Accessing Economic and Social Rights: Perceptions and Experiences of Litigating in Maharashtra's Lower Courts

Shirish N Kavadi
Kalindi Kokal
Bharati Takale Shukla
Dhanaji Khupkar

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The National Centre for Advocacy Studies, Pune

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Shirish N Kavadi, PhD, Project Co-Director,
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Dhanaji Khupkar

Preface

Access to justice, in operational terms, the law and the courts, can be a vital tool for protecting and empowering poor and marginalised people. Across the developing world, poor people face difficulties in getting the judicial system to take up their cause primarily due to the ever-widening chasm between laws and practice. For illiterate people, indigenous communities, dalits and minorities, legal systems are particularly impenetrable. The present National Centre for Advocacy Studies research report is an attempt to address key impediments in accessing economic and social rights, with a focus on the lower judiciary.

India is a signatory to the United Nations Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights (ICESR). The last of these guarantees people entitlements referred to as "progressive" rights from their state representatives. These include rights to: equitable and humane employment conditions, social insurance, a life with a family, safe living conditions, health-care, education, access to civic organizations and a cultural life. India's constitution has a progressive set of Directive Principles of State Policy, which emerged from among other sources, the Universal Declaration of Human Rights, which also served as the basis for framing the ICESR. The Directive Principles serve as aspirational goals for the state and encompass a particular progressive ambit of economic, social, legal, and political ambitions that the framers of the constitution believed the state ought to pursue.

The broad powers of constitutional review combined with far-reaching legislation have proved critical in the judicial enforcement of economic, social and cultural rights, which has produced a vast body of case law in the Supreme Courts and High Courts. Initially, the Supreme Court was reluctant to recognize any of the directive principles as being enforceable in the courts of law. However, in 1980,in a landmark verdict, Justice Bhagwati suggested that the powers granted under Article 142 be used to allow ordinary citizens to approach the Court, sparking a flurry of social action and public interest litigations in the Supreme and High Courts.

NCAS has been working over the last two decades as a resource centre for social change and is committed to a human rights framework. It has over the years endeavoured to strengthen the human rights discourse as an integral and inalienable part of the democratic ethos of India by undertaking and publishing studies on economic, social and cultural rights and on informal dispute-resolution and justice institutions. The present study was conducted in three states: by NCAS in Maharashtra and by its research partners, Centre for Social Justice in Gujarat, and Jagori Grameen in Himachal Pradesh. Independent reports for the three states have been brought out by the respective partners.

The study has attempted to assess how the lower levels of the formal judiciary performed for everyday claimants in ensuring them their economic and social rights. Lower level judicial institutions comprising the district and sub-district (taluka) level courts and administrative and quasi-judicial tribunals are perceived to be and in many instances are the first level contact institutions within the formal judiciary for the resolution of most disputes. The objectiveof the study was to understand public perceptions towards these forums, the extent to which they are seen as instruments of justice and whether tangible remedies are being offered and delivered by such forums. It is hoped that the research findings from this study will aid both the judiciary and citizens in advocating judicial reforms and in the protection and promotion of the economic and social rights of marginalized sections such as women, Scheduled Tribes, Scheduled Castes, unorganised labourers and minorities seeking justice in the lower judiciary.

Dr. Dhananjay Kakade,
Executive Director,
NCAS, Pune
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CONTENTS

EXECUTIVE SUMMARY

I. INTRODUCTION

This report has been developed on the basis of findings from a research study that sought to understand the systemic factors and constraints that affect the extent to which Indians in urban and rural sectors are able to access their economic and social rights. Till date, scholarly investigation on the legal system in India – and the manner in which people access justice – has focused primarily on the upper tier of High Courts and the Supreme Court, those who practice in them, and the constitutional jurisprudence that they produce. But a knowledge vacuum surrounds the vast majority of parties who toil in what might be called the lower judiciary – the lower courts, sub-district courts, and administrative and quasi-judicial tribunals – where an astounding twenty-to-thirty million cases are pending, many for more than a decade.

This scope of this study has enabled us to better understand:

i) whether and how people access their economic and social right through claims in the lower judiciary; and

ii) public perceptions towards these forums and the extent to which they are seen as instruments of justice by all involved.

Economic and Social Rights:

Our focus on economic and social rights has been purposive. In 1979, India became a signatory to the International Covenant on Economic, Social, and Cultural Rights (ICESR) that officially came into force in 1976. This treaty guarantees to people (whose governments are participating parties) entitlements to "progressive" rights from their state representatives. These include the right to equitable and humane employment-conditions and the right of employees to form as organized interests, the right to social insurance, a life with a family, safe living conditions, health-care, education, and access to civic organizations and a cultural life.

These various entitlements have already been incorporated in the Indian Constitution in the form of Directive Principles of State Policy (DPSP). The DPSP which themselves emerged as a result of being influenced by, among other sources, the United Nations Universal Declaration of Human Rights is the same document that also played a role in framing the ICESR.

The broad powers of constitutional review combined with far-reaching legislation have proved critical in the judicial enforcement of economic, social and cultural rights, which has produced a vast body of case law in the Supreme Courts and High Courts. Studies dating back decades have documented that the upper judiciary has been the central institution that has engaged in the serious adjudication of these types of matters.

The findings in this study, however, reveal that even the regular lower judiciary, specialized alternative forums, and administrative courts at the grassroots deal with such issues. As our data reveals, though, while cases in the lower tier involve discrete parties who are keen to pursue their respective individual claims, the questions of law and policy that are raised and that the judges hear in fact have broader economic and social ramifications.

Based on the findings in this study and the experiences from interactions with the people at the grassroots, it was found that those who are disadvantaged from an ESR-perspective receive little support from local elected representatives and relevant civil servants. We, therefore, argue that it is incumbent upon judges within these forums at the district and taluka levels to embrace the role as protectors of claimants who bring forth legitimate social and economic grievances. Judges must play more of an active role in ESR-cases on behalf of needy-claimants. This indeed is the need of the hour, else the suffering of these litigants will continue to go unabated, which would run counter to the

**Some sections of this summary report have been adapted from the Maharashtra state report and from "Grappling at the Grassroots: Litigant-Efforts to Access Economic and Social Rights in India", by Jayanth K. Krishnan, Shirish N. Kavadi, Azima Girach, Dhanaji Khupkar, Kalindi Kokal,Satyajeet Mazumdar, Nupur, Gayatri Panday, Aatreyee Sen, Aqseer Sodhi, and Bharati Takale, Harvard Human Rights Journal, Vol. 27 (2014). Both papers have been developed on the basis of findings from the same study supported by the Ford Foundation and carried out by The National Centre for Advocacy Studies (Maharashtra), Centre for Social Justice (Gujarat) and Jagori Grameen (Himachal Pradesh)*

principles of ICESR and the spirit of India's constitutionally democratic foundation.

Selection Of Districts:

The study focused on district and taluka courts in two districts in Maharashtra. These districts were selected in a manner such that both the developed and underdeveloped regions of the state would be represented. District A is part of Western Maharashtra which is considered developed primarily because of its long history of industrial development, the presence of sugar cooperatives which have transformed the rural economy of this part of the state. District B is, on the other hand, in the Marathwada region which was part of the former Hyderabad state before independence; it is drought prone and has no industries to speak of. Even sugar cooperatives in this area are a very recent development and these are few in numbers. The economy is predominantly agriculture based. As compared to District A, District B has a larger rural population.

Forums Of Dispute Resolution:

The research findings are based on the observation of and interaction with judges/presiding members, lawyers and litigants in the following forums:

a. District court
b. Taluka court
c. Family court
d. Labour court
e. Juvenile Justice Board
f. Gram Nayayalay
g. Quasi-judicial bodies
h. Lok Adalat
i. Dispute Free Village Committees

Accessing The Judiciary

The concept of 'accessibility' was understood amongst the lawyers, litigants and judges in terms of the extent to which the court procedures are comprehended, expenses incurred in pursuing a suit, levels of fairness, physical access to the court and availability of lawyers.

The following factors were perceived to constrain litigants' smooth access to justice in the various judicial and quasi-judicial forums of dispute resolution.

A. Delay:

There was consensus on the fact that there is no quick justice when a matter was filed in court. Time consuming procedures, adjournments, slow execution of decrees in land related disputes, non-appearance of the opposite party and slack working of the supporting machinery such as revenue departments (in case of document procuring) and police personnel (in case of issuing summons) were seen as the primary causes of delay. In a few cases, delays were also attributed to corrupt practices and cases not being studied carefully by either lawyers and/or judges. The several possibilities of appeal, multiplicity of suits related to one dispute and disparity in the proportion of judges to the number of cases being filed were causes of delays specifically cited by lawyers and judges.

B. Illiteracy:

Lawyers and judges tended to use the term illiteracy quite loosely. Extended interactions revealed that the term included the inability to read and write, lack of legal awareness and ignorance of rights. As a result of illiteracy, litigants did not know their rights, did not understand court procedures and were unable to understand the best way of procuring the documents required in evidence of their claim. The gap in knowledge also caused many litigants to be intimidated by judicial processes. Lawyer-litigant relations were impacted as well leading to either total dependency on the lawyer or increased suspiciousness of the lawyers.

C. Public Transport:

Scarce and/or irregular public transport facilities, particularly in taluka areas resulted in many litigants being unable to attend their cases, either because they arrived late or had to leave early in order to catch the last bus back home. Spending an entire day away from work and home was not uncommon experience for litigants from remote villages. The situation was especially trying for lady litigants who were compelled to request a male member from their family to accompany them to court. Related to the difficulties in transport was another issue namely delays in service of summons and notices which was at least partly caused by the absence of or an inadequate public transport system to remote rural areas.

D. Financial Hurdles:
In the experience of most litigants litigation was an expensive affair. Exhaustion of finances mid-way through litigation resulted in many litigants just abandoning the case. Very often litigants ended up selling or mortgaging substantial portions of their movable/immovable property and even taking loans in order to meet court expenses and payment of lawyers' fees.

Working Of The Judicial System: Challenges

According to lawyers and judges the following factors hurdle smooth justice delivery:

A. Illiteracy and ignorance of law among litigants:
Lawyers and judges claimed that illiteracy on part of the litigants hinders efficient pleading and trial of a dispute. As a result of the inability to read and write and lack of awareness regarding the law litigants were unable to relate the facts of the case properly and sometimes did not file cases on time. Lawyers were burdened with an additional responsibility of helping such litigants procure the necessary documents and preparing them for cross examinations.

B. Recruitment of Judges:
Several lawyers and senior judges expressed disappointment with the present system of recruiting judges to the lower court benches after a series of civil-service exams following their law school graduation. A major drawback of the latter approach, according to the judges themselves, is that often they preside over cases where seasoned lawyers are involved. On these occasions, the lawyers regularly tend to know more about the law than the judges, and that made the judges feel insecure, cautious, and unwilling to take more assertive leads during the case. Conversely, in cases where the lawyers are relatively new, there is an opposite effect that occurs. Here, younger lawyers frequently look to the judges for advice and guidance on legal issues pertaining to the case. Unfortunately, as those judges without a practice background conceded, because of their lack of experience, they are unable to provide this needed assistance. The resulting behavior by judges in both circumstances is to try to minimize any potential damage to their reputation and legitimacy.

C. Cases Involving Government Authorities:
In cases against the government, lawyers, both senior and junior, highlighted that the government pleaders were extremely slack and worked very loosely. Often times a lot of corruption also took place in order to get the government pleaders to act efficiently. But lawyers representing the government had their own set of grievances. A wide communication / information gap between the lawyer and the concerned department against whom the case has been filed placed advocates representing the government authorities in a tricky position. Unlike in their regular practice where the client provides them [the lawyers] with all the necessary documents of evidence and the real facts of the case, lawyers on the panel of a government body not only had to plan their pleading but had also to chase the government officials for the relevant documents and information. The problem only becomes more complex when officers get transferred and those who come as replacements have no idea about the history and background of the pending litigation. Possibly, what results from this is the non-appearance of lawyers for the government body, which is the exact problem highlighted by the lawyers appearing for litigants who have filed cases against a government body.

D. Inefficiency of Supporting Machinery:
Lawyers pointed out that the slack working of supporting machinery such as police officers, investigation officers and lower level revenue officials posed a grave hurdle in the pursuit of matters and their delay in the lower court.

E. Miscellaneous:
Lawyers highlighted that litigants' inability to pay fees as a result of their [the litigants'] financial constraints, absence of witness protection and lack of infrastructural facilities also posed a challenge to litigation in lower courts.

Perceptions About The Lower Judiciary:

A. About Lawyers:
Lawyers are appointed mostly through references from relatives and friends. In specialized quasi-judicial forums, such as the Maharashtra State Electricity Commission or the Maharashtra State Water Regulatory Authority, litigants usually appear in person as they [the litigants] have not found lawyers equipped

enough to handle these cases which involve arguments on many technical issues requiring a specialized degree of knowledge so that the case is pleaded properly.

The primary causes for dissatisfaction with lawyers were: insufficient time given to the litigant, not appearing promptly when the matter is called out in court, demanding large sums of money as fees and not spending enough time to inform litigants of the case status and its progress. Good services were defined in terms of whether the lawyer was punctual, whether s/he [the lawyer] had been successful in the case, whether the lawyer heard the litigant out patiently and kept the litigant updated about the status of the case. Litigants whose lawyers were efficient and trustworthy claimed that they did not mind the increasing burden of fees, which they felt was worthwhile in this context. Lawyers who were close relatives were often well spoken off.

Judges had mixed opinions about lawyers. While there was consensus on the fact that there was a good rapport between the bar and the bench, in taluka courts particularly, judges felt that lawyers did not come well prepared to court, did not read their briefs properly; made improper pleadings; used the procedure in filing of applications and cross-examination periods as excuses to seek adjournments and were not very fair and honest. Judges emphasized the need for motivating lawyers towards improvement on these aspects considering that the fate of most litigants is actually written by the lawyer.

While lawyers were aware of people's views held about legal practice and their profession, they believed that the system was not empathetic to their position. Their practice was also a source of their livelihood and therefore insistence of timely payment of fees was only necessary. The amount of fees they could charge was limited by high court directions and competition, amongst other things. Lawyers shared how they often ended up paying for the commutation and court fee expenses of litigants who were constrained financially.

B. About Judges:

Opinions about the integrity of judges were positive. However, litigants and lawyers did highlight drawbacks in the working practices of judges and certain aspects of their approach and attitude. Judges were observed to be working only towards meeting the target rate of disposals. In comparison to the higher courts, in the lower courts cases were getting adversely impacted as a result of prejudiced approaches, inadequate knowledge, narrow perspectives, partiality and acceptance of weak evidence records on part of the judges.

Judges too do not dismiss the need to look at cases from beyond the mere procedure. They understand that law and procedure alone cannot assure 'justice'. However, the lower court being a procedural court, judges expressed that the scope of their engagement with cases was constrained. "That every dispute cannot be understood and decided within the four corners of law" is a fact that judges accept and acknowledge. What this entails therefore is for judges being able to exercise freedom.

