at a figure of about 32500 total cases dealt with by the court during this period. (See **Table 1 & Figure 1 below**).

Type of Petition	No.	No.	Total Case
	Disposed	Pending	
Pet A: Fault Divorce, Annulment, Judicial Separation, Restitution	9942	5105	15047
Pet B: Marital Property/Injunction Suits	303	165	468
Pet C: Hindu Adoption and Maintenance	390	307	697
Pet D: Guardianship/Custody	317	220	537
Pet E: Maintenance under S.125 Cr. PC	1472	926	2398
Pet ER: Maintenance Recovery Petition	1577	931	2508
Pet F: Mutual Consent Divorce	10167	840	11007
Grand Total	24168	8494	32662

Table 1: Total cases 'pending' or 'disposed' by the court between 2010-2014, by petition type

Each case listed links to its own individual webpage which provides such additional details as:

- The Date of Filing
- The Date of First Hearing
- The Dates of Interim Hearings and the purpose of these hearings
- The Date of Decision in case the suit is not currently pending, and the Next Hearing Date for pending cases
- The Manner of Disposal of the case
- The Act and Section under which the application was filed
- Name/Description of the Parties
- Links to any Judgment/Decree passed by the court in that case

By serially downloading the pages for each of these cases and coding, through much trial and error, a program to extract the details I needed from them into a spreadsheet, I was able to arrive at a consolidated table of data upon which this research is based.^{xx}

As I mentioned, there are a couple of important caveats that I need to highlight about the data itself.

First, I assume in this study that the data uploaded on the website is mostly accurate. This is an assumption that is not without its difficulties since the task of uploading data onto the court’s website appears to have been entrusted to clerical staff or IT personnel rather than persons trained in the law. Consequently, through random sampling I have encountered an array of errors – missing information, cases mis-categorized, Acts and sections mixed up etc.

To the extent possible I have manually corrected these errors although it is impossible to ascertain for sure to what extent the source is ‘tainted’ or indeed whether my corrections were correct after all. All I can say is that I am confident that the magnitude of error is not so large as to derail the study entirely.^{xxi}

Second, the website itself does not classify litigants by gender. Since I was keen on conducting a gendered inquiry of the working of the judiciary I was left to classify the cases manually by relying for clues on the names of parties – some 64000 in number, a dour matrimonial Necronominatum that resides on my laptop.^{xxii} In the few instances where the case-page prefixed litigants’ names with “Mr./Shri” or “Mrs/Smt” identifying their gender was simple enough. However for the large part, I had to classify litigants based on my own estimation of whether a name sounded “male” or “female”. This was relatively easier to accomplish with ‘Hindu’ names where feminine names usually (but not always) end with vowels and masculine names frequently end with consonants. However it was painfully difficult to classify Punjabi, Parsi, Muslim and Christian names, owing to my unfamiliarity with naming conventions within these communities. All this to confess that the gender distribution I provide in this paper is, despite the earnestness of my labour, somewhat less than exact. .

Third, I must disclose that I am untrained in statistical methods and it is possible that my extrapolations from such a large data set may offend some revered canon of statistical presentation. It is possible that the discipline of statistics would have evolved methods to accommodate the possibilities of error or mitigate their consequences. A more capable statistician may be able use this data to draw newer and better insights not overtly evident to an amateur. For instance, it would be possible to correlate the filing of Divorce petitions with the filing of petitions for maintenance under the HAMA or the CrPC to arrive at some estimate of the frequency with which petitioners tend to file multiple petitions to obtain relief. However such advanced kinds of calculus are far beyond my limited statistical abilities. To that extent, I would like this paper to be viewed merely as an invitation to more rigorous statistical inquiry rather than a final declaration of conclusions.

Finally, I feel it is important to confess that I have not ever actually set foot in the Mumbai Family Court, and what knowledge I possess about the practices of this court is almost solely induced from the data itself. Local factors and “courtroom realities” that I am ignorant of – conventions of civil court practice for instance – may lend an entirely different colour to my results and to that extent readers are invited to receive this data with an appropriate degree of caution. Readers are invited to read this text as a companion to more methodical field-based ethnographies of Indian courts to get a fuller picture of the experience of litigation.^{xxiii}

Mumbai and the Family Courts

The Census of 2011 counted Mumbai^{xxiv} as being home to roughly 2.6 million married couples^{xxv} who resided in some 2.1 million households^{xxvi}. As **Table 1** below shows, a majority of the *households* (68%) in Mumbai are occupied by a single married couple, indicating that the nuclear family is the predominant form of family life in the city.

Indicator	Number of Households
1 Married Couple	18,00,168 (68%)
2 Married Couples	3,02,691 (11%)
3 Married Couples	58,122 (2%)
4 Married Couples	8,214 (%)
5+ Married Couples	1,730 (%)
No Married Couples	4,94,556 (19%)
Grand Total	26,65,481 (100%)

Table 2: Number of married couples per household (Census 2011)

Table 3 above indicates that a majority of the households in Mumbai have more than 2 members. 64% of Households in Mumbai have between 3-5 members residing together. Reading these statistics together, it appears that a majority of married couples in Mumbai live in nuclear households with 1 or more children and/or their parents.

Number of Members in Household	No. of Households	%
2	2,81,285	11%
3	4,52,537	18%
4	6,81,913	27%
5	4,83,279	19%
6 to 8	5,16,285	20%
9 and above	1,23,128	5%
Grand Total	25,38,427	100%

Table 3: Members per household in Mumbai (Census 2011)

The more serious matrimonial disputes of these 2.6 million couples are serviced by the Family Court in Bandra which was set up in 1989 and only recently celebrated its 25 year anniversary. The court is staffed with 7 judges, three of whom, including the Principal Judge, are currently women. The Court is assisted by a Mediation Center comprising “a total of 10 trained mediators, 45 advocate mediators and seven judge mediators.”^{xxvii}

The Family Courts Act under which the Mumbai Family Court was established was passed and came into effect in 1984. The Act was a welcome legislative response to the expressed concern from many quarters – especially women’s rights organisations – that matrimonial cases be disposed speedily, non-adversarially to the extent possible, through specialized courts^{xxviii}. It is important to note that the Act did not mandate the immediate setting up of Family Courts nationwide. It only *required* State Governments to set up Family Courts in all cities and towns with populations exceeding 1 million. State Governments were also given the power, *optionally*, to establish Family Courts in other areas of the State that they deemed necessary. The latest Census counts 53 cities in India as having a population exceeding 1 million.^{xxix} As against this figure, there are currently about 410 Family Courts said to be functioning within the Country, 25 of which are located in the state of Maharashtra.^{xxx}

The Family Courts Act does not define the word ‘family’ and only focusses narrowly on providing a common forum for a few common matrimonial causes of action viz: “1. Decrees for nullity of marriage 2. Restitution of Conjugal rights 3. Judicial Separation 4. Divorce 5. Declaration of marital status of any person 6. Matrimonial property matters 7. Claims of maintenance both under personal laws as well as under the CrPC 8. Guardianship, Custody and Access to children 9. Injunction suits in matrimonial matters.” These causes of action have been divided by the Mumbai Family court into the 7 Petition Types we encountered in the preceding section of this paper.

One of the important changes that this Act introduced was the investing of the Family court – a civil court- with jurisdiction to try applications for maintenance under S. 125 of the Code of Criminal Procedure. Hitherto, and even currently in non-metropolitan areas where Family Courts have not been established, such claims had to be made in criminal courts, viewed by many as uncongenial for those bringing family disputes.

Despite its wide jurisdiction, however, the Act left out of its ambit all issues relating to succession which continue to be dealt with in ordinary civil courts. In addition complaints under the Domestic Violence Act and petitions for the fixation of Mehr amounts under the

Muslim Women (Protection of Rights on Divorce) Act, 1986 do not currently fall under the ambit of the Family Courts.

There is a heavy emphasis on conciliation in many of the Act's sections, a feature that is important to bear in mind as we go through the statistics of this court. Judges for instance are mandated to "assist and persuade" parties towards settlement, parties do not have an automatic right to legal representation – although it is rare for them to not rely on one - and there are relaxations in evidentiary rules that are designed to enable the court to inform itself holistically about the source of the dispute. The right to *appeal* is barred in all cases of disposal by mutual consent, although the High Court may, in exercise of its Constitutional powers, review the record of any case on a motion by either party.

This statutory impetus towards conciliation is further bolstered by the Maharashtra Family Courts Rules notified by the State Government in 1987 which establishes a permanent Conciliation Center attached to the court. Importantly the Rules mandate that when the parties arrive at a settlement before a counsellor, the Court "*shall* pronounce a decree.. in terms thereof unless the Court considers the terms of the settlement unconscionable or unlawful or contrary to public policy." ^{xxxii}

All of this describes the statutory parameters within which the Family Court of Mumbai operates. In addition, it is vital to bear in mind that this is the sole court for all matrimonial disputes in the most populous city of the country. Events in this court are frequently reported in the national print media^{xxxiii}, not least because of Mumbai being home to Bollywood, which adds its share of lustre to the court's proceedings. In the last year alone, the Family Court of Mumbai was constantly in the spotlight due to matrimonial disputes filed by stars such as Hrithik Roshan, Leander Paes, Yukta Mookhey, Karishma Kapoor and Om Puri, among others.