C. About Alternative Forums of Dispute Resolution:

Alternative forums included state supported informal forums and additional forums and methods of dispute resolution that may or may not be working in tandem with the judiciary.

i) Informal Forums: The whole idea of 'absence of procedure' that dominates the working of informal dispute resolution forums was not well received by many judges and lawyers. It was felt that that the success of informal forums of dispute resolutions indicated a failure of the judiciary. This study looked at the state supported Tanta Mukta Gaav Samiti (Dispute Free Village Committee) as a case study. While, the success of these Samitis has not been overwhelming, the fact that they are being accessed widely at the village level cannot be overlooked. The Samitis are formed in most villages in Maharashtra but the level of their activity depends on the enthusiasm and willingness of its members. In most instances, the absence of procedure and guidelines for functioning seems to have made space for power politics and undue biases. The Samitis are mostly accessed for petty criminal disputes, boundary disputes and a large number of matrimonial disputes. Litigants prefer brining land related disputes to court because land related disputes were perceived as 'complicated' and the members of these Samitis lacked the legal knowledge required to decide land disputes. It was felt that selection of presiding member on

the basis of those who are empowered, educated and honest and have an intention to settle the dispute would go a long way in establishing the efficacy of this forum.

ii) *Lok Adalat:* The *Lok Adalat* was perceived to be functional, but slow. Most lawyers did not express any faith in the dispute settling capacities of the *Lok Adalat* as they claimed that only disputes that were already in the process of being compromised were placed before the *Lok Adalat* for quicker disposal.

iii) *Gram Nyayalay*: Only a handful of *Gram Nyayalayas* are actually in existence in Maharashtra. However, these too are not active on a regular basis because the rules under the Act establishing these forums are still to be formed. However, the absence of formal procedure and encouragement of pleading sans lawyers had already made several lawyers and judges apprehensive about the establishment of this forum.

iv) Quasi-judicial Bodies: Quasi-judicial authorities under the revenue department are most often approached both at the taluka and district levels where land related cases are in large numbers. At the taluka level approaching quasi-judicial authorities for dispute resolution is thought to be less expensive and quicker than litigating in court. The quasi-judicial authorities seemed to understand the on-ground situation; there was neither requirement of court fee nor a lawyer for pleading and most importantly these authorities are more amenable to public pressure, which fact was considered advantageous. In large towns and cities, however, quasi-judicial forums were not very popular and perceived to be politicized, marked by rampant corruption and lack of legal knowledge amongst the authorities and staff.

v) Evening Courts: This was not considered a successful programme of the judiciary. Evening courts being arranged in the later hours of the evening, judges presiding over the regular court continuing to preside over the evening court and lack of time of lawyers to interact with their clients were some of the factors that slackened the efficacy of this forum.

vi) Mediation: Mediation as a method of dispute resolution was promoted widely by lawyers and judges. It was found particularly appropriate for matrimonial disputes because the method gives the parties a chance to talk directly to one another and helps them to arrive at an appropriate solution themselves.

D. About Legal Aid:

Legal aid centres at both the district and taluka level court face a lot of challenges. There is very little awareness regarding availability of legal aid. The lawyers appointed to legal aid panel receive very meager fees, as a result of which they must strike a balance between their private practice and the requirements of the legal aid centre. This often hampers the quality of their work as panel lawyers. Litigants' claims represented by the legal aid panel, however, receive a lot of support from judges in terms of priority on the daily board and speedy hearings and disposals.

Faith In The Judiciary: In Conclusion

Analysing the litigants' experiences in court it can be observed that at the beginning they were very optimistic and hopeful about approaching the court for dispute resolution and only as time passed, did they eventually tend to get frustrated because they found that the processes were not easy to understand and matters were not disposed of speedily. With all the hurdles and frustrations, it may seem only natural that litigants would feel utter hopelessness, and perhaps even disdain towards the judiciary. Ironically such sentiment was not the case. In fact, when it came to attitudes vis-à-vis the courts, the litigants' faith in the judicial process, and specifically the judges, remained strong. Why?

As we were told, while the above issues prompted great dissatisfaction they paled in comparison to how these individuals felt treated by their elected officials, the police, and other civil servants. There was no scope for disputes against government agencies to be resolved at the village level and in the instance of private disputes litigants reported that seeking the assistance of elected officials or bureaucrats was not useful. The obvious isolation from legislators and civil servants leaves many litigants with little choice but to pursue the judicial route if they are interested in finding a governmental venue to redress their concerns. But it is also important to note the personal-agency aspect to this analysis.

The fact is that litigants are generally quite affirmative in their decision to engage in litigation. Even though there are many problems associated with pursuing claims in the lower tier, there remains faith among litigants that this process has legitimacy and that the judges, in particular, are comparatively more trustworthy and rights-oriented than their legislative and bureaucratic counterparts.

For these reasons, therefore, out of sheer necessity and hopeful aspiration, we argue that in order to best preserve and protect the economic and social rights of individuals at the grassroots, the judiciary needs to be the primary site of empowerment.

Recommendations:

It is obvious that more resources and greater financial commitment by the central government to the lower tier of the judiciary are critical to a transformation in how effectively and efficiently this institution functions. While fully cognizant of the previous studies, government commission reports and other proposals pertaining to the working of the lower judiciary, the recommendations that follow are based on one of the most extensive studies till date and add an important, empirically-based layer to the discourse.

i) An increase in the number of judges in district and taluka courts.

ii) An enhancement in the training and education for current judges as well as for those students studying to become judges.

iii) Establishment by the local Bar Associations of a clear structure of fees for lawyers.

iv) Improved infrastructure facilities for judges in terms of more judicial staff, better court rooms, and consistent electricity supply.

v) Better and increased infrastructure for lawyers and litigants, particularly at the taluka level courts.

vi) Curtailment of the inordinate number of appeals that lawyers are allowed to make under the procedural codes.

vii) Procedurally, the system could be better streamlined and the regular, specialized, and administrative courts could be organized in more efficient ways.

viii) Ensuring a court staff that is better equipped to deal with claimants' queries regarding the litigation process.

ix) Urgent addressing of the gender disparity and gender discrimination as reflected in lack of available and clean washrooms, the absence of security to protect them from routine harassment and intimidation, the unavailability of safe transportation to bring them to-and-from the courts to their residences, not enough seating in (male-dominated) waiting areas, and the gender-based verbal prejudice they receive are just a handful of reprehensible conditions that require remedies.

Much more needs to be done, but it is hoped that the lessons from this study will begin a substantive dialogue on how best to understand the problems plaguing claimants at the grassroots and then to find ways to make their lives better.

1

SECTION ONE

INTRODUCTION AND BACKGROUND

I. INTRODUCTION & LITERATURE REVIEW

The report based on the findings of a three years research study has attempted to understand the systemic factors and constraints that affect the efforts of Indians in both urban and rural locations in accessing their economic and social rights. The study focuses on examining how the justice system affects the rights of everyday individuals. Apart from litigants other key stakeholders such as lawyers and judges were also interviewed to understand their point of view on challenges and difficulties countenanced in the judicial process in the country and the constraints faced by ordinary litigants in their pursuit of dispute resolution and justice. Past and current literature has tended to focus attention mainly on the upper levels of the judiciary namely High Courts and the Supreme Court.[1] There is a reasonably large gap in the knowledge base on the lower judiciary. In India this comprises the district and sub-district (taluka) level courts and administrative and quasi-judicial tribunals. These courts are overburdened with millions of pending cases, many for more than a decade.[2] The studies on the functioning of the lower judiciary are far and few. The present study seeks to address this gap in current knowledge.

Lower level judicial institutions are perceived to be and in many instances are the first level contact institutions within the formal judiciary for resolution of most disputes. A NCAS study on mapping informal justice institutions in Maharashtra conducted in 2007, however, showed that for many marginalised groups in the rural areas, mainly scheduled tribes whether adivasis or nomadic tribes, there is a clear preference to access traditional dispute resolution institutions.[3] Constraints imposed by physical distance and limited finances, suspicion about the efficiency of formal institutions, a belief in customary law and keeping disputes within the community appeared as important considerations for persons from these social groups to approach traditional or informal justice institutions. In the context of the findings of this earlier study, it seemed important to understand the experiences of various categories of persons, judges, lawyers and litigants, with the formal judiciary in order to develop a comparative perspective.

*** Some sections of this report have been adapted from "Grappling at the Grassroots: Litigant-Efforts to Access Economic and Social Rights in India", by Jayanth K. Krishnan, Shirish N. Kavadi, Azima Girach, Dhanaji Khupkar, Kalindi Kokal,Satyajeet Mazumdar, Nupur, Gayatri Panday, Aatreyee Sen, Aqseer Sodhi, and Bharati Takale, Harvard Human Rights Journal, Vol. 27 (2014 forthcoming). The current report and the research paper have been developed on the basis of findings from the same study supported by the Ford Foundation and carried out by The National Centre for Advocacy Studies (Maharashtra), Centre for Social Justice (Gujarat) and Jagori Grameen (Himachal Pradesh). Those sections from the Harvard Human Rights Journal Journal may not be copied without the written permission of the Journal.*

1: See e.g., P.N. Bhagwati, Judicial Activism and Public Interest Litigation, 23 COLUM. J. TRANSNAT'L. LAW. 561 (1985); UPENDRA BAXI, COURAGE, CRAFT, AND CONTENTION: THE SUPREME COURT IN THE 1980's (1985); Jamie Cassels, Judicial Activism and Public Interest Litigation in India: Attempting the Impossible? 37 AM. J. COMP. L. 495 (1989); Marc Galanter, New Patterns of Legal Services in India, in LAW AND SOCIETY IN MODERN INDIA 279-295 (Rajeev Dhavan and Marc Galanter eds., 1989); also see, Marc Galanter, Fifty Years On, in Supreme But Not Infallible, ed., B.N. Kirpal et. al. 2000, 57-65); Oliver Mendelsohn, Life and Struggle in the Stone Quarries of India: A Case-Study, 29 JOURNAL OF COMMONWEALTH AND COMPARATIVE POLITICS 43 (1991); G.L. Peiris, Public Interest Litigation in the Indian Subcontinent: Current Dimensions, 40 INT'L & COMP. L.Q. 66 (1991) S.P. Sathe, Judicial Activism, 10 JOURNAL OF INDIAN SCHOOL OF POLITICAL ECONOMY 399 (1998); S.P. Sathe, Political Activism (II): Post-Emergency Judicial Activism: Liberty and Good Governance, 10 JOURNAL OF INDIAN SCHOOL OF POLITICAL ECONOMY 603 (1998); Susan D. Susman, Distant Voices in the Courts of India: Transformation of Standing in Public Interest Litigation, 13 WIS. INT'L L. J. 58 (1994) Madhava Menon, Justice Sans Lawyers: Some Indian Experiments, 12 INDIAN BAR REVIEW 444 (1985).

2: See Judge Me Not, BUSINESS & ECONOMY, Feb.10-23, 2006 at 32; Jayanth K. Krishnan, Outsourcing and Globalizing Legal Profession, 48 WM. & MARY L. REV. 2189, 2221-6 (2007)

3: Shirish N. Kavadi, Swati Kulkarni, and Gauri Bhopatkar, Strengthened Access to Justice: Mapping Informal Justice Institutions in Maharashtra, (National Centre for Advocacy Studies,Indian Institute for Para-Legal Studies, United Nations Development Programme, 2008)

The present study has attempted to assess how the lower levels of the formal judiciary performed for everyday claimants in ensuring them their economic and social rights. The object was to understand public perceptions towards these forums, the extent to which they are seen as instruments of justice and whether tangible remedies are being offered and delivered by such forums. A NCAS study undertaken to assess the people's realisation of economic, social and cultural rights had pointed out to a lack of political will and commitment, a paternalistic approach and attitude ,lack of accountability and absence of prioritization in planning budgetary allocation on the part of government agencies and officials.[4] In other words, government initiatives in matters of peoples' economic and social rights were wanting. The study further presented a few civil society initiatives that ran parallel to government efforts in ensuring social and economic rights for the people. It suggested that people displayed more faith in these endeavours than that of the government. But what happens when people approach judicial institutions to access their social and economic rights or seek redress when these are violated whether by government or private individuals? This is one among other questions that the study seeks to answer.

The study was conducted in three states: in Maharashtra by NCAS, in Gujarat by the Centre for Social Justice and in Himachal Pradesh by Jagori Grameen. The present report is confined to Maharashtra while separate study reports have been prepared for the other two states by the respective partners.

Before proceeding further an important clarification needs to be provided. Permission to conduct this study from the Bombay High Court was granted with the strict stipulation that confidentiality would be maintained and identities of the respondents especially sitting judges of the different courts would not be divulged. This also conformed to the conditions of the Research Ethics Committee of Indiana University a major partner in this study. In order to ensure this even the names of districts and talukas are not mentioned or are camouflaged. The authenticity of the field data is affirmed by the research team and the Steering Committee representing all partners that conducted the study.

Systemic Constraints in the Lower Courts:

Based on a few previous pilot studies that exist,[5] the study focused on examining the functioning of many of these lower courts that suffer from systemic deficiencies which inhibit predictable and equitable justice-delivery. Such systemic deficiencies include:

- An insufficient or unclear set of legal mandates and procedures either from existing laws or governmental policies;
- A lack of adequate structures for implementation and enforcement of laws and policies;
- A lack of resources allocated to these forums (including an insufficient number of judges and courtroom staff);
- Inadequacies in the skills of professionals working in these systems;
- A lack of research tools within the forums (including a lack of computerized legal research directories, up-to-date hard-copy court judgments, law journals, and case reports);
- A lack of sensitization or refresher training of judges, which, if increased, could lead to better delivery of justice;
- A lack of professional practices among lawyers working in these courts;

4: Economic, Social and Cultural Rights. A Study to Assess the Realisation of Economic, Social and Cultural Rights in India (National Centre for Advocacy Studies, 2008)

5: See e.g., Marc Galanter and Jayanth K. Krishnan, Bread for the Poor: Access to Justice and the Rights of the Needy in India, 55 HASTINGS L. J. 789 (2004); Shirish N. Kavadi, Swati Kulkarni, and Gauri Bhopatkar, Strengthened Access to Justice: Mapping Informal Justice Institutions in Maharashtra, (NCAS,IIPLS, UNDP, 2008); Jayanth K. Krishnan, Transgressive Cause Lawyering in the Developing World, in THE WORLDS CAUSE LAWYERS MAKE: STRUCTURE AND AGENCY IN LEGAL PRACTICE 350, 350 (Austin Sarat and Stuart Scheingold eds., 2005); Marc Galanter and Jayanth K. Krishnan, Debased Informalism: Lok Adalats and Legal Rights in India, in BEYOND COMMON KNOWLEDGE: EMPRICIAL APPROACHES TO THE RULE OF LAW (eds., Thomas Heller and Erik Jensen, 2003); see also Jayanth K. Krishnan, Lawyering for a Cause and Experiences from Abroad, 94 CAL..L. REV. 575, 590-91 (2006).