So, whether viewed in terms of the volume of cases, their high profile or the diversity of issues brought before it for adjudication, this is a court which has to contend with more than most other lower courts in India have to. In addition, more than other family courts, the pronouncements of the Family Court in Mumbai undergo regularly public scrutiny in the popular press.

Against this context, I now turn to the data about the cases filed in the Mumbai Family court.

Data Analysis

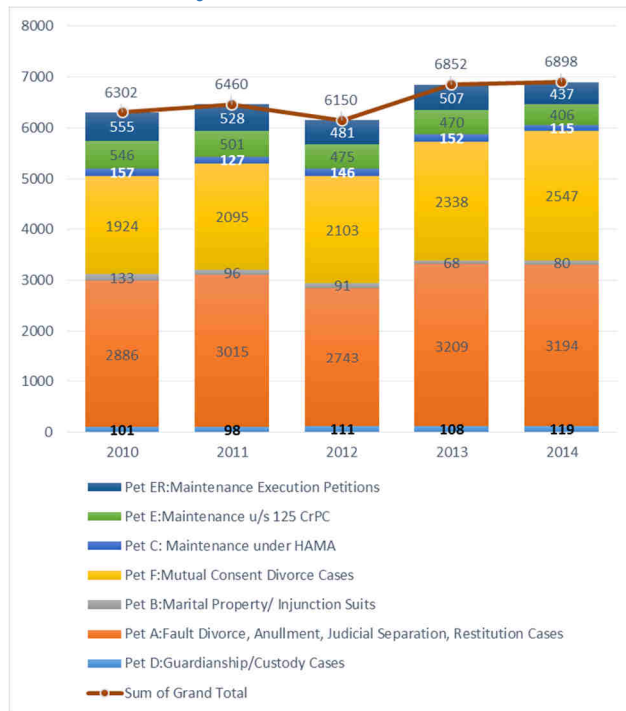


Figure 1: Category-wise breakup of cases filed between 2010-2014

Some 32662 cases are listed as having been filed and either disposed or still pending in the 5 year period between the years 2010-2014. **Figure 1** provides a category-wise breakup of these cases. As is evident, the major Matrimonial reliefs – divorce (including mutual consent divorce), annulment, restitution, and judicial separation make up an overwhelmingly high proportion of the yearly caseload of the court –accounting for fully 86-90% of cases filed. As we see later in this paper, annulment, restitution and judicial separation make up a very minuscule proportion of these petitions, making Divorce the primary relief for which litigants approached this court during the study period.

While the filing of mutual consent petitions (Petition F) has been on the ascendant during this period, they do not, from this chart, appear to have risen at the expense

of filings for divorce on fault grounds (Petition A), whose numbers have continued to grow steadily.

Of the remaining categories of petitions, filings of Marital Property Suits and Maintenance petitions both under the CrPC and the Hindu Adoptions and Maintenance Act appear to have declined sharply during the study period while Guardianship/Custody petitions have recorded a steady rise although their absolute numbers pale in comparison with the rise in Petition A and F cases. **Figure 2** charts the percentage growth/decline in the different categories of cases during the study period.

Cases disposed and currently pending between 2010-2015

Of the 32662 cases filed during the study period, 24168 or 74% are listed as having been ‘Disposed’ during this 5 year period (not necessarily in the year that they were filed). The remaining, roughly 26%, are listed as currently pending. **Figure 3** provides a category-wise breakup of the current status of these cases as on 25th March 2015.

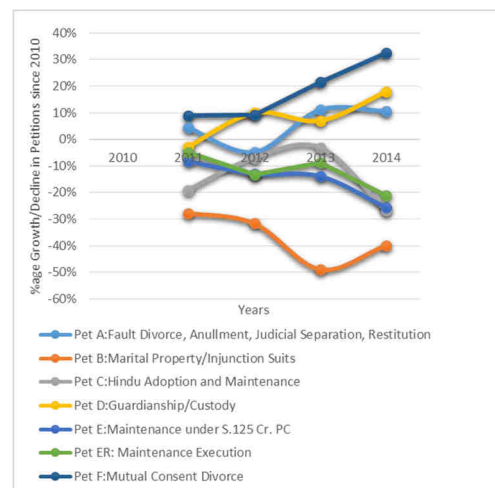


Figure 2: %age annual growth/decline in petitions filed before the Family Court since 2010

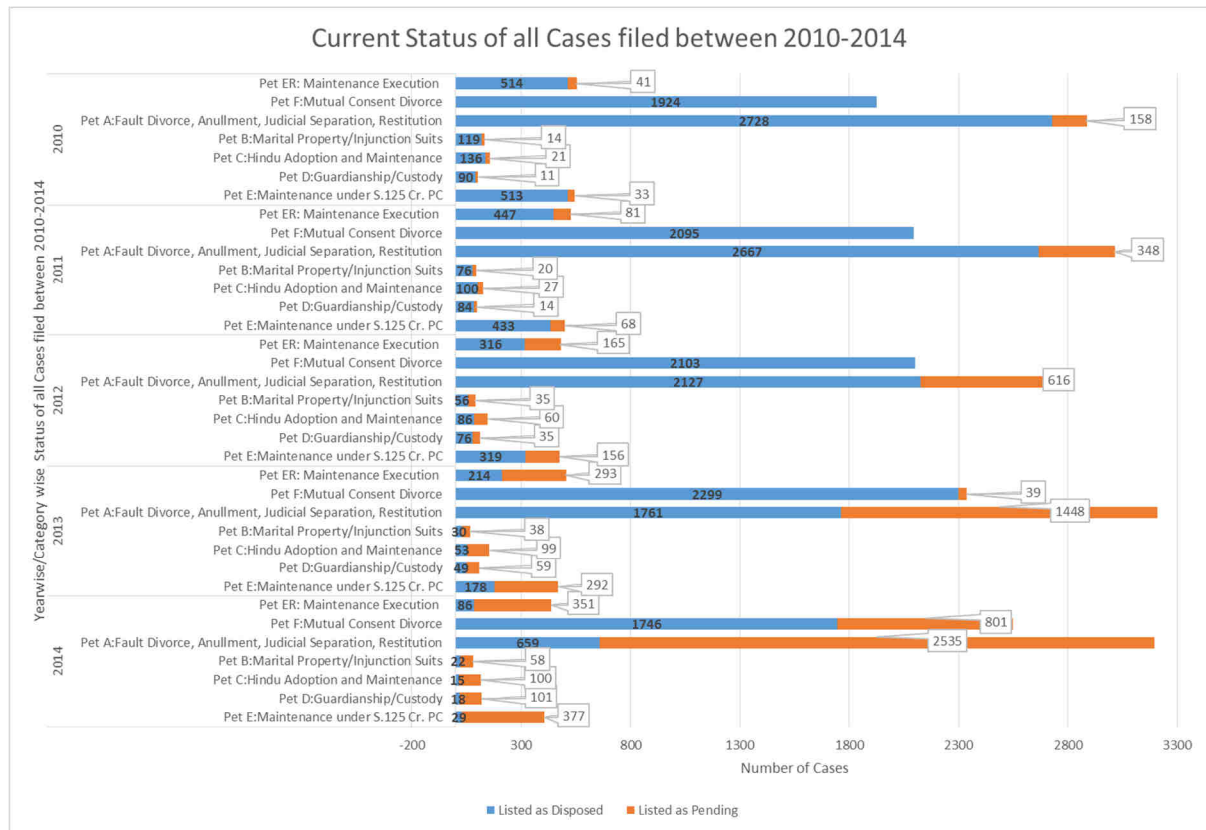


Figure 3: Current Status of Cases Filed between 2010-2014

Without delving deeper for the moment into the manner of disposal of these cases or the duration that they last, a couple of facts are borne out by this chart.

Firstly that the burden of the caseload currently upon the Family Court consists predominantly of petitions filed in the last two years. **Figure 4** provides an annual breakup of the cases currently pending before the family court. The table indicates that up to 79%, or nearly four fifths of all cases currently pending were filed after 2013. Oddly, the numbers of cases pending seem to increase in a rough geometric progression from year to year (3%-6%-12%- 26%-52%)

Year of Filing	Cases currently pending
2010	278 (3%)
2011	558 (6%)
2012	1067 (12%)
2013	2268 (26%)
2014	4323 (53%)
Grand Total	8494 (100%)

Figure 4: Annual breakup of all cases currently pending before the Family Court

Secondly, Figure 3 also indicates that the greater proportion of the pending caseload of the court consists of cases filed for matrimonial reliefs – fault grounds of divorce, annulment, judicial separation and restitution. In fact, as **Table 4** below demonstrates, these cases make up to 70% of the current case load of the family court.

Thirdly, the chart indicates that there are certain kinds of cases that the court is more adept at disposing than others. Mutual consent petitions for instance seem to be promptly disposed of during this 5 year period and, despite the high volume of filings, only 8% of the total pending cases belong to this category – even these are largely those that have been filed during 2014. (See **Figure 5**). By contrast, the court seems to have much greater difficulty in disposing petitions of Guardianship and Maintenance. As

Figure 5 indicates, 41% of cases of Guardianship and Custody and 39% of cases of Maintenance under CrPC filed since 2010 are currently still pending for disposal.

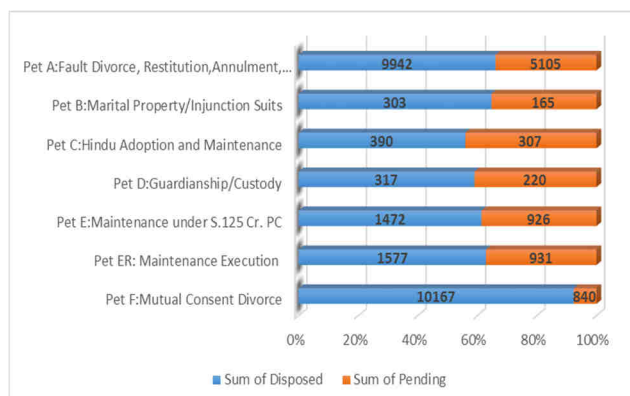


Figure 5: Category wise % of cases filed and disposed since 2010

Pet A: Fault Divorce, Annulment, Judicial Separation, Restitution	5105 (70%)
Pet B: Marital Property/Injunction Suits	165 (2%)
Pet C: Hindu Adoption and Maintenance	307 (4%)
Pet D: Guardianship/Custody	220 (3%)
Pet E: Maintenance under S.125 Cr. PC	926 (13%)
Pet F: Mutual Consent Divorce	840 (12%)
Pet ER: Maintenance Execution	931 (13%)
Grand Total	8494

Table 4: Category wise cases currently pending before the Family Court

cases every day. More details are provided in the subsequent segment of this paper on the number of hearings.

Nevertheless, viewing the figures in this segment alone, the backlog in number of cases does not seem to be occasioned by *delays* in justice delivery. As Upendra Baxi reminds us, “time consumption is a structural property of legal systems.. related to the normativity of law”. From the figures we have seen so far, it does not seem like the Family Court has an abnormal appetite for time-consumption. Of course a slightly different picture begins to emerge when this data is squared with data about the manner of disposal and average disposal times, which we turn to in later segments of this paper.

Major Enactments invoked, and grounds of relief claimed

Relying on the Acts and section numbers mentioned in the case pages – where such detail was in fact available - I was able to further classify the petitions based on the Act under which they were filed. I was also able to extract major grounds of relief from the Section numbers listed. Cases under Muslim law proved most cumbersome to collate since the court’s website classifies them variously as having been filed under the ‘Muslim Divorce Act’ (referring presumably to the Dissolution of Muslim Marriages Act) or more inscrutably under ‘Momidian Law’ or ‘Sheriyat Act’ – reflecting perhaps the court clerk’s confusion about how to classify cases grounded in uncodified Muslim Law. For the purposes of this study, I classified all cases that were not listed as ‘Muslim Divorce Act’ under the heading of Mohammedan Law. **Table 5** below lists the major Acts under which petitions were filed during the study period.

Acts	Number of Cases
HINDU MARRIAGE ACT	20690 (67%)
CRIMINAL PROCEDURE CODE	4512 (15%)
SPECIAL MARRIAGE ACT	1842 (6%)
INDIAN DIVORCE ACT	1115 (4%)
Muslim Law	946 (3%)
Mohammedan Law	722 (2%)
Dissolution of Muslim Marriages Act	224 (1%)
S.18/20 Hindu Adoption and Maintenance Act	714 (2%)
Guardianship/Custody	453 (1%)
Guardians and Wards Act	387 (1%)
Hindu Minority and Guardianship Act	66 (%)
FAMILY COURT ACT	354 (1%)
Other Acts	145 (%)
Grand Total	30771 (100%)

Table 5: Act-wise breakup of cases filed between 2010-2014

Expectedly, an overwhelming majority of cases were filed under the Hindu Marriage Act, followed by proceedings for maintenance under Section 125 of the Code of Criminal Procedure. Petitions grounded in the other matrimonial laws – The Special Marriage Act, the Indian Divorce Act and Muslim law combined account for only about 15% of the cases filed before the Family Court.

Turning to the major reliefs claimed under these statutes, in **Table 6** below I was able to disaggregate Petition A and B cases^{xxxiii} using Section numbers wherever these were mentioned in the individual case pages. So for example if a case page listed “Hindu Marriage Act” as the Act under which a case was filed, and the Section number listed was “9”, I classified the case as one for ‘Restitution of Conjugal Rights’. Where no section number was listed in a Petition A case, or more frequently where the section was listed as ‘13’ I classified the case as an “Unclear Fault ground of divorce” although it is highly likely that they are Divorce cases filed on grounds of Cruelty. Curiously, a number of Mohammedan Law petitions listed as ‘Sections’, paragraphs from Mulla’s Textbook on Mohammedan Law. Illustratively, a case page might list ‘Momidian Law’ as the Act under which a case was filed and ‘281’ as the section under which it was filed. Paragraph 281 of Mulla’s textbook on Mohammedan Law, of course, deals with the topic of Restitution of Conjugal rights. It is possible that the statutory organization of Mulla’s textbook confused the clerk into mistaking it for a statute - an inadvertent instance of scholarly legislation!^{xxxiv} **Table 6** below summarizes this disaggregated data based on Section numbers.

Types of Relief	Pending	Disposed	Grand Total
Fault Divorce	3837 (75%)	8130 (76%)	11967 (76%)
Unclear Fault grounds of Divorce	364 (9%)	2225 (27%)	2589 (22%)
Cruelty	2662 (69%)	5152 (63%)	7814 (65%)
Cruelty + Desertion	708 (18%)	609 (7%)	1317 (11%)
Cruelty + Failure to Maintain/Perform Marital Obligations	27 (1%)	27 (%)	54 (%)
Desertion	64 (2%)	96 (1%)	160 (1%)
Divorce: Refusal to Consummate	1 (%)	11 (%)	12 (%)
Failure to Maintain/Perform Marital Obligations	11 (%)	10 (%)	21 (%)
Restitution	978 (19%)	1706 (16%)	2684 (17%)
Annulment	269 (5%)	699 (7%)	968 (6%)
Judicial Separation	60 (1%)	90 (1%)	150 (1%)
Khula/Mubarat	1 (%)	3 (%)	4 (%)
Grand Total	5145 (100%)	10628 (100%)	15773 (100%)

Table 6: Major grounds of Relief claimed in Petition A and B cases (% of Parent Category Total)

“Cruelty” is clearly, from the table above, the most frequently invoked ground of relief, relied on in no fewer than 65% of the total cases disposed. From this statistic one cannot suppress morbidly imagining the Family Court as an archive that minutely catalogues the variety of cruelties ever visited by spouses upon each other - sparing not even the most trifling of innuendos. At a more mundane level however, this figure is possibly expressive of the fact that the wording of the various matrimonial statutes is restrictive and compels litigants to choose between a limited menu of available charges (Adultery, cruelty, desertion, mental disorder etc) in order to obtain a divorce. Against this context, cruelty emerges as the residual category, invoked where no evidence of any other matrimonial fault can be adduced.

Multiplicity of proceedings

Of the 32000 cases analysed for this study, at least about 3100 (roughly 10%) were filed between 1300 litigant-pairs who had more than one petition – either of the same type or different types - pending or disposed by the court during the study period . Of these 3100 petitions, Maintenance Recovery Petitions under the CrPC (Pet ER) formed the bulk. About 1200 of these petitions (38%) were by a group of about 425 (mostly) women^{xxxv} who appear to have been compelled to file two or more maintenance recovery petitions against the same respondent during the study period. These 1200 amount to about 48% of the *total* petitions filed/disposed under the category of Petition ER during the entire 5 year study period. At least 367 of the 931 petitions currently listed as *pending* under this category (see **Table 4**) are by petitioners whose previous recovery cases have already been disposed by the court. In other words these 367 cases are instances of petitioners returning to the court for further relief even after the court had previously decreed the execution of their maintenance petitions.

An additional 400 petitions out of the 3100 duplicate cases were filed by about 180 petitioners who had petitions of other kinds (mostly Petition E Cases pleading for the award of maintenance) either pending or disposed by the court in addition to an ER petition for Recovery of Maintenance during the study period.

In other words about 47% (600 out of 1300) litigants who had multiple suits pending/disposed by the court during the study period were involved in the recovery of maintenance amounts.

The bulk of the remainder of duplicate cases involved Petition A for Divorce/Restitution/Annulment or Judicial Separation. Some 310 petitions were instances of multiple Petition A proceedings initiated by 148 litigants in the same court. An additional 712 petitions were filed by 353 litigants who had also filed at least one proceeding of a different type (excluding recovery petitions) in addition to a Petition A case. Most frequently Petition A cases were clubbed with Petition E cases for maintenance under the CrPC or Petition F cases for Divorce by Mutual Consent. So about 31% (400 out of 1300) litigants were involved in proceedings for Divorce/Restitution in addition, commonly, to maintenance proceedings.