- Corruption and political interference with functioning of the courts;
- Hierarchical constraints and strained relationships with administrative supervisors;
- Lack of physical, financial, and informational accessibility by claimants vis-à-vis the courts; and
- Lack of available legal aid and advice services by the government.

Economic and Social Rights:

The focus on economic and social rights is purposive. In 1979, India became a signatory to the International Covenant on Economic, Social, and Cultural Rights (ICESR) that officially came into force in 1976.[6] This treaty guarantees people (whose governments are participating parties) entitlements to what the agreement refers to as "progressive"[7] rights from their state representatives. These include the right to equitable and humane employment conditions and the right of employees to form as organized interests.[8] In addition, the treaty also recognizes that people of signatory countries have the right to: social insurance, a life with a family, safe living conditions, health-care, education, and access to civic organizations and a cultural life.[9]

These various entitlements have the potential for being interpreted broadly, and in the Indian context civil-society advocacy on the economic and social rights (ESR) front has been quite liberal. This development is not surprising given that the country's constitution has a progressive set of Directive Principles of State Policy (DPSP), which themselves emerged as a result of being influenced by, among other sources, the United Nations Universal Declaration of Human Rights – the same document that also played a role in framing the ICESR.[10] As is well-known, the Directive Principles serve as aspirational goals for the state as set forth by the framers of the Indian constitution. They encompass a particular progressive ambit of economic, social, legal, and political ambitions that the framers believed the state ought to pursue.[11] They are, in theory, non-justiciable, although courts have substantively incorporated these principles into their rulings at different points throughout the post-independence period.[12]

The broad powers of constitutional review combined with far-reaching legislation have proved critical in the judicial enforcement of economic, social and cultural rights, which has produced a vast body of case law in the Supreme Courts and High Courts.[13] Initially, the Supreme Court was reluctant to recognize any of the directive principles as being enforceable in the courts of law.[14] In fact, it had been held that 'the directive principles have to conform to and run subsidiary to the chapter on fundamental rights'. However, in *Kesavananda Bharati vs. State of Kerela*,[15] commonly known as 'the Fundamental Rights case', the majority opinions of the Supreme Court of India reflected the view that what is fundamental in the governance of the country cannot be less significant than what is significant in the life of the individual. One of the judges constituting the majority in that case articulated: 'In building up a just social order it is sometimes imperative that the fundamental rights should be subordinated to directive principles'. Fundamental rights and DPSP have since been perceived as complementary, 'neither part being superior to the other'.

6: See International Covenant on Economic, Social, and Cultural Rights, United Nations General Assembly, 1976.
7: See id at Article 2.2
8: See id at Articles 6-8.
9: See id at Articles 10-15.
10: For a discussion of the Directive Principles and this point, see RAJESH KUMAR, UNIVERSAL'S GUIDE TO THE CONSTITUTION OF INDIA, 59 (2011).
11: For more on the Directive Principles, see S.P. SATHE, JUDICIAL ACTIVISM IN INDIA: TRANSGRESSING BORDERS AND ENFORCING LIMITS (2002).
12: For an important book on the Constitution of India and a discussion of the Supreme Court's role in adjudicating substantive justice matters, see GARY JEFFREY JACOBSOHN, THE WHEEL OF SECULARISM: INDIA'S SECULARISM IN COMPARATIVE CONTEXT (2003).
13: S. Murlidhar, "India - The Expectations and Challenges of Judicial Enforcement of Social Rights" in Social Rights Jurisprudence Emerging Trends in International Comparative Law, Langford (Ed.), (Cambridge, CUP, 2008), pp 102 – 124, 102
14: Murlidhar, 107
15: AIR 1973 SC 1461

In 1981, the Supreme Court declared in *Francis Coralie Mullin v. The Administrator*[16] that:

> *"The right to life includes the right to live with human dignity and all that goes with it, namely, the bare necessaries of life such as adequate nutrition, clothing and shelter and facilities for reading, writing and expressing oneself in diverse forms, freely moving about and mixing and commingling with fellow human beings."* [Emphasis added]

At a time when the Court was actively seeking a new kind of constitutional litigation, Justice Bhagwati suggested in *Municipal Council Ratlam v Vardichan,*[17] that the powers granted under Article 142 be used to allow ordinary citizens to approach the Court. Through its epistolary jurisdiction, the Court sparked a flurry of Social Action Litigation.[18] Some instances are related below:

Right to Health:
Though the Right to Health exists only as a DPSP, in *State of Punjab v Mohinder Singh Chawala*,[19] the right was fully read into the social contract, and governments were bestowed with a "constitutional obligation to provide health facilities" for citizens. The impact of this statement was reflected in several Court judgments that followed.

The Court mandated the provision of compulsory health insurance for every worker as enforcement of the worker's fundamental right to health in *Consumer Education and Research Centre v. Union of India*.[20] That governments must properly regulate blood banks was declared in public interest litigation *Common Cause v Union of India.*[21] In *Haripada Saha v State of Tripura*,[22] the State was mandated to compensate for failure to maintain a functioning electricity grid during a patient's surgery as it infringed the patient's right to life under Art. 21. The Court held that antiretroviral drugs must be free for patients below the poverty line in *Voluntary Health Association of Punjab v Union of India.*[23] The Court established in *Jacob Mathew v State of Punjab*[24] that doctors could be tried in a criminal court for negligence.

Right to Shelter:
The Right to Shelter was also read into the Right to Life in *Shantistar Builders v Narayan K Totame,*[25] where the Court stated that the Right to Life would include the right to food "… and a reasonable accommodation to live in." In the 1997 case of *Ahmedabad Municipal Corporation v Nawab Khan Gulab Khan*,[26] the Court went one step further and held that it was the constitutional duty of the state to provide "adequate facilities and opportunities by distributing its wealth and resources for settlement of life and erection of shelter over their heads to make the right to life more meaningful."

Right to Education:
By far, it has been in enforcement of the Right to Education that the Court's activism has seen much fervor. To begin with, even while the Right to Education is only a DPSP, it carries a deadline: "The state shall endeavour to provide within a period of 10 years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of 14 years."[27] In *Unnikrishnan v State of Andhra Pradesh*,[28] the Court rejected a suit filed by private colleges where they sought to enforce

16: 1981 2SCR 516
17: AIR 1980 SC 1620
18: Satbir Singh Chowdry, "Where did the Revolution Go? The Supreme Court of India and Socio-economic rights since the end of the Emergency Rule" available at http://oxford.academia.edu/SatbirSingh
19: AIR 1997 SC 37
20: 1995 SCC (3) 42
21: 1996 (1) SCR 89
22: 2002 ACJ 1877
23: 2003 SC 311
24: 2005 SC 0475
25: 1990, 1SCC 520, PART 9
26: 1997 II SCC 123 at 13
27: Article 45 (1), The Constitution of India
28: AIR 1993 SC 2178 at 733

their right to business by challenging the regulation of capitation fees. In the said case, the Court ruled that "Fundamental rights and directive principles are supplementary and complementary." Ten years later, the NDA government passed the 86th Amendment Act, 2002, providing a state obligation in Article 45 to "endeavour to provide early childhood care and education for all children." Eight years on, the UPA government passed the 2010 Right to Education Act, making education an enforceable right from ages six to fourteen and duly ring-fencing the requisite budgetary appropriations.[29]

Right to Food:

The Right to Food is enshrined in Article 47 of the constitution (Duty of the State to raise the level of nutrition and the standard of living and to improve public health):

> *"The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purpose of intoxicating drinks and of drugs which are injurious to health."*

When the Right to Food campaign became full-fledged, the People's Union for Civil Liberties (PUCL) filed a public interest litigation[30] in the Supreme Court in April 2001. PUCL sought the enforcement of the Right to Food of the thousands of families that were starving in the drought-struck States of Orissa, Rajasthan, Chhatisgarh, Gujarat and Maharashtra, and where several had died due to starvation. This was the very first time that a distinct Right to Food was being articulated as encompassed within Article 21 and was sought to be enforced in the Supreme Court.[31] In its judgment in this case, the Supreme Court held that the scope of the Right to Food was not just limited to the right to be free from starvation, but also included distribution and access to food and the right to be free from mal-nutrition, especially of women, children and the aged. In 2013, the Indian Parliament passed the National Food Security Bill.

The intervention by the Court in a wide range of issues, including those involving economic, social and cultural rights, has generated a debate about the competence and legitimacy of the judiciary in entering areas which have for long been perceived as belonging properly within the domain of the other organs of state.

The impact of the Court in bringing within its purview the subject of economic and social rights has been felt in two ways:

a. A space has been created for an issue that would otherwise not have received sufficient attention.
b. The development of a jurisprudence of human rights that comports with the development of international law.[32]

Economic and Social Rights and the Lower Judiciary:

Past studies have documented that the upper judiciary has been the central institution that has engaged in the serious adjudication of these types of matters. The findings in this study, however, reveal that contrary to conventional wisdom, the regular lower judiciary, specialized alternative forums, and administrative courts at the grassroots encounter such issues as well. As our data reveals, though, while cases in the lower tier involve discrete parties who are keen to pursue their respective individual claims, the questions of law and policy that are raised and that the judges hear in fact have broader economic and social ramifications.

Based on interactions with people at the grassroot level, this study found that those who are disadvantaged from an ESR-perspective receive little support from local elected representatives and relevant civil servants. We,

29: Satbir Singh Chowdry, "Where did the Revolution Go? The Supreme Court of India and Socio-economic rights since the end of the Emergency Rule" available at http://oxford.academia.edu/SatbirSingh, p 8

30: Peoples Union for Civil Liberties (PUCL) v. Union of India & Ors. W.P. (Civil) No. 196 / 2001

31: J.Kothari, 'Social Rights and the Indian Constitution Law', Social Justice & Global Development Journal, Vol. 2, 2004

32: S. Murlidhar, "India - The Expectations and Challenges of Judicial Enforcement of Social Rights" in Social Rights Jurisprudence Emerging Trends in International Comparative Law, Langford (Ed.), Cambridge, CUP, 2008, pp 102 – 124, 121-122

therefore, argue that it is incumbent upon judges within these forums at the district and taluka levels to embrace their role as protectors of claimants who bring forth legitimate social and economic grievances. Judges must play more of an active role in ESR cases on behalf of needy claimants. This indeed is the need of the hour, else the suffering of these litigants will continue to go unabated, which would run counter to the principles of ICESR and the spirit of India's constitutionally democratic foundation.

The results of this research would contribute greatly to knowledge, providing scholars, lawyers, non-governmental organizations, public policymakers, and perhaps most importantly, everyday claimants with information never before available. Indeed, the heart of this study rests on the fact that it is *people-centered*, that those at the grassroots will be the principal beneficiaries of the research and the findings that come from this analysis. The motivation of the scholars and activists engaging in this work is to improve the lives of those who too frequently are ignored by the state and whose rights, which are guaranteed by law, simply are too often left unrealised. The significance of the study is the manner in which it seeks to relate access to social and economic rights to access to lower judiciary based on perceptions of all key stake holders. It provides a composite perspective on the interface between the stake holders identified and judicial institutions and attempts to enhance the understanding of all concerned.

A second clarification pertains to the direct quotes from respondents used here that often speak with reference to the male gender, but the intent of the report is that the situation may be with reference to either genders.

II. APPROACH AND METHODOLOGY

The approach adopted in this study was developed, revised and finalized through a series of:

- Workshops to discuss methodological approaches to incorporate into the study;
- Empirical training sessions to develop questionnaires for conducting interviews and for selecting stake-holders to be included in the research;
- Workshops for training investigators and sensitizing them to a people-centered approach.

The different techniques used to gather data include:

i) A desk review of literature, including research-papers, articles, and books on:
   - o local courts and forums;
   - o access to lower courts and remedies for economic and social rights-violations;
   - o the relevant laws and policies that provide mandates to various courts, tribunals, and quasi-judicial/administrative forums to deal with economic and social rights.

ii) Mapping of existing courts and other forums with respective mandates;

iii) Conducting field surveys and semi-structured interviews;

iv) Examination of courts-records and observation of court proceedings.

III. DISTRICT BACKGROUND

The districts were selected to include both the developed and underdeveloped regions of the state. District A is part of Western Maharashtra which is considered developed primarily because of its long history of industrial development and the presence of sugar cooperatives which have transformed the rural economy of this part of the state. District B is, on the other hand, in the Marathwada region which was part of the former Hyderabad state before independence; it is drought-prone and has no industries to speak of. Even sugar cooperatives in this area are a very recent development and are few in number. The economy is predominantly agriculture-based.

A. District 'A'
General Population Information[33]

	Area (Sq. kms)	Population per sq km.	No. of talukas	No. of villages		No. of towns	Population (2001 census)		
				Inhabited	Uninhabited		Persons	Males	Females
Rural	14792.85	204		1844	22	--	3031718	1557463	1474255
Urban	850.15	4941		--	--	25	4200837	2211665	1989172
Total	15643		14	1844	22	25	7232555	3769128	3463427

Total Urban Population for the District 'A' = 4200837[34]
Total Rural population for the District 'A' = 3031718[35]