What is interesting about these figures of multiple proceedings is that viewed in light of the total volume of cases, their percentage does not seem so high. In fact they seem suspiciously too low. They imply that a vast majority of litigants (~90%) are content to come to court for the limited purpose of obtaining a Divorce and never see the courtroom again. One can read multiple meanings into this figure. On a more optimistic reading one may assume that, for the largest part, litigants are able to cast aside any rancour attendant on the breakdown of their marital relationships and arrive at, and fully adhere to, a fair agreement about the distribution of their post-marital financial responsibilities. This would not necessitate further litigation, aside from the petition that terminated their status as spouses. Another plausible explanation is that complaints under the Domestic Violence Act – not dealt with by the Family Court - offers women a more reliable route to secure their maintenance claims. So there may be a higher percentage of multiplicity of proceedings if we had that data as well. Of course, more pessimistic readings are also possible, among them the possibility that the judicial system – not necessarily this Family Court - does not invest litigants with enough confidence of a just and timely outcome to warrant their continued pursuit of remedies that they are entitled to (in addition to divorce).

Manner of Disposal of Cases

“In every suit or proceeding, endeavor shall be made by the Family Court in the first instance, .. to assist and persuade the parties in arriving at a **settlement** in respect of the subject-matter of the suit..”

Section 9 of the Family Courts Act

No single detail of the cases that I analysed for this paper confounded me more than the information listed about their “Manner of Disposal”. The Mumbai Family court appears to draw on a highly whimsical taxonomy to describe the eventual outcome of each case. Some of the terms they use such as “Withdrawn” or “Transfer” seem sensible enough. Others are more ambiguous: “Disposed Of” (sic) or “Judgement” (sic) which don’t aide us very much in understanding what *happened* to the case – did the petitioner’s claim succeed or no? Notwithstanding this disarray, some patterns are discernible and **Table 7** below is the result of my attempts to impose some linguistic order on the Babel of confused, often conflicting or self-cancelling terms used in the court’s website. I have listed disposal figures for 14200 cases where such details were available (excluding some 10000 Mutual Consent Divorce petitions (Petition F) which were mostly, by their very nature “Disposed by Consent” or “Allowed”). To achieve greater granularity, I have classified the remaining cases according to the reliefs claimed rather than their Petition Types.

Manner of Disposal	Number of Cases (%)										
	Restitution	Annulment	Judicial Separation	Marital Property/Injunction	Guardianship/Custody	Fault Grounds of Divorce	Maintenance under CrPC	Maintenance under HAMA	S125	Maintenance Recovery Appln.	Total Number of Cases
Without entering merits	869 (51%)	364 (52%)	64 (71%)	99 (44%)	102 (33%)	4892 (60%)	367 (33%)	214 (55%)	157 (10%)	7128 (50%)	
Consent Terms	318 (19%)	256 (37%)	39 (43%)	9 (4%)	17 (6%)	3863 (48%)	15 (1%)	11 (3%)	6 (%)	4534 (32%)	
Withdrawn	439 (26%)	86 (12%)	21 (23%)	86 (38%)	78 (25%)	742 (9%)	319 (29%)	188 (49%)	147 (9%)	2106 (15%)	
Reconciled/Abated	84 (5%)	7 (1%)	2 (2%)	3 (1%)	4 (1%)	140 (2%)	32 (3%)	14 (4%)	4 (%)	290 (2%)	
Transfer	28 (2%)	15 (2%)	2 (2%)	1 (%)	3 (1%)	147 (2%)	1 (%)	1 (%)	(%)	198 (1%)	
Dismissed/Rejected	606 (36%)	119 (17%)	16 (18%)	59 (26%)	89 (29%)	1333 (16%)	391 (35%)	77 (20%)	404 (26%)	3094 (22%)	
Ex-Parte	108 (6%)	49 (7%)	5 (6%)	9 (4%)	17 (6%)	862 (11%)	66 (6%)	23 (6%)	(%)	1139 (8%)	
"Allowed"	55 (3%)	50 (7%)	2 (2%)	15 (7%)	31 (10%)	605 (7%)	108 (10%)	27 (7%)	5 (%)	898 (6%)	
"Judgment"/"Disposed Of"	55 (3%)	39 (6%)	3 (3%)	33 (15%)	60 (19%)	344 (4%)	161 (15%)	43 (11%)	181 (11%)	919 (6%)	
Disposed Otherwise	12 (1%)	73 (11%)	(%)	10 (4%)	9 (3%)	70 (1%)	12 (1%)	2 (1%)	16 (1%)	204 (1%)	
"Fully Satisfied"	(%)	(%)	(%)	(%)	(%)	7 (%)	2 (%)	(%)	812 (52%)	821 (6%)	
Grand Total	1705 (100%)	694 (100%)	90 (100%)	225 (100%)	308 (100%)	8113 (100%)	1107 (100%)	386 (100%)	1575 (100%)	14203 (100%)	

Table 7: Manner of Disposal by Relief-claimed

What is immediately striking from this table is the high percentage of petitions that end up being disposed as I have classified them “Without entering into merits”, i.e. owing to the agency of the litigants themselves rather than a deliberated determination by the court. In at least a *third* of all cases (32%) resolution is arrived at by a settlement brokered between the parties. This should not come as a surprise since the Family Court itself incorporates a policy bias towards settlement in Section 9 that I have quoted at the start of this segment of the paper. This figure is a testament to the success of the policy goal behind the statute, although much remains to be said about the fairness, quality and conditions of the settlements that are arrived at.

In addition, about 17% of all cases are either withdrawn by the litigants themselves or are “abated” – meaning they are closed by the court due to the long inactivity of the petitioners. This percentage is higher in Maintenance Cases approaching 50% of all cases for Maintenance under the Hindu Adoptions and Maintenance Act and 40% in disputes over Marital Property and 30% in proceedings for Maintenance under the CrPC. This high attrition rate, especially in areas of litigation that are crucial for securing women’s economic rights signals a latent gender bias in the access to courts. Significantly, in each of these categories of cases, the percentage of resolution by consent is minor (~1-3%) indicating that they are vigorously resisted by respondents – typically husbands.

This leads us to the third significant percentage – an average of 22% of all cases end up being ‘Dismissed’ or are ‘Rejected’. Once again there are thematic variations to this figure and if one only focuses on the four categories of women’s claims – Maintenance under the CrPC and HAMA, Maintenance Recovery Petitions and Marital Property Disputes – this percentage nudges up to an average of 30%.

Leaving aside these two categories of disposal – ‘Without going into merits’ and ‘Dismissals’ – the residual 28% of cases represent the *maximum* chances of a litigant’s success in courts after the court’s appraisal of the facts and the law.

To turn these statistics into a narrative, when the average litigant files a petition in the Family Court at Mumbai, he/she has a 32% chance of the matter ending in a mediated settlement. Then, there is a 17% chance that he/she will tire of the case midway and will withdraw it or cease to pursue it. Should he/she persist with the claim despite the failure of a settlement, there is a 22% likelihood that the case will be dismissed and a maximum chance of 28% that the litigant will achieve his/her desired result. Different teleologies may be written up by varying the relief claimed – for instance, a 60% of chance of a mediate settlement in the case of Fault Grounds of Divorce.

Viewed from the perspective of the court, in *half* of all cases that come before it (that aren't instituted as mutual consent divorce petitions), the court ends up not having to exercise its judicial mind upon the issues raised. This is not to suggest that this 'administration of consent' that the court is engaged in is not time consuming. If litigants end their cases with a settlement, or withdraw their cases midway, they do so having taken up a significant amount of the court's time. **Table 8** below supplies some detail about the time taken for each disposal type. In the next segment we turn to figures about the average time taken per-case type.

Disposal times, Interim Hearings Per Case Type

The webpage of each individual petition provides details of the number of hearings in that case along with their dates and brief details about the purpose of the hearing. I was able to extract these details and construct a picture of the average lifespan of different types of petitions.

A total of about 265,000 hearings were listed as having been conducted in the 32000 petitions included in this study. Assuming about 300 working days per year^{xxxvi}, this works out to roughly 880 hearings conducted per day or a staggering 125 hearings conducted per judge per day.^{xxxvii}

Table 6 below focuses only on the cases 'Disposed' by the court during the study period and provides details of the number of *interim* hearings between the first date of hearing and the date of decision, it takes for a petition to be disposed. So 4% of all 'Petition A' cases were disposed after a single interim hearing, 19% were disposed within 2-3 hearings and so on.