B. District 'B'
General Population Information[36]

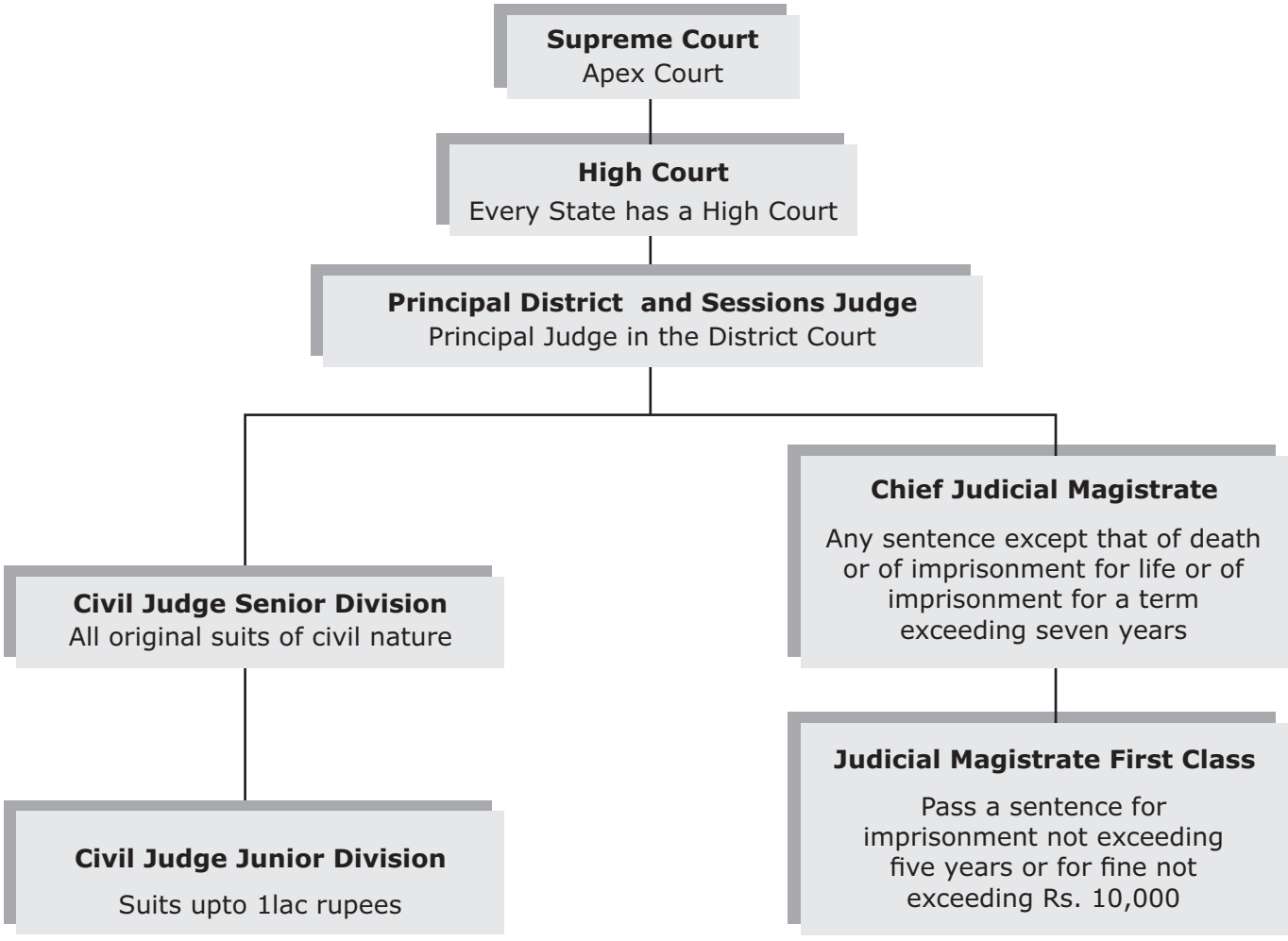
	Area (Sq. kms)	Population per sq km.	No. of talukas	No. of villages		No. of towns	Population (2001 census)		
				Inhabited	Uninhabited		Persons	Males	Females
Rural	7522	166	--	729	5	--	1253330	648276	605054
Urban	47	4962	--	--	--	8	233256	121092	112164
Total	7569	196	--	729	5	8	1486586	769368	717218

Total Urban Population for District 'B' =233256[37]
Total Rural population for District 'B' = 1253330[38]

Social Services	11749
Non- categorized services	18454

33: Population Census 2001 – Maharashtra Tables, Directorates of Economics and Statistics, Planning Department Government of Maharashtra, p 3
34: District Economic and Social Review – District 'A' (March 2009), National Informatics Centre, Part II, p 10
35: District Economic and Social Review - District 'A' (March 2009), National Informatics Centre, Part II, p 10
36: Population Census 2001 – Maharashtra Tables, Directorates of Economics and Statistics, Planning Department Government of Maharashtra, p 5
37: District Economic and Social Review – District 'B' (March 2009), National Informatics Centre, Part II, p 5
38: District Economic and Social Review – District 'B' (March 2009), National Informatics Centre, Part II, p 5

IV. AN OVERVIEW OF THE JUDICIAL SYSTEM IN INDIA



V. FORUMS SELECTED FOR STUDY:

A. Family Court

The family court is located in District 'A'. District 'B' did not have a family court. The family court has jurisdiction over all matrimonial disputes arising within the limits of the district headquarters where it is located. All applications for divorce arising between parties residing in any part of District 'A' must be filed before this family court. Except for divorce applications, all other matrimonial disputes arising in a taluka are heard by the local taluka court.

B. The *Gram Nyayalay*[39]

The *Gram Nyayalayas* were set up under the *Gram Nyayalay* Act, 2008 which was brought into effect on 2nd October, 2009[40] in Maharashtra. The *Gram Nyayalay* is presided over by a judge who is eligible to be otherwise appointed as a Judicial Magistrate First Class.

The Rules under this Act are to be framed by the High Court in Bombay, which however has not been done yet. Notwithstanding that, a total of seven *Gram Nyayalayas* has been established in

39: Detailed information about the Gram Nyayalay can be found on website of the Department of Justice, Ministry of Law and Justice, available at: http://doj.gov.in/?q=node/104

40: No.J-12021/5/2009-JR, Government of India, Ministry of Law and Justice, Department of Justice http://doj.gov.in/?q=node/104

Maharashtra, with one functioning in District 'A'.[41] The Gram Nyayalay is a court established at the level of the Gram Panchayat, the most basic unit of public administration. The Act provides for a list of civil and criminal offences that can be filed in and decided by the Gram Nyayalayas. However, in the absence of the rules detailing the working of these Nyayalayas, the Nyayalayas in Maharashtra currently entertain only disputes punishable by fine and decide only cases referred to them by the District and Sessions Court.

The decisions of the Gram Nyayalay can be appealed against in the District/Sessions Court. The Gram Nyayalay is not bound by the Rules of Procedure under the Criminal Procedure Code, 1973 and the Civil Procedure Code, 1908. This fact is perceived to be very advantageous for the system of justice delivery, because it allows the judge and/or his officers a lot of flexibility in terms of visiting the site of dispute or land in question and communicating with the disputant. This enables easier access to justice.

Besides these courts, specialized tribunals are also established under various enactments such as the Income tax Appellate Tribunal, Maharashtra Administrative Tribunal, the Sales Tax Appellate Tribunal, the Consumer Forums, the Debt Recovery Tribunal, School Tribunal, and University Tribunal.

To promote further access to justice, the government has also encouraged the following programmes at district, taluka and village levels-

i) Mobile Legal Services[42]-

An initiative of The Maharashtra State Legal Services Authority, the Mobile Legal Services comprise Judicial Officers (retired or serving), Lawyers, Social Activists, NGOs, Law Students and Law Teachers.

To ensure maximum accessibility and effectiveness, as far as possible, a person of repute from the locality commanding respect from the community is selected to preside over the function so that maximum people in the locality may take advantage of Lok Adalat/Legal Literacy Camps and actively participate in the programme arranged by the Mobile Team.

The Mobile Van visits villages, slum areas, and remote tribal and rural areas on fixed dates or intermittently as per the schedule prepared by the District Legal Services Authority (DLSA) concerned. The van visits various police stations, jails, remand homes/shelter homes etc. in the area to ensure that there is no violation of human rights and to address the problems of inmates' access to justice.

Literature review and fieldwork observations reveal that this team carries out the following functions:

- Creates awareness on new laws through written and visual materials in the local language;
- Counsels and advises those coming to the Camp with particular problem;
- Resolves disputes amicably through compromise and settlement between the parties in the Lok Adalat;
- Provides information about legal services and legal aid, if people want to file a case.

The place of halt is selected as per convenience of the people, particularly on a weekly bazaar day, or at fairs or *melas* at the following places: (i) Market place (ii) School (iii) Gram Panchayat Office or any other suitable place in the Village/venue.

ii) *Mahatma Gandhi Tanta Mukta Gaon Mohim*[43] (Dispute-Free Village Campaign)

On August 15, 2007, the Government of Maharashtra, launched the Mahatma Gandhi *Tanta Mukta Gaon Mohim*[44] (TMGM; strife/dispute-free village campaign) as an alternative dispute-resolution forum.

41: http://articles.timesofindia.indiatimes.com/2009-10-01/pune/28062924_1_rural-courts-gram-nyayalayas-district-courts

42: The Mobile Legal Services is a scheme introduced by the Maharashtra State Legal Services Authority to secure justice for weaker and marginalized sections of society. Available at: http://legalservices.maharashtra.gov.in/Links/latest/mobile_scheme.pdf

43: Shirish N. Kavadi, Swati Kulkarni, and Gauri Bhopatkar, Strengthened Access to Justice: Mapping Informal Justice Institutions in Maharashtra, (National Centre for Advocacy Studies,Indian Institute for Para-Legal Studies, United Nations Development Programme, 2008)

44:The Home Department of the Government of Maharashtra has launched this innovative scheme for Alternative Dispute Resolution vide GR MIS:1007/ CR-238/POL-8 dated 19 July 2007. Available at: http://www.mahapolice.gov.in/mahapolice/jsp/temp/disputefree.jsp

Considering the huge pendency of cases in various Courts and the inevitable delays in delivering judgments, the need was felt for Alternative Dispute-resolution (ADR). In fact this was the reason for the formation of Loknyayalas and Fast Track Courts. The aim is to free villages from conflicts that often result in civil and criminal cases that place a burden on the formal judicial system.

At the village level, disputes often arise over petty issues. Even though initially few people may be involved, petty disputes, if unresolved, often tend to accelerate into wider conflicts involving more people. Sometimes civil disputes take a violent criminal turn. Such unresolved disputes over a period of time may pose a threat to social peace and order, besides putting a strain on the criminal and civil justice system. The *Mahatma Gandhi Tanta Mukta Gaon Mohim* is a village-level Alternative Dispute-resolution (ADR) system which seeks to prevent the occurrence of disputes and to resolve existing disputes at the village level itself through people's participation.

The salient features of this mission are:

1. Formation of *Tanta Mukta Gaon Samitis* (*TMGS*; Dispute-Free Village Committees) in each and every village in the state;
2. Identification of existing disputes, classifying them into criminal, civil, revenue and noting them down in a register maintained by the *TMGS*;
3. Preventive schemes and measures to ensure that disputes do not occur;
4. Resolution of existing and new disputes in a democratic, fair and participative manner.

Structure: The *TMGS* have a four tier structure, with Committees at the State, District, Taluka and Village levels. The Chief Minister is the head of the state-level committee which has twenty five other members. At the village-level, the committee has representation for different groups - professional, occupational (non-caste), local-level agencies, cooperatives etc., and even government officials. The committee at this level, therefore, has a maximum of 35 members. The Police Patil is the convener of the village committee.

Functions: The *TMGS* settle disputes filed with them and prevent disputes from flaring up into major conflicts.

Approach To Dispute-resolution: Dispute-resolution is attempted through arbitration, mediation, conciliation and compromise; if necessary with the help of the administration.

Jurisdiction: The committees have jurisdiction over the following type of disputes:

- *Civil* – disputes related to immovable property, succession, division and transfer of property, sale and purchase of movable property, tenancy, and maintenance.
- *Revenue* – disputes related to agricultural land ownership, boundaries, encroachment, land laws, common road etc.
- *Criminal* – Non-cognizable offences related to person, property and deceit that could be settled with the permission of parties involved and according to law.
- *Other disputes* – other than civil, criminal or revenue matters i.e. disputes related to co-operative sector, labour, industry etc.

There is an annual process of grading and marking the performance of these committees at the Village, Taluka, District and State levels. Rewards range from Rs. 1, 00,000 to Rs. 10, 00,000 for the best performing villages. The scheme also has a public awareness and publicity component. There is a reward scheme for publicity given to press reporters, ranging from Rs. 25,000 to Rs. 1, 00,000.

VI. ACCESSIBILITY TO FORUMS

Below are the district-wise particulars regarding physical accessibility to judicial institutions, infrastructure of the judicial institutions and facilities provided to judicial officers by the Government.

This information is related to the main town/city in the two districts.

JUDICIAL STATION	DISTRICT 'A'	DISTRICT 'B'
Railway Connection	Available	Available.
Bus Connection	Available	Available
No. of Courts	74	13
Nature of Court Premises	District Court Building	Government Building
No. Of Residential Quarters of Judicial Officers	32 assigned quarters	Judicial Qtr.-8, PWD Qtr.-5.
Nature of Residential Accommodation	Assigned quarters and Common pool Quarters	Judicial & PWD Quarters
No. of Lawyers	4500	528
Water Supply	Municipal	Available
Electricity Supply (Inventor/Generator)	Available	Available
Educational Facilities including Specialization Study	Available	Available
Medical facilities (Special medical care available at station viz. Heart care Unit, Gynecologist, etc.	Available	Available
Library Facility	Available	Available
Club Facility	Available	Available
Banks	Available	Available
Government Rest House	Available	Available

VII. DETAILS OF JUDICIAL INSTITUTIONS

District	DISTRICT 'A'	DISTRICT 'B'
Principal District Judge / CJM	✓	✓
District Judge+	✓ (2)	✓ (2)
Civil Judge Senior Div.	✓ (2)	✓ (2)
CJJD/JMFC*	✓ (13)	✓
Family Court	✓ (5)	X
Small Causes Court**	✓	X
MACT	✓	X
Labour Court***	✓ (2)	X
Industrial Court	✓ (1)	X
Co-operative Court	✓	X
Cooperative Appellate Court	✓	X
School Tribunal	✓	✓ (1)
Fast Track Court		X
Gram Nyayalaya	✓	X
No Court#	✓ (2)	

+ Figures in brackets indicate number of judicial officers listed. In the case of other officers, the numbers were not available.
X – These courts were non-existent.
**The Civil Judge Junior Division (CJJD) & Judicial Magistrate First Class (JMFC) are located at the Taluka level.*
*** Apart from District A, only Bombay and Nagpur have a Small Causes Court.*
**** District 'B' refers labour-related cases to the labour court in the neighbouring district town.*
#Figures in brackets indicate Talukas with no courts. These Talukas are attached to other Talukas which have a court.

2

SECTION TWO

ECONOMIC AND SOCIAL RIGHTS IN THE LOWER COURTS OF MAHARASHTRA

I. CLAIMS CONCERNING ECONOMIC AND SOCIAL RIGHTS:

On matters relating to Economic and Social Rights (ESRs), responses revealed that most judges and lawyers have paid little specific attention to these rights. Judges in the district court in District A, responded, almost defensively, that it was important in a country like India to emphasize people's duties towards society and towards their nation, rather than merely stressing on how important it is to fight for one's rights. These lawyers generally believed that if every party who attended court was aware of and fulfilled his/her duties, rights would accrue automatically.[45]

Judges were mostly unaware of the concept of ESRs. Responses revealed that very rarely did judges discuss matters concerning economic and social rights in conversations with their colleagues. Therefore, as a part of the methodology, to ensure that the interviewees understood ESRs in the same manner as was described in the international covenant, a list of the issues that fell within the scope of Economic and Social Rights was placed before every judge and they were asked to elaborate the nature of cases relating to these subjects that come before them. In many instances, the judges felt that the subject of 'rights', whether economic and social or civil and political, fell within the scope of the Constitution and therefore within the jurisdiction of the higher courts.[46] As a result, they did not think ESRs concerned lower court judges. Judges who felt that the understanding of human rights among their cohort was fairly good spoke primarily in the context of criminal cases.[47] A district judge with a post-graduate degree in human rights expressed disappointment over the situation that judges had a very limited understanding of the issues concerning human rights, and economic and social rights. "Judges in the district court are only concerned with books and laws. They don't like to concern themselves with human rights. This is unfortunate. An understanding of human rights allows the judge to develop a perspective on issues of compensation and justice. Your ideas on these subjects become better. You ask yourself whether you can go beyond the section and in what way the litigant can benefit from the court," he explained.[48] Judges with such perspectives are rare in the lower court, with many being plain unaware of the discourse of rights, and others hesitant to contextualize decisions in the light of such knowledge for fear of overstepping their powers.