Number of Hearings	Cases Disposed (Running Total %)							
	Cri. App. E	Petition A	Petition B	Petition D	Petition F	Petition C	Petition ER	Total
1 Hearing	16 (1%)	346 (4%)	14 (5%)	14 (4%)	5424 (54%)	8 (2%)	68 (4%)	5890 (25%)
2-3 Hearings	65 (7%)	1416 (19%)	27 (14%)	22 (12%)	3344 (87%)	9 (4%)	73 (9%)	4956 (47%)
4-10 Hearings	420 (44%)	4377 (65%)	94 (46%)	131 (56%)	1187 (99%)	141 (41%)	532 (44%)	6882 (76%)
11-15 Hearings	212 (62%)	1646 (82%)	50 (63%)	51 (74%)	121 (100%)	62 (57%)	327 (65%)	2469 (87%)
16-20 Hearings	156 (76%)	841 (91%)	39 (76%)	23 (82%)	10 (100%)	57 (72%)	220 (79%)	1346 (93%)
20-50 Hearings	273 (100%)	834 (100%)	67 (99%)	51 (99%)	(100%)	102 (99%)	316 (100%)	1643 (100%)
50-100 Hearings	4 (100%)	31 (100%)	3 (100%)	3 (100%)	(100%)	4 (100%)	4 (100%)	49 (100%)
Grand Total	1146	9491	294	295	10086	383	1540	23235

Table 8: Running Total of Number of Interim Hearings before disposal of petition

The figures in the table above lend support to the assertion made earlier in this paper that the court has an easier time of disposing certain types of petitions over others. For instance, during the study period, 87% of all Petition F cases for Divorce by Mutual Consent had been Disposed by the 4th hearing. By contrast, by the 10th hearing, only 44% of Maintenance and Recovery Proceedings under the CrPC - respectively Cri. App. E and Petition ER petitions - had been disposed. In other words 55% of the cases filed under this category were heard on more than 10 dates before they were finally disposed. These figures are broken down further in **Table 9** below which provides the Average, Median and Modal number of hearings per relief type. In addition the table also provides the average number of days the court took in these cases to dispose the petition and the average number of days between hearings.

For instance the average number of hearings in an Annulment petition was 8, although most frequently, in 22% of cases that were disposed, the court only took 3 hearings to dispose of the matter. The average time the court took to dispose of annulment petitions during the study period was 440 days or roughly a year and two months. The average interval between hearing dates in petitions for annulment was 47 days .

Once again, the average number of hearing dates and the average decision time are the highest for Maintenance cases both under the CrPC and the Hindu Adoptions and Maintenance Act –

both lasting an average of between 650-660 days or about a year and 10 months. During this period, these cases are heard on *average* between 14-16 times. Petitions for Divorce by mutual consent on the other hand are disposed in an average of only 220 days – a little over 7 months. 53% of these cases were disposed in a single hearing.

Reliefs Sought	Average No of Hearings per case	Median No of Hearings per case	Max of No of Hearings in any case	Modal No of Hearings (Frequency)	Average No. of Days between hearings	Average Decision Time (Days)	StdDev of Decision Time	Number of Cases Disposed
Annulment	8	6	55	3 (22%)	47	405	277	699
Guardianship/Custody	12	9	67	6 (35%)	40	487	346	308
Fault Grounds of Divorce	9	7	81	3 (26%)	50	451	300	8130
Judicial Separation	10	8	59	4 (26%)	47	511	303	90
Maintenance under CrPC	14	12	70	6 (23%)	45	648	356	1108
Marital Property/Injunction	14	12	100	3 (13%)	40	566	403	225
Mutual Consent Divorce	2	1	46	1 (53%)	79	221	100	9212
Restitution	9	7	62	3 (18%)	50	474	296	1706
Hindu Adoption and Maintenance Act	16	13	63	9 (36%)	48	660	395	387
S125 Maintenance Recovery Appln.	14	12	59	7 (27%)	43	547	365	1575
Grand Total								23440

Table 9: Averages, Medians and Modal No. of Hearings, Average Interval between hearings, Average Decision time

Translated into the ordinary lives of litigants, these statistics would mean that if a woman intends to file a petition for maintenance against her spouse, the average time she can expect to have to wait is nearly two years. She or her lawyer would also very likely, in this period have to make between 14-16 trips to court at intervals of every one and a half month. If she's lucky her case could be disposed in fewer hearings – 6 hearings in the case of Maintenance petitions under the CrPC and 9 in case of petitions under the HAMA. Of course, there's always the possibility she must weigh that her's could be one of the unlucky ones that is heard more than 60 times. It would be pertinent to recall here that Maintenance cases coincidentally have the highest percentage of withdrawals – a statistic that seems quite understandable in light of the timelines that this table reveals.

In **Table 10** below I provide details of the number of hearings and the average decision time taken to dispose cases, arranged according to 4 common grounds of disposal – by consent, withdrawn, “Fully Satisfied”, “Dismissed” and “Allowed”. I exclude from this table, figures from Mutual Consent petitions which are presumably all disposed “By Consent” or, less commonly, “Withdrawn”.

Number of Interim Hearings	Consent/Convert		WITHDRAWN		FULLY SATISFIED		DISMISSED		ALLOWED		Disposed Of/Judgment	
	Avg Decn time (Days)	No. of Cases (%)	Avg Decn time (Days)	No. of Cases (%)	Avg Decn time (Days)	No. of Cases (%)	Avg Decn time (Days)	No. of Cases (%)	Avg Decn time (Days)	No. of Cases (%)	Avg Decn time (Days)	No. of Cases (%)
1 Hearing	197	172 (5%)	107	135 (7%)	80	43 (5%)	107	30 (1%)	108	5 (1%)	94	27 (3%)
2-4	240	1185 (31%)	214	483 (24%)	157	78 (10%)	227	443 (15%)	184	47 (6%)	180	93 (10%)
5-10	389	1345 (35%)	393	669 (34%)	322	242 (30%)	427	1198 (39%)	374	227 (31%)	365	228 (25%)
11-15	622	520 (14%)	602	308 (15%)	520	174 (22%)	665	639 (21%)	596	175 (24%)	580	118 (13%)
16-20	787	290 (8%)	782	182 (9%)	714	114 (14%)	848	324 (11%)	763	99 (14%)	707	111 (12%)
21-100	1123	296 (8%)	1105	220 (11%)	1064	148 (19%)	1144	407 (13%)	1158	178 (24%)	1105	320 (36%)
Grand Total	453	3808 (100%)	477	1997 (100%)	529	799 (100%)	586	3041 (100%)	657	731 (100%)	672	897 (100%)

Table 10: Number of hearings, Average Decision Time by Disposal Type

What this table indicates, for instance, is that it takes up to 4 interim hearings and an average of 240 days to dispose a third (36%) of all cases that end up being disposed by “Consent”. I.e, in a third of all petitions that were disposed under this category, litigants were able to arrive

at a settlement before the 5th date of hearing or roughly 8 months. Similarly a third of all cases that are withdrawn (31%) do so within 4 hearings and 214 days – i.e. within 7 months of filing. 60-70% of both types of cases are disposed before the 10th hearing after the lapse of 390 days – a little over a year.

By contrast, in only 40% of cases where the petitioner’s relief was “Allowed”, did this occur before the 10th hearing. Viewed differently, 60% of cases where the petitioner’s relief was ‘allowed’ took more than 10 hearings. In a quarter of these petitions the case lasted more than 20 interim hearings and an average of 1128 days or a little over 3 years.

In up to 55% of cases that were ‘Dismissed’ by the court, this was done within 10 hearings taking an average of 427 days – over 14 months.

Over a third of all cases that were “Fully Satisfied” – mostly Maintenance Recovery Petitions – proceedings lasted an average of over 900 days - over 2.5 years.

The broad story that emerges from the figures in this segment is that the court does dispense ‘speedy justice’, but this is only available for those who are able to arrive at a settlement with their opponents. In many of the cases where settlement is not an option, the ordinary time consumption of the court in adjudicating norms proves too burdensome for litigants – especially women - to persist with. In the next and final segment I turn to figures of the distribution of petitions by gender.

Distribution of cases by gender of petitioner

There has been a growing recognition in feminist literature that securing rights for women is a reliable route to enhancing the welfare of the ‘family’ overall^{xxxviii} – that in some senses the word “woman” is metaphoric of the “family” as whole, in ways that the word “man” is not. The inverse of this insight is somewhat borne out by the distribution of cases by gender in the Family Court – i.e. viewed solely on the yardstick of the gender of the petitioners, *Family Courts* are largely *women’s courts* – or at least this one in Mumbai is. **Table 11** provides a distribution of the various reliefs claimed in the Family Court by the gender of the petitioner.^{xxxix}

Reliefs Claimed	Filed by Husbands/Men	Filed by Wives/Wome	Total
Annulment	547 (57%)	419 (43%)	966
Fault Divorce	6081 (51%)	5864 (49%)	11945
Guardianship/Custody	331 (65%)	181 (35%)	512
Judicial Separation	74 (51%)	72 (49%)	146
Restitution	2120 (79%)	559 (21%)	2679
Maintenance under CrPC	60 (3%)	1919 (97%)	1979
Marital Property/Injunction	95 (26%)	271 (74%)	366
HAMA Petition	(%)	697 (100%)	697
S125 Maintenance Recovery Appln.	(%)	2508 (100%)	2508
Grand Total	9308 (43%)	12490 (57%)	21798

Table 11: Distribution of reliefs (Excluding mutual consent) claimed by gender of petitioner in all cases that are both pending and disposed

Clearly the majority of petitions (57%) in this court are filed by women against men. Leaving out figures of petitions for Restitution of Conjugal rights this percentage nudges upwards to 62%. That is, *three-fifths of all petitioners in the Family Courts are women seeking some kind of relief.*

The variations in the gender distribution across the different reliefs are interesting to take note of. Upto 79% of all restitution cases are filed by men against women. This figure accords with the observations and findings of several feminist scholars and commentators, notably Flavia Agnes, that this is a ground that is frequently abused by husbands to harass their wives. Importantly, Agnes notes that this remains a crucial ground of relief for women who do not wish to dissolve their matrimonial relationship entirely. This relief is also of particular importance to non-Hindu women – especially Christian women - since it serves as a doorway to secure auxiliary rights for them such as that of maintenance and custodial rights.^{x1} These auxiliary rights are secured statutorily for Hindu women by the Hindu Minority and Guardianship Act and the Hindu Adoptions and Maintenance Act and so they need not take the ‘Restitution’ route to secure them. There is some evidence of this in the data. Of the 559 cases of restitution filed by women against men, 92 petitions or about 16% of cases were filed by women who were non-Hindus. This may seem like a small number but is from my rough estimates, in accordance with the percentage of all non-Hindus who approach the Family Court of Mumbai. It is also in accordance with the percentage of non-Hindus in the state of Maharashtra and India overall.