Ignorance regarding ESR issues, however, was not unique to the judges alone, and extended amongst several lawyers as well. On most occasions, despite background discussions, lawyers continued to relate experiences from all sorts of cases, leaving it to the researchers to identify which ones fell within the scope of ESRs. Interestingly, in spite of District A being more developed and far ahead of District B with regard to literacy levels, it was in District B that lawyers were fairly quicker at grasping the concept of ESRs and relating relevant cases from their docket.

Lawyers, unlike judges, however, felt that their own understanding of ESRs was sound. They felt that this sensitivity did not reflect with much impact in their pleadings because the interpretation and understanding of ESRs depended on the perception of each lawyer and therefore differed from lawyer to lawyer.

Socio-legal activists and lawyers who handled a large number of ESR-related cases felt that lawyers would not be sensitive to ESRs and would continue to plead ESRs ineffectively until their understanding of 'rights' was improved. These lawyers felt that the lower judiciary was not equipped to handle ESR-related disputes. The situation is better explained through the sentiments of a female lawyer handling several matrimonial cases. "If there can be a special court set up only hear cases of cheque-bouncing, why can't the judiciary set up a court to hear only applications under the domestic violence act?" she demanded.[49]

45: Research team interview with judge, May 2, 2011
46: Research team interview with judge, June 11, 2012
47: Research team interview with judge, January 10, 2011
48: Research team interview with judge, September 15, 2011
49: Research team interview with lawyer, October 11, 2011

ESR litigation is not very common even in the district-level court in both districts. What then are the ESR cases that come up in these courts? The only types of cases identified were:

1. Claims against land acquisition by the government, specifically where the land was the source of livelihood for the claimant. In rural areas, where the litigants are mostly farmers, land constitutes not only the Right to Livelihood but also the Right to Shelter.
2. Disputes over land partition, encroachment and fraudulent transfers of land where the land was the source of livelihood for the claimant.
3. Claims against the electricity board for irregular supply and sudden disconnection of electric supply. Regular electric supply may be considered part of a person's right to comfortable living and housing.
4. Maintenance applications.
5. Cases of public nuisance.

II. TYPES OF ESR CASES:

i) LAND CASES -

What is the nature of land-related cases that were most frequently cited as concerning economic and social rights and what are the reasons for these happening on a large scale? In District B, which falls in the mostly dry, drought-prone Marathwada region, agriculture is the main source of livelihood. The government has on several occasions acquired land for percolation of rain water and rain-water harvesting to ensure that farmers in adjoining areas get water. But there are problems in the manner in which land is acquired and the rate of compensation determined. The Collector acts on behalf of the government for acquisition; s/he issues notices, determines the boundary, invites objection and determines the amount of compensation. The market value of the land to be acquired is determined as on the date on which the notice is issued. The method of determining the market value involves collecting sale instances from the surrounding areas. Ideally, the valuers should determine the market value of the land according to the sale instances of land most similar in value and fertility to the land in question. But instead, they classify the lands according to the land revenue. The land in question is then placed within the category of land to which its land revenue matches. Thereafter, the lowest market value from amongst the lands in that land-revenue category is decided as the market value of the land in question. Naturally the farmer is seen to suffer, when he knows that lands adjacent to his own have been sold at much higher rates. A reference is made to the collector and the matter is then referred to the District Court.

In a taluka in District B, the principal judge, noted that a majority of the cases concern disputes arising from moneylending transactions. According to the judge, "Parties actually intending to mortgage their land for money end up executing sale deeds in favour of the moneylender. They then come to court on the ground that they did not intend to sell the land but only to mortgage it and now that they are repaying the loan, the moneylender refuses to return the land."[50] This judge also feels that in the lot of those farmers who were genuinely duped, there also exist landholders who commonly execute sale deeds instead of actual mortgage deeds only to save tax. These cases, however, usually get decided in favour of the moneylenders because the farmers are unable to file any evidence in support of their 'intent'. "There is no evidence and we must rely only on his statement, which becomes difficult," she added.

Three female judges – two judicial magistrates of the first class and one senior division civil judge – observed that there has been an increase in the number of cases filed by women pertaining to their claims in joint family property. Describing the types of cases filed, the senior judge says, "Sometimes they seek injunctions to restrain the male members of the family from creating third party interests in the joint family property. On most occasions, the women claim that the agreements to sell bear their signatures, but that these have been acquired fraudulently by the brothers."[51] Another judge, 20% of whose docket comprised such disputes, said that female litigants filing land cases have increased substantially after the 2005 amendment which gives a birthright to women in coparcenary property.[52] The number of such cases at the

50: Research team interview with judge, February 16, 2012
51: Research team interview with judge, April 27, 2011
52: Research team interview with judge, April 29, 2011

taluka level is also substantial as can be seen from the response of a judge who stated that almost 50% of the partition disputes in his taluka court were initiated by women.[53]

ii) Electricity And Water Disputes

Electricity and water disputes were also considered as ESRs, as part of the Right to Housing. However, it was found that not many such disputes are filed in the lower courts in Maharashtra. According to a senior judge in District A, the proportion of such cases is small because, when it comes to rights, people are most aware of their rights to land.[54] With reference to water disputes this judge, made a reference to how several people install motors on the backwaters of a dam and so many of them do not even pay for it. The trend of stealing water however, he observed, differed from area to area in Maharashtra. "For example, in western Maharashtra, there are cooperative societies, so people apply for water connections and pay the money. In Marathwada, people want water supply free of cost and so they have illegal connections." As regards electricity disputes, a judge who was assigned to decide electricity disputes being filed in the District Court in District B said that cases concerning electricity were usually filed by the distribution company and mostly related to theft of electricity by attaching steel hooks. According to this judge if all things were proved, the accused would be bound to be convicted, but in 99% of the cases the accused get acquitted because of the slack functioning of the departments.[55] Explaining the procedure, the judge narrated how the investigating authority must visit the site and seize the hook or any electric equipment that might be lying in the accused person's house and make enquiries about the status of the accused person's residence in the said premises. "However, none of this is ever done. The complaint itself is made several weeks after the act has been committed. Even the complaints filed by the MSEDCL are vague," observed this judge.[56] According to this judge, such cases are merely a social and economic loss to public resources. "Ultimately, the MSEDCL collects these theft charges from the common man's pockets," he continued disappointedly.

In a taluka court in District A, a judge observed that an absence of cases concerning water and electricity did not imply that there were no issues in the villages in this regard. "When we go to the villages to conduct legal aid camps, we notice how people still do not have access to water, let alone clean drinking water and electricity and depend on herbal medicines to cure diseases," he said.[57]

iii) Food Adulteration

In District A, judges highlighted cases of food adulteration in claims concerning economic and social rights. Food adulteration claims essentially fall within the scope of Right to Food, which would constitute an ESR under the Covenant. These disputes are brought by the Food and Drug Administration Department against wholesale traders and retailers of food-grain and food products.

Two junior judges who had dealt with a fair number of food adulteration and pollution cases stated that since the procedure in these cases is so technical, there is no scope for adopting a different perspective or approach. "When the investigating authority finds a violation of the law, it records the same in a *panchanama* – an FIR. Where the investigating authority is able to prove the *panchnama,* and all facts are proved beyond reasonable doubt, then we are bound to give a decree in their favour. Where the *panchnama* is not proved, then the court cannot do anything. We cannot go against the evidence brought before us, ultimately," explained one of them.[58]

iv) Public Nuisance

In taluka courts, cases of public nuisance were perceived by judges to fall within the scope of ESRs. In one taluka court, a judge went on to state that in his opinion the only cases where decisions at taluka level impacted a large section of society were complaints filed against a public nuisance.[59] Giving an example from his

53: Research team interview with judge, April 19, 2011
54: Research team interview with judge, April 25, 2011
55: Research team interview with judge, September 16, 2011
56: Research team interview with judge, September 16, 2011
57: Research team interview with judge, May 25, 2011
58: Research team interview with judge, April 29, 2011
59: Research team interview with judge, 15.02.2012

jurisdiction, he explained how a decision on encroachment of Waqf property or one regarding the cause of pollution in the vicinity of a temple or mosque can impact (benefit) more than one person.

III. DEALING WITH AND DECIDING ESR CASES

Lawyers and judges did agree that ESR-related claims were being filed in the lower courts and that their quantum would increase only with more awareness amongst litigants in this regard. A senior judge felt that most ESRs ended up being filed as Writ Petitions or PILs in the High Court for want of proper legal advice. "Litigants are unaware that they can approach the District Court with the same issues," she said.[60] Some judges were also of the opinion that since writ petitions are an efficient method of dealing with ESRs, extending this power to the lower courts may increase the quantum of ESR-related litigation there. A senior judge noted that, "The procedure for deciding writs is not lengthy. Moreover, if we look carefully, the decisions of the High Court in writ petitions are rarely appealed against. We can draw from this that there are greater chances that even the decisions of the district court in writ petitions are less likely to be appealed against. Therefore we will have speedy justice and less pendency if ESRs are decided through writs at the district level too. It will also help reduce the burden of the High Courts."[61] A chief judicial magistrate felt that enactment of statutes facilitating enforcement of fundamental and other rights guaranteed under the Constitution would make ESR-related litigation more possible for a larger number of claimants. "This way, there may be no writ jurisdiction in the lower courts but the district court can still apply the appropriate procedural laws to protect people from a violation of their rights," he said.[62]

Need To Increase Awareness About Esrs

All categories of respondents agreed on the need to increase awareness about the types of ESR claims that people can file even in the lower courts. A senior judge who hailed from rural Maharashtra stated that awareness regarding ESRs would be best raised through the training of Gram Sevak workers and Anganwadi workers.[63] According to him, since Gram Sevaks and Anganwadi workers are in contact with the people at the grassroots on a daily basis, they aere better placed to explain the concept of ESRs and instances of their violation.

60: Research team interview with judge, June 28, 2011
61: Research team interview with judge, May 20, 2011
62: Research team interview with judge, April 5, 2011
63: Research team interview with judge, April 25, 2011

3

SECTION THREE

PERCEPTIONS ABOUT THE SYSTEM: LITIGANTS, LAWYERS AND JUDGES

This section provides an overview of the perceptions of lawyers, litigants and judges about the judicial system as a whole, issues of accessibility and corruption, the impact of caste and the hurdles they face accessing, presenting and deciding matters concerning economic and social rights There are three sets of target respondents in this study – the judges, lawyers and litigants. Our dialogues with each set was individual. Therefore on analyzing interviews, when we found that some responses (possibly from different set of target respondents) co-related, we clubbed them under one section or have run them in flow.

I. PERCEPTIONS ABOUT ACCESSIBILITY:

The understanding of 'accessibility' amongst lawyers, litigants and judges was varied. It encompassed the extent to which the court procedures are comprehended, expenses incurred in pursuing a suit, levels of fairness, physical access to the court and availability of lawyers. A lawyer in the district court explained, "Litigants can approach the lawyers directly; the lawyers are friendly and help the litigants to attempt to settle the dispute amicably. Even the judges in court do not rush into legal procedures and evidence; they too try and help the parties to settle the dispute and only if this seems impossible do they proceed to hear the case."[64]

In comparison to other forums of dispute-resolution, the court was seen to be "fast, fair and delivering proper justice."

A. Hurdles Faced By Litigants In Accessing The Judiciary:

While all litigants understood and were able to articulate sufficiently the kind of hurdles they faced in court, amongst the lawyers and the judges there were some respondents who felt that litigants face no hurdles at all. Some lawyers and judges were amazed that litigants continued to find the court inaccessible despite the easy availability of lawyers,[65] the court's willingness to hear a variety of claims/disputes[66] and the provision of suitable facilities such as the increasing number of legal awareness camps[67] and legal aid centres.[68] A judge who has been part of many such camps felt that the judiciary was accessible enough. "Through these trainings and legal awareness programmes, we have made possible a direct dialogue with judges. How much more accessible can the legal process be?" he demanded rhetorically.[69] According to a senior lawyer in a district court, this perceived inaccessibility among the litigants was only a result of their pessimistic attitude towards coming to court.[70]

However, it would be incorrect to conclude that litigants faced no difficulties in accessing courts. Several issues constrained litigants from accessing the courts. Many perceived the court as not the most litigant-friendly and comfortable forum. A district court judge sympathized with the cause of the litigants: "The litigants are compelled to come to court irrespective of their age, health and economic situation."[71]

The hurdles that litigants face in accessing the judiciary and pursuing litigation (as perceived by litigants themselves as well as by their lawyers and the judges) are elaborated in more detail below:

i) Delays:

One of the first reactions encountered from litigants in both districts is that the process of the court is extremely lengthy and lethargic. The common consensus is that there is no quick justice. "Justice delayed is justice denied and that is the overall experience of the lower judiciary," said a civil rights activist who helped litigants file claims before the consumer court, the consumer grievance redressal forum, the Maharashtra Electricity Regulatory Commission and other quasi judicial bodies.[72]

Delays were generally attributed to corrupt practices,[73] cases not being studied carefully,[74] slow procedures[75] and specifically to the following causes:

a. Non-appearance of Litigating Parties

Litigants articulated non-attendance by the opposite party as one reason for delays. It was perceived as a serious hurdle, particularly when one party of litigants remained absent at the time

64: Research team interview with lawyer on June 7, 2012
65: Research team interview with judge on April 29, 2011
66: Research team interview with judge, April 25, 2011
67: Research team interview with judge, September 14, 2011
68: Research team interview with judge, August 30, 2011
69: Research team interview with judge, September 14, 2011
70: Research team interview with lawyer, June 7, 2012
71: Research team interview with judge, September 16, 2011
72: Research team interview with litigant, April 7, 2011
73: Research team interview with litigants, June 14, 2012 and June 15, 2012
74: Research team interview with litigant, June 15, 2012
75: Litigants shared how they had to wait endlessly to procure certified copies of the orders from the Clerks; Research team interview with litigant, August 8, 2012.

of crucial procedures such as cross examinations. Such absences were seen to contribute to the overall delay in the disposal of the case.

In cases concerning matrimonial disputes, a junior female lawyer who has been primarily representing women was of the opinion that women did not end up coming to court because of various social and economic constraints.[76] Other lawyers commonly representing female clients in matrimonial suits stated that non-appearance on time in court was used as a tactic to seek adjournments and delay the case by the husbands and their families.

b. Adjournments

The numerous land laws in India allow the initiation of several applications in a single land-related dispute. Multiple applications were perceived as a fine tactic of seeking adjournments, a primary cause for cases being prolonged. Field interviews showed that this was a very common tendency among lawyers and litigants alike.