The second lopsided figure to note is that of guardianship/custody petitions where again, an overwhelmingly large percentage of petitions are filed by husbands/men against women. This data however must be viewed as incomplete until we have a fuller picture of the disposal of custody of children in matrimonial suits. In the course of divorce proceedings – especially mutual consent petitions - men typically completely cede their right to custody and guardianship over children in exchange for a reciprocal waiver of maintenance interests. Against this context, the petitions for guardianship/custody must be viewed of this overall retreat by men from the responsibilities of parenting.

Lastly one cannot help note that petitions for Maintenance under the HAMA and the CrPC are exclusively by women against men. This is unsurprising given the statutory language under which these cases are filed which exclusively enables women and children to obtain financial relief from men – mostly husbands.

Turning briefly to a gender-wise breakup of petitions filed on “Fault grounds of Divorce”, from

Grounds	Husband	Wife	Total
Cruelty	3965	3841	7806
Cruelty + Desertion	695	618	1313
Desertion	82	76	158
Divorce: Refusal to Consummate	9	3	12
Cruelty+Failure to Maintain		54	54
Unspecified Fault Grounds	1330	1251	2581
Failure to Maintain		21	21
Grand Total	6081	5864	11945

Table 12: Gender wise breakup of Fault grounds of Divorce

the cases (both disposed and pending) from which such details were extractable the number of petitions filed on each of the grounds seem fairly equally distributed (See **Table 12**). Specifically men ground their claims for divorce on allegations of cruelty as frequently as women do. Of course this gives us no insight about the seriousness of the allegations of cruelty that men and women each level. As mentioned before “cruelty” has turned into a residual term for filing divorce cases and is invoked elastically to include frivolous complaints of “not preparing food” or neglecting household chores. Against this context, the Table above must be viewed as merely expressing the absence of any superficial links between gender and the grounds upon which Divorce is sought.

I now turn to the last table in this paper – a gender-wise break up of the manner of disposal of suits (See **Table 13** below).

Gender/Nature of Disposal of Suit	Annulment	Fault Divorce	Guardianship / Custody	HAMA Petition	Judicial Separation	Maintenance under CrPC	Marital Property/ Injunction	Restitution	S125 Maintenance Recovery Appln.	Total Number of Cases
Number of Cases (% of Parent Row total)										
Husband/Men	346 (56%)	3910 (49%)	181 (62%)	0.00%	44 (49%)	31 (3%)	52 (24%)	1369 (81%)	0.00%	5933 (43%)
Consent/Converted to Consent	139 (40%)	1773 (45%)	12 (7%)		20 (45%)	(%)	2 (4%)	249 (18%)		2195 (37%)
Dismissed/Rejected	66 (19%)	725 (19%)	57 (31%)		7 (16%)	14 (45%)	13 (25%)	489 (36%)		1371 (23%)
WITHDRAWN	53 (15%)	394 (10%)	48 (27%)		9 (20%)	3 (10%)	25 (48%)	368 (27%)		900 (15%)
ALLOWED	24 (7%)	262 (7%)	14 (8%)		1 (2%)	2 (6%)	2 (4%)	41 (3%)		346 (6%)
EXPARTE	23 (7%)	347 (9%)	8 (4%)		4 (9%)	2 (6%)	2 (4%)	84 (6%)		470 (8%)
"Disposed" Of	21 (6%)	174 (4%)	37 (20%)		(%)	10 (32%)	7 (13%)	43 (3%)		292 (5%)
Transferred	15 (4%)	144 (4%)	2 (1%)		1 (2%)	(%)	1 (2%)	27 (2%)		190 (3%)
Reconciled/Abated	5 (1%)	88 (2%)	3 (2%)		2 (5%)	(%)	(%)	68 (5%)		166 (3%)
"Fully Satisfied"	(%)	3 (3%)	(%)		(%)	(%)	(%)	(%)		3 (3%)
Wife/Women	275 (44%)	4113 (51%)	112 (38%)	385 (100%)	45 (51%)	1057 (97%)	161 (76%)	316 (19%)	1559 (100%)	8023 (57%)
Consent/Converted to	117 (43%)	2079 (51%)	4 (4%)	11 (3%)	18 (40%)	15 (1%)	7 (4%)	68 (22%)	6 (6%)	2325 (29%)
Dismissed/Rejected	53 (19%)	608 (15%)	31 (28%)	77 (20%)	9 (20%)	372 (35%)	46 (29%)	113 (36%)	404 (26%)	1713 (21%)
WITHDRAWN	33 (12%)	345 (8%)	28 (25%)	189 (49%)	12 (27%)	315 (30%)	61 (38%)	68 (22%)	147 (9%)	1198 (15%)
EXPARTE	26 (9%)	512 (12%)	9 (8%)	23 (6%)	1 (2%)	64 (6%)	6 (4%)	24 (8%)	(%)	665 (8%)
ALLOWED	26 (9%)	341 (8%)	16 (14%)	27 (7%)	1 (2%)	106 (10%)	13 (8%)	14 (4%)	5 (5%)	549 (7%)
"Disposed" Of	18 (7%)	170 (4%)	23 (21%)	43 (11%)	3 (7%)	150 (14%)	25 (16%)	12 (4%)	181 (12%)	625 (8%)
Reconciled/Abated	2 (1%)	52 (1%)	1 (1%)	14 (4%)	(%)	32 (3%)	3 (2%)	16 (5%)	4 (4%)	124 (2%)
"Fully Satisfied"	(%)	4 (4%)	(%)	(%)	(%)	2 (2%)	(%)	(%)	812 (52%)	818 (10%)
Transferred	(%)	2 (2%)	(%)	1 (1%)	1 (2%)	1 (1%)	(%)	1 (1%)	(%)	6 (6%)
Grand Total	621 (100%)	8023 (100%)	293 (100%)	385 (100%)	89 (100%)	1088 (100%)	213 (100%)	1685 (100%)	1559 (100%)	13956 (100%)

Table 13: Gender wise breakup of nature of disposal of cases

At first glance, as bare percentages, the petitions filed by both Men and Women fare almost equally on almost every relief. 15% of all cases filed by both men and women are disposed as “withdrawn”, 21-23% of all petitions are “Dismissed” and between 6-7% of cases filed by men and women are “Allowed”. Petitions filed by men have higher chances of being disposed “by consent”, but the different bargaining attitudes of men and women could have some bearing on this statistic.^{xli}

On a closer look at the individual relief types, interesting patterns begin to emerge. For instance, although the greater percentage of cases for Restitution of Conjugal Rights are filed by men against women, their petitions are only ‘Allowed’ in 3% of these cases. 36% of their petitions end up being Dismissed by the court and 27% are disposed as ‘Withdrawn’. This indicates that whatever their intentions may have been in filing the suit, the court only seems to issue such orders with reluctance and in only up to a maximum of 10% of cases (if one counts the cases disposed as “ExParte” and “Disposed Of” as being favourable to the petitioner) The high rate of eventual failure of these petitions however does not turn it any less into an instrument of harassment. The fate of petitions filed by men for guardianship or custody suffer a similar fate where upto 60% of cases filed by men are either Dismissed or Withdrawn.

Women do not appear to fare comparatively better in the maintenance suits that they file. 65-70% of all suits filed by women for Maintenance either under the HAMA or the CrPC end in either Withdrawal or Dismissal. On the positive side, 52% of all petitions for recovery of maintenance are disposed of as “Fully Satisfied” indicating that the court takes the business of enforcing its maintenance orders with seriousness.

Discussion and Conclusion

I would like to conclude this paper with a brief discussion of some broad themes that the figures signal:

Firstly, the statistics presented in this paper attest to the emergence of “Settlement” as the predominant mode of disposing cases in the Family Court. What this indicates is that Family courts are not essentially, but only residually courts of adjudication. By this I am not referring

to the hidden glacier of causes that never make it to court, but to the fate of the cases that do. 'Judgment' is what courts are compelled to deliver in residual cases when they have been unable to coerce conciliation upon parties, or where the parties have not been driven away by process and withdrawn their claims. So a 'Judgment' paradoxically seems to be a symptom of judicial failure, not the very *raison d'être* for courts' existence.