Litigants expressed disappointment with the court over the number of adjournments granted in land cases. Several accounts of litigation experiences reflected frustration over the fact that the court continued to grant adjournments at the request of the lawyers for parties who consistently failed to appear in court. In a particular case, a litigant related that the court allowed an adjournment to the opposite party even though this litigant had gone to the extent of requesting the court to issue a warrant in the name of the defendant, to compel him to appear.[77]

The lower court judges, however, were not foreign to this situation. Having been lawyers themselves, some of them were quick to take note of the strategies used by lawyers to delay/prolong the case and were found to be making resolute efforts to combat these tactics. For instance, a senior judge in a Sessions Court tried to give as few adjournments as possible. "When a matter is at the stage of final hearing, I give a maximum of 3 adjournments, each for not more than a week," he said.[78] Dismissing the seeking of frivolous adjournments,[79] keeping the adjournment periods short[80] and imposing costs for seeking more than a fixed number of adjournments[81] were some of the methods adopted by judges to ensure speedy disposal of cases.

c. Slow and Lengthy Procedures

Delays were particularly common with respect to land matters, which comprise more than half the cases in taluka and district level courts. In the lower courts, it is not uncommon to come across land-related disputes that have been pending for eleven, fifteen and even twenty-five years. Relating his experience, a litigant who has been pursuing a land-related case for the last 35 years said, "The process of the court is slow and time consuming. Due to this delay alone, I have suffered a tremendous economic loss."[82] These delays sometimes lead to tricky situations such as in the case of a litigant who had filed a complaint for theft of sandalwood from a sandalwood tree on his land, but was called to identify the accused after one whole year from the date of the incident. "Obviously the incident and loss it had caused had lost its gravity by then. We were unable to identify the thief and in spite of that the case took 4 years to be decided," he observed.[83]

Most litigants were very unhappy that they had to spare separate time for court work, which resulted in significant loss of time, money and work. In the experience of several litigants, lengthy procedures made pursuing a case in court not only time-consuming but also very expensive. The distant location of the courts from several villages coupled with scarce and inefficient public transport led to several litigants waiting for long periods outside the court until their matter was heard. Litigants dependent on daily wage jobs and agricultural activities[84] for their livelihood expressed disappointment over the loss of a whole day's income-generation opportunity.[85]

76: Research team interview with lawyer, October 11, 2011
77: Research team interview with litigant, June 11, 2012
78: Research team interview with judge, May 16, 2011
79: Research team interview with judge, Sept. 15, 2011
80: Research team interview with judge, April 21, 2011
81: Research team interview with judge, April 21, 2011
82: Research team interview with litigant, June 15, 2012
83: Research team interview with litigant, June 13, 2012
84: Research team interview with litigant, February 15, 2012; June 11, 2012
85: Research team interview with lawyer, November 22, 2011

d. Slow Execution of Decrees

Even though litigants may not have been able to describe slow execution of decrees as a hurdle, a few lawyers did feel that this procedural detail that caused a lot of delay to the cases posed a hurdle for litigants and lawyers as well. A paper decree is of no meaning for the litigant until the order therein is executed.

The delay in execution of decrees was particularly damaging in land acquisition matters, where litigants spent a better part of their lifetime awaiting the monetary compensation due to them from the State. Several of them were compelled to approach politicians and make visits to the *Mantralaya* (State government secretariat in Mumbai) to follow up the execution of their decrees.[86]

In maintenance matters, female litigants could not enjoy the fruits of the decree till the husband began paying maintenance, which on many occasions was irregular besides being inadequate. Lawyers did not press, under section 125 of the Criminal Procedure Code (CrPC), for the husbands to be committed to prison until the maintenance amount was paid because in their experience the court was found to be very hesitant in this regard. "Even if it does [send the husband to prison], it sends the husbands to prison only for one month – irrespective of the amount of maintenance that is due from him. The men complete that term in jail and return to society," said a senior lawyer in a taluka court.[87]

e. Failure of Supporting Machinery

At the taluka level, litigants did not express much dissatisfaction with the court but were extremely frustrated with the conduct of the supporting machinery, such as, local revenue officials, lawyers and policemen. They felt that it was not so much the courts as the authorities in the revenue department who were to blame for the delays in land cases. The supporting machinery and the revenue department in particular were seen to be easily pressurized through bribery, political power and general threatening.[88] Without commenting on the element of corruption, even judges sympathized with the plight of the litigants when it came to dealing with revenue authorities. The sole explanation for the situation came from a lawyer in a taluka court, who remarked, "They have multiple responsibilities, under various departments. Now look at the tahsildar, for instance. He is in charge of carrying out the partition of land in metes and bounds in accordance with a decree, but being bogged down with so many other responsibilities, execution of partition decrees gets invariably delayed."[89]

f. Miscellaneous

The number of appeals that can easily be made in suit before the district court level was also perceived as a hurdle for litigants and a reason for cases to remain pending. Lawyers in a taluka located close to the High Court felt that the procedure of appeal from the taluka court to the district court and from the district court to the High Court was very easy. "Just about any application can get appealed and as a result the entire case remains pending. The lower court refuses to proceed in the matter until the higher court decides the issue before it. This way the case keeps getting prolonged," stated a lawyer.[90]

Often used as strategy by lawyers, but actually a cause for delay in proceedings are instances where parties are encouraged to file several cases under various sections in the court. "The opposite party is sure to get frustrated because s/he has to attend the court on various occasions. This ultimately forces the opposite party to compromise," said a taluka court lawyer.[91]

Amongst the judges, a common explanation for delays was the disparity in proportion of judges to the large flow and uneven distribution of cases.[92]

There were, however, some lawyers, though very few in number, who felt that the issue of 'delay' in court was overstated by the litigants and the media. Delays, they said, were inevitable because "the procedure in civil court is very lengthy as the court must give every person an opportunity to present his say and the court must

86: Research team interview with judge, September 14, 2011
87: Research team interview with lawyer, June 6, 2012
88: Research team interview with litigant, June 13, 2012
89: Research team interview with lawyer, January 20, 2012
90: Research team interview with lawyer, June 14, 2011
91: Research team interview with lawyer, February 19, 2012
92: Research team interview with judge, April 21, 2011

consider both perspectives before deciding a case"[93] and that in any case, the delays were not as severe as eight to ten years ago.

Interestingly, the High Court's efforts to combat the pendency of cases in the lower courts were not received very well in the lower courts. Uniform directions passed by the High Court for the lower courts in every district are not effective, when the reasons for pendency in every district vary tremendously. A senior lawyer in a small taluka court explained, quite aggressively, how the High Court has recently directed all the lower courts to decide old disputes on a priority basis. "But in our district, the pendency is quite low. In spite of this, all the judges are spending all their time in deciding old disputes, as a result of which new cases are being delayed unnecessarily," he stated.

In the same context, some judges in the taluka courts also attributed their inability to see many cases from beginning to end because of the directions from the High Court to prioritize the disposal of old cases. It may be noted that to the same question "How many cases they [the judges] have seen from beginning to end? " that these similar responses were received and that too from judges who were all interviewed independently.[94]

Delays also compelled litigants to constantly pressurize their lawyers to wrap up the case quickly. "Sometimes it is due to financial constraints and at other times it's mostly because they are frustrated with the system and lengthy procedures," explained a senior lawyer.[95] Another senior lawyer added, "When the case concerns the litigant's land, it directly concerns also his livelihood because most litigants are farmers. The longer the land remains the subject matter of litigation, the less chances of the litigant securing his livelihood from it."[96]

Why cases take time to be resolved?

Pendency, as noted at the beginning of the study, is a major concern or issue in courts in India. Hence, this was an issue discussed elaborately with the respondents in this study.

Responses of Lawyers:

According to lawyers the time taken to resolve a case depended on the nature of the case.

Land acquisition cases, on an average, took 2 – 3 years to be decided. The maximum time was spent in execution of the order.

Cases involving the government as a party took 2 -3 years to be decided.

Other cases of land disputes took 10 years on an average to be decided both in district- and taluka-level courts. Some senior lawyers stated that it could be anywhere from a minimum of 2 years to a maximum of 20 years.

Criminal cases took a long time because of the insufficient police machinery. In many taluka courts there was only one policeman available, who must serve summons, appear in court and work on night duty as well.

Cases before the collector took up to one year to be decided.

Electricity cases took up to 1 year to be decided in the district court and up to 2 years in a taluka court.

Maintenance cases in the taluka court took about 3 – 4 years.

Food adulteration cases took 2 – 3 years in the taluka court.

In the experience of lawyers at the taluka level, speedy disposal of civil cases could be ensured particularly if the parties were cooperative. A lawyer in the taluka court explained, "The courts are not very proactive. The parties have to be very keen on finishing the suit [only then can the matter see an end]." [Research team interview with lawyer, August 27, 2011]

93: Research team interview with lawyer, June 11, 2012
94: Research team interviews with judges, February 19, 2011
95: Research team interview with lawyer, November 22, 2011
96: Research team interview with lawyer, November 22, 2011

Responses of Judges:

Judges had some interesting responses to the question of how much time is approximately taken to decide cases. According to a judge in a district court, the time taken to decide a case depended on the attitude of the judge. "Managing the daily board carefully is the key to quick and efficient disposal of cases," remarked this judge, in whose court ESR matters took no longer than 3 months to be decided [Research team interview with judge, September 15, 2011]. This judge recommended that judges should be trained in how to organize and manage their boards. Many other judges felt that resolution of a dispute depended on the cooperation of the lawyers and the parties related to the dispute. "The time taken to resolve a case depends on the counsel, the party and the number and types of cases I have on board that day," said a judge from a taluka court. [Research team interview with judge, April 19, 2011].

Explaining how litigants prolong disputes, a female judge in a district court explained: "Firstly, there are several litigants who file several cases for one dispute trying their luck in every court. Secondly, many times the party knows that his/her case doesn't stand a very good chance of being successful. So they prolong the case – almost as though they are waiting for some circumstances to change their luck in the case." [Research team interview with judge, April 29, 2011]

In criminal matters, the presence of the police, witnesses, accused, prosecutor and defense lawyers is crucial to the processes of a criminal court. If any one of these persons is not present the matter will get adjourned. [Research team interview with judge, May 2, 2011] The primary reason for delays in criminal cases was that the accused was absconding. [Research team interview with judge, April 19, 2011] Judges hearing criminal matters tended to be stricter about ensuring speedy disposal. A procedure-abiding chief judicial magistrate had fixed for herself a time schedule within which each case must be decided. "I place a time schedule [for passing orders] which is between six months to a year to pass an order. Clients and the system, both, benefit from speedy decisions," she said [Research team interview with judge, June 28, 2011]

In civil cases, land disputes ranked highest in pendency. Presenting a possible explanation on why land disputes get delayed, a senior judge said, "Land cases mostly get delayed because the party in possession prolongs the matter by invoking the various provisions of law." [Research team interview with judge, May 20, 2011]

Maintenance disputes were noted to be pending for the least amount of time, from anywhere between 6 months to one year. A possible cause for this trend could be the high number of settlements occurring in maintenance-related matters. A judge in a taluka court said that where she noticed a possibility of settlement in maintenance matters, she left no stone unturned to ensure a successful settlement. [Research team interview with judge, February 16, 2012]

In the context of pendency, judges also elaborated their experience in response to a question of how many cases they had seen from beginning to end. Most judges had rarely had the opportunity to decide a case that had been filed before them. A junior judge who had seen only 2 to 3 cases from beginning to end in her entire tenure of 10 years stated, "The only time I have seen a civil case filed before me also end before me is when it has been withdrawn." [Research team interview with judge, April 21, 2011] Of course there were judges who differed from this trend and felt that "If the judge is experienced and the advocate is skillful the matter can be completed very quickly." [Research team interview with judge, May 20, 2011]

ii) Illiteracy:
Many litigants perceived illiteracy as a hurdle in accessing the judiciary.. A seventy-year-old litigant stated that illiteracy was the biggest hurdle a common man can face in accessing justice.[97] Litigants, particularly female litigants, stated that the court procedures related to land disputes were very complicated and difficult to understand. Since land concerns the right to livelihood in most parts of rural Maharashtra, the litigants felt that their inability to understand the court procedures placed them at a crucial disadvantage.

Lawyers and judges articulated very well the problems that arose from illiteracy of the litigants, including the inability to read and write, lack of legal awareness and ignorance of rights. Most of the problems for litigants were seen to arise out of their ignorance of the law Due to illiteracy, litigants did not know their rights, did not understand court procedures[98] and were unable to understand the best way of procuring the documents required in evidence of their claim.

For those who could read and write, it is legal illiteracy and their inability to understand English that posed a challenge. "Unfortunately all the laws are printed in English. I cannot even access the bare act laws in Marathi so that I can understand a little of what the lawyers and judges are doing in my case," said a litigant in a taluka court.[99]

Illiteracy, both the inability to read and write, and legal illiteracy was seen to have the following impact:

a. Lack of Understanding of Court Procedures and Delays in Procuring Documentary Evidence:
Litigants expressed that their inability to understand court procedures proved to be a serious hurdle when dealing with revenue officials, particularly at the time of procuring the relevant documents for their case.[100] The courts, though aware, are not very sensitive to this reality and continue to pressurize litigants to produce a series of documents in evidence. A tribal litigant, whose matter has been pending for over 25 years in a taluka court, said about his experience: "The judges ask for several documents. We are illiterate and ignorant and on most occasions we do not know what documents the judge is asking for; all we learn is that it takes very long to acquire them."[101]

Some lawyers, especially those with experience in representing persons from marginalized backgrounds, confirmed these litigants' experiences. They had observed the court becoming rather insistent on procedure with respect to cases concerning persons from marginalised socio-economic backgrounds.[102] According to a lawyer in a taluka town, cases did not end up being filed in time because there were delays in procuring documents.[103]

Procuring documents is quite a trying task, particularly in cases against government authorities. According to all the lawyers regularly appearing for or against government bodies, litigants have a very hard time getting the required documents of evidence for their case from the government department concerned. The process is fraught with bribery, delays and non-cooperation on part of the government officers.[104]

b. Lack of Understanding of Legal and Human Rights:
Several judges in both the district and taluka courts observed that foundational hurdles surrounding access to justice arose because of illiteracy, which in turn led to lack of awareness regarding the law and civil, political, economic and social rights.