As I have mentioned previously, this is unsurprising, even expected, given the policy thrust of the Family Courts Act. As a proportion of cases that are disposed after trial, it even accords well with international practices (read USA). Writing almost 30 years ago, Marc Galanter wrote in the same article from which I borrowed the word "Litigotiation" for this paper's title:, "Bargaining in the shadow of the law' is the prevalent means of resolving civil cases in American courts: *fewer than ten percent of cases are tried.*"^{xliii} Galanter describes the shift in American judiciary's attitude towards settlement since the 1940s as being responsive to the spectre of 'docket explosion' – echoes of which are familiar to us in the periodic pronouncements of our own Judges from bench and pulpit.^{xliiii} Against popular opinion, however, I would like to state two caveats that would dull the hurrahs normally due to any evidence of an increasing shift towards mediated outcomes:

- 1) Galanter's paper discusses evidence from studies that indicated that the increasing shift towards mediation had no impact, and at times even an inverse relationship with the number of cases disposed by judges. I.e. if the rationale of an increasing shift towards mediation is to free up judicial time to adjudicate more intricate cases, this was not borne out by the actual practices of courts in the US.^{xliiv} Although I have not verified whether this still remains the case 30 years after Galanter's paper, the statistics about the Mumbai family court seem to point in this direction as well. The high volume of cases that are disposed by consent seem to have had no bearing at all on the remainder of cases – chiefly maintenance petitions which continue to take an average of two years or longer to dispose. This does not mean that mediation is undesirable, only that a more systematic stock-taking and budgeting of judicial time is warranted at an institutional level.
- 2) Any evaluation of the desirability of increased "court-annexed" mediation must also factor in the *quality* of the bargains that litigants enter into under the court's shadow. Although I have not yet systematised the data in this regard, consent terms recorded in the decrees of the court seem to indicate that it is nearly a template for women to waive all present and future maintenance claims in return for unhindered custodial access to their children.^{xliv} Against this context, the increased frequency of cases disposed by 'consent' may be read as an assessment by women that they cannot hope for better justice from the processes of the court. The insubstantive justice of these "private orderings" by litigants should be a greater concern of the court than it currently appears to be.

The second point I would like to make in this conclusion is about the role that gender plays in the Family Court. Access of women to courts generally has been a concern of the women's movement both nationally and internationally. While it is encouraging to note that the Mumbai Family Court seems more accessible to women generally (although we have no system-wide statistics to form any basis for comparison), it is worrying that the average disposal times of cases are longer in the categories of cases litigated by women. It remains the task of future research in the area to assess the *quality* of outcomes women receive from the court.

ENDNOTES

ⁱ I borrow the portmanteau word “Litigotiation” in my title from Marc Galanter’s coinage in an illuminating article about the American Judiciary. See Marc Galanter, “A Settlement Judge, Not a Trial Judge:” *Judicial Mediation In the United States*, *Journal of Law and Society* 12, no. 1 (Spring 1985), <http://www.marcgalanter.net/Documents/papers/scannedpdf/settlementjudge.pdf>.

ⁱⁱ See Marc Galanter, “A Settlement Judge, Not a Trial Judge:” *Judicial Mediation In the United States*, *Journal of Law and Society* 12, no. 1 (Spring 1985), <http://www.marcgalanter.net/Documents/papers/scannedpdf/settlementjudge.pdf>.

ⁱⁱⁱ *Annual Report 2008-2009* (New Delhi: Supreme Court of India, 2009), <http://supremecourtindia.nic.in/annualreport/annualreport2008-09.pdf>.

^{iv} *Biennial Report 2010-2012* (New Delhi: Delhi High Court, 2013), http://delhihighcourt.nic.in/writereaddata/upload/Report/AnnouncementFile_3AYQLFA.PDF.

^v Frequently the responsibility for the compilation of these Annual Reports falls on the respective Registrars of these courts. I realize it is scarcely fair to expect them, in addition to their various administrative responsibilities, to shoulder the burden of moonlighting as jurimetrics scholars. Still it bears mentioning that the Annual Reports of these courts could be put to more fulsome use than they currently are.

^{vi} A striking example of the constraints that the paucity of statistics imposes on the quality of judicial policy-making is the 245th Report of the Law Commission on “Arrears and Backlog: Creating Additional Judicial (wo)manpower”. Tasked with recommending solutions to the backlog of cases in the country, the Commission appears to have had no access to any statistics about the courts in India other than the number of cases instituted, disposed and pending in each state. When one knows only a) that x number of cases are filed in a year b) y number of cases are disposed every year leading to c) z - a number of pending cases = x-y, the only recommendation that you *could* possibly put forward based on this limited knowledge is that perhaps more judges might be a good idea. This was in fact what the Law Commission’s recommendation boiled down to. One wishes that the Hon’ble Commission had, in addition also recommended as a solution to problem of pendency, the standardised compilation of sufficiently disaggregated statistics about the workings of each court. This would at least have had the virtue of supplying the next law commission report on pendency with a more nuanced set of data to work with. Law Commission of India et al., *Report No. 245: Arrears and Backlog: Creating Additional Judicial (wo)manpower* (New Delhi, 11 April 2015), New Delhi, http://lawcommissionofindia.nic.in/reports/Report_No.245.pdf.

^{vii} Upendra Baxi, *Towards a Sociology of Indian Law* (New Delhi: Satvahan, 1986), 3.

^{viii} Flavia Agnes, *A Study of the Family Courts, West Bengal*, September 2004.

^{ix} EKTA Resource Centre for Women Resource Centre for Women, *A Study of Family Courts in Tamil Nadu*, November 2008, http://ektamadurai.org/wp-content/uploads/2011/pdf/Family_Court_Study_Book_let.pdf.

^x Srimati Basu, ‘Judges of Normality: Mediating Marriage in the Family Courts of Kolkata, India’, *Signs* 37, no. 2 (2012): 469–92, doi:10.1086/661712.

^{xi} Gopika Solanki, *Adjudication in Religious Family Laws: Cultural Accommodation, Legal Pluralism, And Gender Equality In India* (Cambridge University Press, 2013).

^{xvi} It is important to note that these 7 categories are only the *major* kinds of petitions filed before this court and should not be read as expressing the total volume of cases that the court has to contend with. In addition to these 7 categories, the Mumbai Family Court’s website also displays data about Criminal and Civil Miscellaneous Applications and ‘Regular Darkhast’ petitions filed before it. I have omitted these cases – amounting to about 1200 cases every year - from my survey both because they appear to form only a negligible component of the court’s caseload and also since they only deal peripherally with the matrimonial issues that are the chief object of my study.

^{xvii} A number of suits of annulment or divorce are filed under the category of Petition B suits – chiefly (but not only) by parties who are Muslim for whom a declaratory decree under the Specific Relief Act seems the only way possible to obtain a judicial affirmation of their *talaq*. The absolute number of these petitions however is not so large as to skew the broad contours of the data.

^{xx} This however is a vastly simplified account of the process. The actual activity of downloading and segregating of information was a process too intricate to describe and arduous to accomplish – especially for a hobbyist programmer such as myself.

^{xxi} To be utterly clear, I am unable to verify whether some glitch in the court’s system or typist’s ignorance did not lead inadvertently to a 1000 cases being wrongly classified as something they were not! Likewise, I cannot say for sure if the fall in numbers of cases filed/disposed during 2012 was a natural occurrence or is simply reflective of the fact that fewer cases were uploaded by the court’s IT

Division that year. This is the unfortunate flip side to working with large quantities of electronic data. As a researcher however I am entitled to my optimism about the absolute integrity of my data.

^{xxii} I am profoundly conscious that this work was built upon what seems to be a rather wholesale violation of privacy of the litigants – first by the court’s website in uploading their data and secondarily by myself in making use of this data. Since the turn of the century the Indian state has capped a long period of opaqueness by taking remarkable strides towards openness of information. This new culture of openness however seems driven more by an exuberant and almost desperate embrace of IT as a source of salvation for the problems of underdevelopment than a deliberated and systematic policy preference towards the virtue of openness. Commissioning IT projects for each of its departments has become a routine activity of most arms of the state, and are almost somnambulistically executed in the same manner as civil works projects were commissioned during the previous era. Welcome though all the surfeit of information that this IT-crazy-state has produced is, this has frequently come at the expense of the right to privacy which gets routinely overrun in a range of the state’s IT endeavours. For instance in the 50 page National Policy on IT in the Judiciary prepared by the Supreme Court in 2005 and pursuant to which the Mumbai Family Court’s website was set up, the word ‘privacy’ is mentioned not even once. E-Committee, Supreme Court of India, *National Policy And Action Plan For Implementation Of Information And Communication Technology In The Indian Judiciary* (New Delhi, 1 August 2005), New Delhi, <http://supremecourtindia.nic.in/ecommittee/action-plan-ecourt.pdf>.

^{xxiii} See for instance Jayanth K. Krishnan et al., ‘Grappling at the Grassroots: Access to Justice in India’s Lower Tier’, *Harvard Human Rights Journal* 27, accessed 10 April 2015, http://harvardhrj.com/wp-content/uploads/2014/07/V27_Krishnan_et_al.pdf; Solanki, *Adjudication in Religious Family Laws*; Basu, ‘Judges of Normality’.