A senior lawyer in a taluka court observed that litigants who are illiterate did not come to court of their own accord. "They 'don't know' when they must come to court. It is only when there is some

97: Research team interview with litigant, June 15, 2012
98: Research team interview with litigant, June 14, 2012
99: Research team interview with litigant, June 11, 2012
100: Research team interview with litigant, July 11, 2012
101: Research team interview with litigant, June 25, 2011
102: Research team interview with lawyer, March 15, 2011
103: Research team interview with lawyer,, May 30,2011
104: Research team interview with lawyer, February 23, 2011

political motivation, influence of local touts or basic awareness that has spread because of the recent legal aid programmes that they decide to come to court," he said.[105]

Speaking with reference to applications for cancellation of sale deeds, which are received in large numbers by this taluka court, a taluka court judge said,

> *"The Adivasis (tribal communities) are largely illiterate with no knowledge of law. More often than not they are pressurized into executing the sale deed. Many are even executed by minor children. The main hurdle litigants face in enforcing their right to land under such disputes is the clause of limitation. A suit for cancellation of sale deed must be filed within 3 years from the date or sale or knowledge of the date of sale. When the sale deeds are executed by the litigant as a minor, he obviously understands nothing. He gains knowledge of the harm he has suffered only after he grows up and interacts with others from the community. By the time he files a suit, however, it is barred by limitation. The litigant does not get justice due to poverty, illiteracy and ignorance of law. Since they are so isolated, these people don't even know their age and when they have become majors."*[106]

Lack of knowledge regarding one's rights was observed to cause multiple suits to be filed for the same case,[107] interference with proper litigation and an infringement of fundamental rights.[108]

c. Fear of the Court:

Illiteracy also caused litigants to fear court procedures. A young female litigant in a district court said that she was scared to come to the court alone and therefore insisted that her mother accompany her. "I don't know anything about law and the process of the court, hence I do not have the courage to face the process of the court all by myself," she remarked.[109]

d. Relationship with Lawyers:

The inability to understand the processes of court caused several litigants to become totally dependent on their lawyers. While the majority did not articulate it, in the case of a few litigants this total dependency had resulted in litigants beginning to perceive lawyers in themselves as a hurdle. Litigants spoke about how their lawyers did not allow them an opportunity to speak in front of the judge,[110] the tactics used by lawyers to prolong cases, demand money and avoid meeting the client often.[111] In the view of an activist lawyer, "Lawyers make the system seem complex and inaccessible to the litigants."[112]

Illiteracy clearly makes litigants very vulnerable and this is obvious from the small number of litigants accompanying their lawyers to court for the hearing of their cases. Criticizing the situation, a district court judge said, "Out of the 80 cases on my Board, in only 5 to 6 matters do the parties accompany their advocates."[113]

But total dependency was only one side of the coin; lawyers related that illiteracy and ignorance also caused many litigants to become suspicious of the lawyers. "They refuse to trust the lawyer completely as a result of which they don't cooperate with us," said a taluka court lawyer.[114]

But not everybody has a dim view of the situation. A senior judge in a district court who was also chairing the District Legal Services Authority at the time of the interview stated that legal awareness amongst the general public has relatively increased over the last few years. He attributed this change to the efforts of the legal aid department in his district. On being asked how he made such a determination, he said: "There are very few applications requesting condoning of delay pleading ignorance of law."[115]

105: Research team interview with lawyer, June 6, 2012
106: Research team interview with judge, May 25, 2011
107: Research team interview with judge, April 21, 2011
108: Research team interview with judge, April 27, 2011
109: Research team interview with litigant, June 15, 2012
110: Research team interview with litigant, June 13, 2012
111: Research team interview with litigant, March 22, 2012
112: Research team interview with lawyer, March 15, 2011
113: Research team interview with judge, September 14, 2011
114: Research team interview with lawyer, July 27, 2011
115: Research team interview with judge, September 15, 2011

iii) Public Transport:

a. Physical Inaccessibility:

Amongst the hurdles cited by all lawyers and litigants and several judges, a primary hurdle was scarce and/or irregular public transport facility, which affected physical accessibility to the courts. In the taluka areas, public transport is the main mode of commutation for most people, especially litigants who often come from surrounding villages. Irregular public transport resulted in many litigants being unable to attend their cases, either because they arrived late or had to leave early in order to catch the last bus back home. More diligent litigants who remained in court until the closing time of 5.00 pm complained of the difficulties they faced in getting a vehicle back to their village. Spending an entire day away from work and home was not an uncommon experience for litigants from remote villages. The situation was especially trying for female litigants who were compelled to request a male member from their family to accompany them to court.[116] A litigant who lived 53 kms away from the taluka court said he has never been able to leave court before 4.00pm. "There is no public transport by this time and ultimately I have to take lifts all the way back and end up walking the last 5 kms to my village," he remarked.[117]

In the taluka courts however, judges familiar with the transport difficulties accommodated such litigants either by prioritizing their cases and hearing them at the beginning of the day[118] or holding back the hearing of the case until the litigant arrived.[119]

b. Other Implications:

Related to the difficulties in transport was another issue – namely, delays in service of summons and notices, which was at least partly caused by an inadequate or absent public transport system to remote rural areas. Delays in service of summons and notices are perceived as a hurdle for both lawyers and litigants. A lawyer from a small taluka court related his woes, "Acknowledgment of receipts for notices served through Registered Post Acknowledgement Due (R.P.A.D) to persons residing outside the taluka takes 6-7 months. Where notices are served through police stations, acknowledgments are not received at all."[120]

iv) Financial Hurdles:

Financial constraints were also cited as hurdle in pursuing litigation smoothly. At both taluka- and district-level courts, litigants were of the view that litigation was an expensive affair. A common experience of many litigants was that approaching the court for enforcement of one's right seemed almost impossible without having sufficient money. The gravity of financial constraint was felt even more when litigants could neither use political influence / connections nor had any public or family support. The situation only worsened for poor litigants if the other party decided to use its political and economic power in court.

a. Taking Loans or Selling Property:

Very often litigants ended up selling or mortgaging substantial portions of their movable/immovable property and even taking loans[121] in order to pursue their case in court. Expenses extended from mere commutation to court right up to payment of lawyer's fees and tipping clerks and officials for petty tasks. An eighty-year-old woman who had filed her case in a district court relates: "The court needs money at each and every stage of the case. Over the last 35 years, I have spent 6 lakh rupees on this case. I even sold my small hotel to fight for my rights in the court. Now I do not have any more money to spend."[122]

b. Sudden Abandonment of Litigation:

In the experience of lawyers, exhaustion of finances mid-way through litigation also saw many litigants just abandon the case. In fact, a senior lawyer in a district court actually attributed reduction in the rate of litigation in the district court where he was practicing to the increasing court fees and litigation expenditures.[123]

116: Research team interview with litigant, March 20, 2012; Research team interview with judge, April 27,2011
117: Research team interview with litigant, June 11, 2012
118: Research team interview with judge, May 25, 2011
119: Research team interview with lawyer, June 6, 2012
120: Research team interview with lawyer, July 25, 2011
121: Research team interviews with litigants, January 21, 2012; January 19, 2012
122: Research team interviews with litigant, June 15, 2012
123: Research interview with lawyer, October 13, 2011

c. Female Litigants and Court Fees:
The imposition of court fees placed female litigants in an extremely tricky position as regards their rights. While women are generally exempt from court fees, when filing for a share in family property through a suit for partition, the female litigant is bound to pay court fees like any of her male counterparts. Explaining the plight of such women, a senior female judge elucidated, "Payment of court fee can be a problem, particularly for widows. These women cannot take advantage of legal aid because they are going to benefit as a result of this claim, which is quite unlike a matrimonial dispute."[124] But at the same time, this judge recognized that at the point when such women filed the suit, they had practically no finances to invest in litigation, which compelled them to seek the support of relatives and friends at whose mercy they then may have had to remain for the duration of the suit and possibly for many years thereafter.

d. Other Issues:
While insufficient finance forms the larger part of financial hurdles, mismanagement of available finances also caused a problem for litigants. This situation was specially observed in land acquisition cases where litigants received substantially large amounts of money in compensation from the government against their land acquisition claims. A senior lawyer who had been representing several such claims said, "The amount received as compensation is very large, Many times, the claimant has spent many months or even years to procure it. But once they receive the money, I have seen so many of them just wasting it away in buying petty goods, liquor and even gambling. As a result, at the end of the day they are left with neither the land nor the money received as compensation."

v) Lack of Infrastructure:
A few litigants, particularly those in the taluka courts, cited infrastructural hurdles as well. Lack of toilets and drinking water facilities was the most common one. Elaborating on this point, a human rights activist with several years of experience in legal aid, who felt that 'litigants are the most neglected lot in the judiciary', said, "There are no facilities for pure drinking water in the court. Toilets are dirty and sometimes non–existent, seating arrangements are inadequate, and those that exist are in ramshackle state."[126]

vi) Language as a Barrier:
Lawyers working with marginalised groups also cite language as a barrier for these litigants. Though the working language in the court is English, in most small towns, neither the judge nor the lawyers are well-versed with the language. Therefore, lawyers and many litigants observed that a lot of time was spent in translating into English (for the sake of court records) what the lawyer explained/argued in the local language. On many occasions, this translation "was flawed and therefore meaningless."[127] In a taluka court, a lawyer representing several Adivasi litigants also explained how the language of the Adivasis community being different from Marathi posed a hurdle for them, particularly at the time of cross examination. "Neither the judges nor the litigant understand what the other saying. This makes the trial procedure difficult," said the lawyer, who further explained how these litigants also had to be taught what was to be deposed in court.[128]

Even judges expressed how translating legal terminology, often in English or even Latin, into the local language for the benefit of the litigant and sometimes even the lawyer was quite a challenge.[129]

vii) Long Vacations for Judges:
In addition to all of the above, a junior lawyer said that he viewed the long duration of vacations for judges as a hurdle for litigants in pursuing their case. Pendency of the case, already caused by the various procedural causes, is further lengthened because of the court vacation.

While lawyers might complain about the long vacation periods for judges as a hurdle in the smooth pursuit of cases, a senior judge in the district court noted how being overburdened with

124: Research interview with judge, April 27, 2011
125: Research interview with lawyer, October 14, 2011
126: Research interview with litigant, February 24, 2012
127: Research interview with lawyer, March 23, 2011
128: Research team interview with lawyer, July 25, 2011
129: Research interview with judge, June 11, 2012

work and lack of free time actually ended up impacting the delivery of justice: "A judge's family has no human rights. I don't even know what my family does on most weekends. Think about a taluka court judge – he works for 280 days in a year, whereas there are only 240 working days on the Court Calendar."[130] Contrasting the terms of employment of a judge with those of the other Court Staff, the judge pointed out: "Every member of staff in the Court is compensated when s/he works on an official holiday; but this doesn't apply to judges. They work on several holidays, but they aren't compensated in any way whatsoever." Looking around his chamber he pointed to the dust gathering on the window sill and said, "I keep telling the cleaner to clear this every day. But there is only so much that I can do. With no family time, surrounded by dilapidated infrastructure and odd working hours, how can you even expect a judge to always remain calm on the dais? It is humanly impossible."[131]

Hurdles Faced by Female Litigants:

As a consequence of the various social constraints imposed on women, female litigants were perceived to face quite a few challenges in approaching court. "In these parts, a lady needs a lot of courage to stand by her decision to come to court and file a case against her husband. The challenges she faces from society and even her own family while going through with this decision are the biggest hurdles for her. She must put everything at stake – from her reputation to the support that she may be able to draw from her friends and family," said a senior lawyer in a fairly remote taluka court.[132]

But the response of two junior female judges, to a question about whether they perceived any problems that female litigants face in particular is worth noting. "No, no, Courts are also doing a large number of activities to empower and educate women about the laws framed to protect them. As part of conducting legal aid camps, we have visited villages, schools and even hospitals with our target group being women,"[133] they said emphatically. From their experience in conducting legal aid camps at the village level, they say: "People at the grassroots are hesitant to come to court mostly because they are unaware of their rights. Litigants in general know about the existence of the laws such as DV Act and PNDT Act, but they do not know the purpose of the legislature behind enacting these laws and therefore the acts get misused." These judges further observed that laws are particularly misused by the educated: "Women use these Acts not as a shield, but more as a sword." In fact the two judges were of the opinion, "We feel that more the education, more the litigation."[134]

B. About Faith In The Judiciary:

When litigants were asked whether they felt that the court was the best forum for dispute-resolution, almost all of them answered in the affirmative. But when viewed alongside their responses with regard to their experiences in court, a very different picture emerges, one which is important to examine before concluding this section. Relating the experience of litigants in court, a trade union activist, who also helps employees pursue cases in the Labour court, said, "Before filing a case, a litigant is hopeful, optimistic and really believes in the efficacy of the process. During the trials s/he becomes tired and is almost killed by the technicalities of the process. By the end of the case, s/he is frustrated and has lost faith in the process."[135]

The views of this union activist appear to bear some truth because litigants' responses revealed how initially they were very optimistic and hopeful about approaching the court for dispute-resolution and only as time passed did they eventually tend to get frustrated because they found that the processes were not easy to understand and there was not speedy disposal of the matter. The situation was more or less uniform across district- and taluka-level courts.

While delays did not tend to deter litigants from continuing to have faith in the fairness of the court procedure and its capability of making 'just' decisions, lawyers and judges perceived slackening in court procedure a potential cause

130: Research interview with judge, April 27, 2011
131: Ibid
132: Research interview with lawyer, February 15, 2012
133: Research interview with judges, April 29, 2011
134: Ibid
135: Research interview with litigant, March 14, 2011

for common people's faith in the judiciary to reduce. In the experience of lawyers, several litigants withdrew[136] or compromised[137] their cases because they had become frustrated with the slow and complex procedure which led to delays. Unlike lawyers, however, judges felt that the responsibility of reinstating the faith of litigants in the judiciary primarily lies on the fraternity of judges itself. Some judges felt that efforts such as interacting with litigants directly,[138] seeming more approachable and friendly,[139] proper management of cases,[140] ensuring that litigants did not have to wait endlessly[141] went a long way in helping litigants feel less intimidated and more confident about approaching the court and also in reducing corruption in the system.

II. THE SYSTEM

In this section, we shall make an attempt to understand what each set of target respondents felt about their own fraternity in the judicial set-up and about the other set of respondents who were part of this study. Here, the hurdles faced by lawyers in presenting cases and those faced by judges in the process of justice delivery are discussed. This helps to analyze the extent to which effective dispute-resolution and justice-delivery are challenged by systemic constraints and failures.

A. Litigants' Perceptions Of Lawyers:

i) Appointing a Lawyer:

In majority cases, litigants, at both district and taluka levels, find a lawyer to represent them through references and recommendations from friends or relatives. If the prospective litigant had a relative who was a practicing lawyer, then the litigant was most likely to appoint him/her. Muslim litigants were observed to approach only Muslim lawyers for legal opinions. Very rarely did litigants appoint a lawyer randomly in the court premises.

ii) Experiences in Regular Court:

Litigants have had a fairly mixed sort of experience with their lawyers. The primary causes for dissatisfaction with lawyers were: insufficient time given to the litigant, not appearing promptly when the matter is called out in court,[142] demanding large sums of money as fees and not spending enough time to inform litigants of the case status and its progress. Litigants also related experiences of lawyers being bought over by the opposite party. In maintenance matters, litigants stated that lawyers charge a percentage of the maintenance amount as fee. A tribal litigant whose case has been pending for 25 years in a taluka court said, "I could buy a new piece of land with the amount I have paid to the lawyer in fees."[143]

As a result of these woes, some litigants even changed their lawyers during the pendency of the case. A female litigant who had filed a suit for restitution of conjugal right in the district court related: "My first lawyer cheated me. He was not honest. He was bought over by the opposite side; he accepted a bribe from my mother-in-law and withdrew from my case. I then appointed a second lawyer to represent my case in court. He seems to be honest."[144] Having had one nasty experience, this woman is not completely confident even as she makes this statement.