^{xxiv} I have aggregated the 2011 census figures for ‘Mumbai district’ and ‘Mumbai suburban’ to arrive at the figures in this section.

^{xxv} The Census provides details of the number of married couples per household. Census surveyors were given the following instructions: “A ‘couple’ is formed through marriage. All currently married couples living in the household irrespective of their age are to be included... Count those couples who are normal residents even if one of the spouses is temporarily absent.” Office of the Registrar General and Census Commissioner, *Instruction Manual for Houselisting and Housing Census, 2011*, 45, <http://catalog.ihnsn.org/index.php/catalog/4161/download/55469>. I arrived at the estimate of 2.6 million married couples by the spurious method of multiplying the number of married couples by the number of households they were listed as residents of.

^{xxvi} The instructions given to census surveyors in 2011 define a household as: “a group of persons who normally live together and take their meals from a common kitchen unless the exigencies of work prevent any of them from doing so. The persons in a household may be related or unrelated or a mix of both. However, if a group of unrelated persons live in a Census house but do not take their meals from the common kitchen, then they will not collectively constitute a household. ... The important link in finding out whether it is a household or not is a common kitchen.” *Ibid.*, 8.

^{xxvii} Sonam Saigal, ‘Bandra Family Court Receives 1000 Divorce Pleas Every Month’, *Free Press Journal*, 1 January 2015, <http://www.freepressjournal.in/bandra-family-court-receives-1000-divorce-pleas-every-month/>; ‘High Court of Mumbai - Handbook of Mediation 2012’ (Main Mediation Center, Mumbai, October 2012), <http://mediationbhc.gov.in/PDF/Handbook2013.pdf>.

^{xxviii} Basu, ‘Judges of Normality’, 475.

^{xxix} ‘INDIA STATS □: Million plus Cities in India as per Census 2011’, *Press Information Bureau, Mumbai*, 31 October 2011, <http://pibmumbai.gov.in/scripts/detail.asp?releaseId=E2011S3>.

^{xxx} Department of Justice, Ministry of Law, ‘Statement Indicating Number Of Family Courts Functional’, 31 October 2014, http://doj.gov.in/sites/default/files/userfiles/fc_fuctional.pdf.

^{xxxi} See Rule 31 of the Maharashtra Family Courts Rules 1987

^{xxxii} In my own media analysis of some 540 English newspaper accounts of family law matters that had been reported in the year 2014, 171 or about 31% were from the city of Mumbai, followed at a distance by New Delhi at 23% – reflective perhaps of the urban bias of these newspapers, but also indicative of the domineering presence of this court’s utterances in the national media.

^{xxxiii} Omitted from this table are all cases from Petitions C,D,E, ER and F which deal exclusively with reliefs under particular sections (Petition F for instance only refers to cases of Divorce by Mutual Consent under the various matrimonial statutes, Petition E deals exclusively with claims for maintenance under S.125 CrPC) do not require further disaggregation.

^{xxxiv} To be sure such mis-identification is not restricted to untutored court clerks. In many instances High Court judges have referred to the popular commentary by Mulla almost as if it was an Act of Parliament. In *Tara Bano’s case* (2009) for instance, a judge of the Rajasthan High Court refers to “Section 272 of the Muslim Law Sheriyat” - meaning, in fact, the particular passage from Mulla’s commentary - a curious case of a commentary evolving into legislation through judicial easement! . So

commonly does this misidentification seem to occur that at least on one occasion, a judge of the Allahabad High Court was prompted to include in his judgment a cautionary note that paragraph 310 of Mulla was “not to be called as Section 27 since Mulla’s Mohammedan Laws is not enactment” *Tara Bano V Iqbal Mohd*, (Rajasthan High Court, January 27 2009), <http://indiankanoon.org/doc/294178/> (last visited Feb 22, 2012); *Imtiyaz Ahmed V Shamim Bano*, 1998 CriLJ 2343 (Allahabad High Court, 1997), <http://indiankanoon.org/doc/1274334/> (last visited Feb 23, 2012).

^{xxxv} Although S. 125 of the CrPC also makes it possible for parents, including fathers, to file applications for support against their children, I have not, in the data in my possession, come across a single instance of such a claim being made in the Mumbai Family Court. The only other claimants permitted by the section are women – mainly “wives”, who may also claim on behalf of their minor male children, but remain despite this fact, the primary petitioners.

^{xxxvi} The Bandra Family Court does not conduct business on Sundays and second Saturdays. Including roughly 20 festival holidays in a year, the total number of working days should be roughly 270. I have taken 300 to be the number of working days in a year since the judges seem to be working overtime and on holidays to dispose cases.

^{xxxvii} Prima facie this figure seems rather excessive – on a random sampling of the “Cause lists” of various judges of this court, it appears that only between 50-70 matters are officially listed for hearing per judge per day. The only possibilities of reconciling these figures is if the case pages from which I extracted my data were erroneous – i.e. if they listed hearing dates when no hearings were in fact conducted, or if the judges took up additional cases for hearing (possibly ‘passovers’ from the previous day) even when they were not formally listed in the causelist for the day.

^{xxxviii} I particularly have in mind the works of Bina Agarwal for this insight. See for instance Bina Agarwal, ‘Gender and Land Rights Revisited: Exploring New Prospects via the State, Family and Market’, *Journal of Agrarian Change* 3, no. 1 and 2 (April 2003): 184–224, docs.escripnet.org/usr_doc/Agarwal-_Gender_and_Land_Rights_Revisited.pdf. And more generally Bina Agarwal, *A Field of One’s Own Gender and Land Rights in South Asia*, Cambridge South Asian Studies (New York: Cambridge University Press, 1994).

^{xxxix} I exclude from this figure some 10000 cases of Divorce by Mutual Consent which by their very nature are “joint petitions” and so the labels of petitioner and respondent are superficial.

^{xl} Flavia Agnes, ‘Reforms As If Women Mattered □: A Critique of the Proposed Christian Marriage Bill’, *Manushi*, August 2000, <http://indiatgether.org/manushi/issue119/reforms.htm>.

^{xli} An illuminating article to read in this context is Bina Agarwal’s paper on bargaining and gender relations listing the various constraints, aside from the purely economical, that constrain the bargaining capabilities of women. Bina Agarwal, “Bargaining” and Gender Relations: Within and Beyond the Household’, *Feminist Economics* 3, no. 1 (1997): 1–51, http://www.binaagarwal.com/downloads/apapers/bargaining_and_gender_relations.pdf.

^{xlii} Marc Galanter, “A Settlement Judge, Not a Trial Judge:” *Judicial Mediation In the United States*’.

^{xliiii} Examples abound and can be traced as far back as the Law Commission’s 77th Report in 1978 which is a virtual paean to the advantages of ‘Conciliation’. see Law Commission of India and P.M Bakshi, *Report 77: Delays and Arrears in Trial Courts* (New Delhi, November 1978), New Delhi; R.C. Lahoti, ‘Key Note Address Delivered at Valedictory Session of Two Days Conference on ADR, Conciliation, Mediation and Case Management Organised by the Law Commission of India’, 3 May 2003, http://lawcommissionofindia.nic.in/adr_conf/Justice_Lahoti_Address.pdf; Legal Correspondent, ‘Mediation Can Cut Backlog: Judge’, *The Hindu*, 13 February 2015, New Delhi, <http://www.thehindu.com/news/national/mediation-can-cut-backlog-judge/article6888676.ece>; ‘Promote Mediation for Dispute Resolution: Justice Lokur’, *The Hindu*, 20 October 2013, Kochi, <http://www.thehindu.com/news/national/kerala/promote-mediation-for-dispute-resolution-justice-lokur/article5252110.ece>; Subhash Chandra N S, ‘High Court Favours Mediation in Marriage Disputes’, *The Deccan Herald*, 13 November 2014, Bangalore, <http://www.deccanherald.com/content/441489/high-court-favours-mediation-marriage.html>.

^{xliiv} Galanter’s more interesting conclusion in this paper is that despite the rhetoric of reducing case load, the push towards mediation is the product of a convergence of “fundamental strategic considerations” between all of the participants – litigants, lawyers and the Court. In “seeking to achieve their goals while avoiding unacceptable risks, [they each, for different reasons] find full-blown adjudication inexpedient.” Galanter proposes this not as an accusation but as a corrective to the unanimous perception that mediation is a response to the “increased volume of cases congesting the courts”. Rather than a response to increased case load, he sees the shift towards mediation as being a function of the increased complexity of adjudication which in the process of becoming “freer of arbitrary formalities, more open to evidence of complicated states of fact, and responsive to a wider range of argument” has in fact inadvertently become “more complex, more expensive, more protracted, more rational – and more indeterminate”.

^{xiv} Courts have unevenly enforced such contractual waivers of maintenance rights, and have alternatively either struck them down as being opposed to public policy or upheld them in some cases. See *Geeta Gokarna v. Satish Gokarna* AIR 2004 Bom 345 for an example of the court refusing to enforce such a contractual waiver, and *Ranawat v. State of Gujarat* (2010) II DC 730 Guj for an instance of a contrary ruling.