As regards delays caused by lawyers, a few litigants highlighted that lawyers used the fact "that matters in court take time" as an excuse for their inefficiency. In a taluka court, a litigant representing his own case held the opinion that lawyers caused delays because that way they could earn more money. "Lawyers take advantage of the procedural delays," he remarked. Speaking about his experience of arguing without lawyers, he said: "I was not successful fighting my own case in the taluka court, but at the district level, I succeeded."[145]

136: Research interview with lawyer, November 2, 2011
137: Research interview with litigant, January 19, 2012
138: Research interview with judge, April 27, 2011
139: Research interview with judge, September 15, 2011
140: Research interview with judge, April 21, 2011
141: Research interview with judge, February 16, 2012
142: Research interview with litigant, June 14, 2012
143: Research interview with litigant, June 25, 2011
144: Research team interview with litigant, June 15, 2012
145: Research team interview with litigant, June 13, 2012

Good services were defined in terms of whether the lawyer was punctual, whether s/he [the lawyer] had been successful in the case,[146] whether the lawyer heard the litigant out patiently and kept the litigant updated about the status of the case. Litigants whose lawyers were efficient and trustworthy claimed that they did not mind the increasing burden of fees, which they felt was worthwhile in this context. Lawyers who were close relatives were often well spoken-of.[147]

iii) Experiences in Specialized Forums:

Litigants filing cases in specialized forums such as the MERC and the Maharashtra Water Resources Regulatory Authority (MWRRA) related that they usually appear in person because these cases may involve arguments on many technical issues which require a specialized degree of knowledge so that the case is pleaded properly. One of the litigants who appointed a lawyer said: "We were lucky because the lawyer has worked on similar cases with us before. So she was sensitive to the issue and tactful in presenting the case."[148] The situation was no different in labour courts, where employees who were guided by trade unions in filing a case were also represented by them. On speaking to trade-union activists, it was found that they [trade-union activists] perceived the lawyers to be ill-prepared, lacking integrity and greedy for money. In one case, the lack of integrity did not trouble the litigant as much as the fact that the lawyers were just not studying the case at hand. "We have even had cases dismissed for default," he remarked.[149]

In the family court – a specialized forum that hears only matrimonial disputes – the litigants had a fairly mixed opinion of their lawyers. Several lawyers in District A practiced simultaneously in the Family Court and District Court. This is probably the reason for the similarity in litigants' reasons for dissatisfaction with lawyers in the regular and in the family courts. Some of these complains included, lawyers not keeping their appointments, never appearing when the case was called out, often coming late to court and not providing receipts for the fees they were charging. Many litigants related that lawyers in this forum charged exorbitant fees.

Female litigants often shared that they felt more satisfied and comfortable being represented by a female lawyer.

B. Lawyers' Perception Of Their Colleagues And Profession:

> *"A lawyer has to be a practical man in terms of his and his client's interests, even if they may diverge occasionally. Accordingly, he has to manipulate and maneuver men, events, and ideas frequently, and even in a contradictory manner. He is freely found to appeal to the religious or traditional side of his client at one moment and to the letter and spirit of the court law at another. He of course knows how to manipulate popular or folk images of law; he may reinterpret them in terms of the court necessities. As he always translates at various levels the contents of the law to the layman and vice-versa, he is multiple-ended."*[150]

This observation made by R.S. Khare in his ethnographic work way back in 1972 rings true even today and sums up the role and image of the legal profession at the taluka and district levels.

Lawyers had very interesting views about their own profession and their peers. They seem to be aware that in the public mind there is not much high regard for the lawyer as a professional, that they are perceived as money grabbers who prolong disputes to earn more money, who please only rich litigants and are generally very insensitive to the situation before them. Lawyers admitted that the opinion about lawyers in the general public was not very favourable.

Litigants suggested that part of the reason for the slack working of their lawyers was attributable to them representing as many cases as possible. In this context, lawyers explained that it was very difficult for them to refuse to represent a prospective litigant. "As a result they get burdened with more cases than they can handle," concluded a senior lawyer.[151] Some other lawyers

146: Research team interview with litigant, July 11, 2012
147: Research interview with litigants, January 19, 2012; July 11, 2012; February 15, 2012
148: Research interview with litigant, June 7, 2012
149: Research interview with litigant, March 14, 2011
150: R.S. Khare, "Indigenous Culture and Lawyer's Law in India", Comparative Studies in Society and History, Vol. 14, No. 1, pp. 71-96, 82
151: Research team interview with lawyer, October 13, 2011

matter-of-factly explained that litigating also earned them their livelihood and hence they had to resort to tactics such as telling a litigant that s/he had a strong case, even though this was not true, mainly in order increase the number of cases on their docket.[152]

The same argument of litigation being a source of livelihood was put forth in defense to the allegation that lawyers are not sensitive to the economic and social situation of their client. A senior lawyer in a taluka court was a little taken aback with this question on sensitivity and responded: "How can you expect lawyers to be very sensitive? Ultimately it is also a matter of our livelihood. There is too much competition in the market and therefore lawyers cannot be as sensitive as they are expected to be."[153] Many lawyers, particularly at the taluka level, who were politically active felt that such an allegation was not justified in light of the pro-bono work they did as part of their 'social commitment'.[154]

Lawyers were very defensive against the allegation that they prolong disputes. Prolonging a dispute was seen to be of no benefit to a lawyer because the more a case was prolonged, the longer the lawyer would have to wait to receive his fees.[155] Therefore, lawyers were not interested in prolonging a case and wanted to wrap it up as soon as possible. Lawyers claimed that the receipt of fees from clients posed the biggest challenge to the smooth functioning of their professional practice.

There appeared to be a great deal of unity amongst lawyers themselves, particularly those who were members of a common bar association. Lawyers often discussed cases with each other, and within the fraternity they perceived themselves as being very cooperative with one another during court proceedings.[156] Most lawyers spoke highly of their Bar Association and the fact that it was free from the influence of any type of political or caste lobbies, a perception that contradicts the responses received and discussed later in the report.

There were mixed reactions from lawyers about the extent to which they were happy and satisfied in their profession. Consequently, there was a divided opinion on whether current lawyers would encourage their children to become lawyers. There were hardly any women lawyers in the taluka courts and consequently the larger proportion of responses was from men. About 30 – 40% lawyers stated that they would encourage their children to become lawyers, but mostly because they perceived the legal profession as noble and prestigious. "People need lawyers to fight for their rights. And then we also have the satisfaction of having done something for society," was the response from a lawyer in a taluka court.[157] Those who did not respond in the affirmative expressed that this was so because the economic gains from this profession were not rewarding either because there was increasing competition or because the time taken to establish oneself was only increasing over the years

C. Judges' Perceptions Of Lawyers:

On the whole, judges also did not have high regard for the practices of present-day lawyers. While judges empathized with the position of lawyers vis-à-vis litigants who are unable to articulate their case properly and the issue of fees, judges felt that lawyers did not come well-prepared to court, did not read their briefs properly, made improper pleadings,[158] used the procedure in filing of applications and cross-examination periods as excuses to seek adjournments[159] and were not very fair and honest.[160] Summing up the impact of the trend in lawyers' practices, a senior judge said, "Lawyers are causing the system of justice to collapse."[161] Sympathizing with the plight of litigants, a senior additional sessions judge says, "The system is such that if a judge makes a mistake there is the opportunity to appeal, but if the lawyer makes a

152: Research interview with lawyer, June 14, 2012
153: Research interview with lawyer, February 16, 2012
154: Research interview with lawyer, November 2, 2011
155: Research interview with lawyer, February 19, 2012
156: Research team interview with lawyer, June 7, 2012
157: Research team interview with lawyer, June 11, 2012
158: Research team interview with judge, April 27, 2011
159: Research team interview with judge, June 30, 2011
160: Research team interview with judge, July 28, 2011; June 30, 2011
161: Research team interview with judge, May 16, 2011

mistake, the litigant only suffers."[162] Judges were unanimous on the fact that in the lower courts, "a litigant's fate is written by the lawyer."[163]

But ironically, judges were not in favour of a system sans lawyers or with the limited engagement of lawyers either. Some of the common concerns were that there could be allegations against the judge if s/he was found to be interacting directly with the parties[164] and that parties did not know the procedures and consequently their behaviour may disturb the working of the court.[165] Those judges who did have experiences of interacting with litigants directly felt that this was necessary because: the litigant knows his/her case best, lawyers may have kept the litigant uninformed about certain legal aspects of the case[166], to save the litigant from suffering because of his/her lawyer's inadvertence[167] and to encourage settlement if possible. A very senior judge in the Family Court said that lawyers were not very supportive of compromising a case because that would have an adverse impact on their earnings from the case.

Some judges simply refused to express an opinion on the working practices of lawyers. "Being judges, we are under a mandate that prohibits interacting with anybody in the public, lest it affect our neutrality. We can't even go out for a cup of tea – that too must be brought home by the *Shipahi (peon).* Therefore we are hardly in touch with the social happenings in the town," remarked a junior judge in a taluka court.[168] In an attempt to appear neutral, these judges remarked that non-cooperative and difficult lawyers are often those who have not had a successful professional practice[169] or have to confront unfamiliar procedures[170] or those whose clients are not following the case seriously.[171]

D. Litigants' Perceptions Of Judges:

Litigants did not have very decided opinions or concrete remarks about the judges because they interacted with the judges very rarely, only maybe during cross examinations. "I never spoke with the judge, only my lawyer used to speak with him," "I have never met the judge, so how can I say anything about him," "The judge never spoke to me directly," were the common explanations for why the litigants could not offer a view or could not elaborate on the judge's approach and attitude. In one instance, a litigant who was very dissatisfied with his lawyer because he never informed him about the progress of the case decided to approach the judge directly. "I tried twice to approach the judge directly but his peon did not permit me to meet him. I have never met the judge more than once in the last six years that this case has been pending in the court," he said.[172] Many times, litigants were dissatisfied with the judge if s/he allowed too many adjournments.[173]

Litigants who had a verdict in their favour stated in detail how the judges had been very efficient and honest, hearing both sides patiently and verifying the facts properly. Other litigants generally said that the judges were fair and unbiased. This may have also been because judges were projected in that light alone and that it would be morally wrong to doubt the integrity of the judge. "How can we say anything about the judge's honesty? He only gives judgment as per the facts provided by the lawyer," said one litigant.[174] Litigants also mentioned very often that judges, in comparison to the police or lawyers, listened very patiently to both parties.

Members of the litigant forum, a forum formed to advocate the rights of litigants felt that judges did not apply their mind to the process of decision-making. "If the work of judges is well-appreciated

162: Research team interview with judge, June 30, 2011
163: Research team interview with judge, April 27, 2011
164: Research team interview with judge, May 16, 2011
165: Research team interview with judge, April 27, 2011
166: Research team interview with judge, April 25, 2011
167: Research team interview with judge, June 11, 2012
168: Research team interview with judge, April 19,2011
169: Research team interview with judge, September 14, 2011
170: Research team interview with judge September 15, 2011
171: Research team interview with judge, June 11, 2012
172: Research team interview with litigant, March 22, 2012
173: Research team interview with litigant, July 11, 2012
174: Research team interview with litigant, March 14, 2011; Research team interview with lawyer, October 11, 2011

and they are lauded for their noble work, they will be motivated to discharge their duties more efficiently," expressed a founder member of the forum.

With regard to quasi-judicial forums for specialized disputes such as water and electricity, litigants appeared quite satisfied. While presiding members [judges] were thought to be very fair, it was felt that these forums ought to be less bureaucratic and more strict, proactive and rigorous, especially in regard to ensuring the implementation of rulings.[175] Lawyers felt no differently; those appearing regularly before quasi-judicial authorities found that presiding members were often not conversant with the technicalities of the subject matter in dispute before them. In the case of specialized tribunals such as the labour court, this unfamiliarity with the subject matter was attributed to lack of specialized training.[176]

E. Lawyers' Perceptions Of Judges:

Lawyers spoke on various issues concerning judges – how lawyers' perceive judges in relation to economic and social rights claims and public welfare legislation, matrimonial disputes and the extent of sensitivity of the judge and the working practices of judges. These responses reflect the attitudes of lawyers towards the entire system of justice delivery and are therefore indicative of how they approach courts and specific judges. The comments and opinions of lawyers and litigants as well as interactions with judges on these same issues provide an overview of certain issues from all three perspectives.

i) Working Practices of Judges and their Attitudes:

The working practices of judges and their attitudes were widely criticized by senior and junior lawyers alike. It was stated that judges only work towards meeting the target rate of disposals[177] and that they are only interested in winding up cases.[178] Lawyers expressed the view that a proportion of cases were getting adversely impacted because of prejudiced approaches, inadequate knowledge, narrow perspectives, partiality and acceptance of weak evidence records on part of the judges.[179]

The trend of responses from judges about how they approach and deal with cases was to explain that the lower court being a procedural court, the scope of their engagement was constrained, that is, the boundaries were set, beyond which their choices are limited. Sticking to procedure was understood in different ways – from there being no place for emotions and moral values to take precedence,[180] to being unable to interpret the law differently from the High Court and taking decisions on the law.[181] An example cited by a senior judge clarifies how being bound by procedure constrains the lower court judges from interpreting the laws creatively. He gives the example of a case where the complainant applied to the court for police protection because he was being threatened by the accused against making statements in the court.

> *"He was ultimately fighting for his right to life. The Court of the Judicial Magistrate First Class dismissed the petition stating that his Court had no jurisdiction to decide the issue. Issues concerning the right to life can only be raised before the High Court. The matter came in appeal before me. I allowed the petition and passed an order granting the complainant police protection. This Order however was reversed by the Principal Sessions Judge on the ground that the lower judiciary did not have the jurisdiction to hear such a petition. The applicant was a poor man who would never be able to afford the expenses of filing an application before the High Court. What use is Right to Life being a justiciable right if it cannot be accessed in any Court by any common person?"*[182]

But judges do not dismiss the need to look at cases from beyond the merely procedural. There

175: Research team interview with litigant April 7, 2011
176: Research team interview with litigant March 14, 2011
177: Research team interview with lawyer, November 22, 2011
178: Research team interview with lawyer August 8, 2012
179: Research team interview with lawyer, November 23, 2011
180: Research team interview with judges, May 2, 2012
181: Research team interview with judge, September 14, 2011
182: Research team interview with judge, April 5, 2011

are judges who feel law and procedure alone cannot assure 'justice'. "That every dispute cannot be understood and decided within the four corners of law" is a fact that judges accept and acknowledge.[183] What this entails therefore is for judges to be able to exercise freedom. It was observed that this point of view was held primarily by senior judges who, with experience, have realized and recognized the limitations of working purely according to procedure. "Merely working according to the procedures laid down is not enough to do justice. Judges need to be given freedom – the freedom to be more creative as regards interpretation. Technicalities shouldn't be allowed to come in the way of justice. The hands of the judges are almost tied under the garb of legal procedure," said a judge with experience of nearly sixteen years.[184] The need to go beyond procedure essentially means that judges have to be sensitive to concerns that are not necessarily legal and may not fall strictly within the ambit of law; instead, they need to have a good understanding of broader social, economic contexts. But going beyond procedure also places judges at the risk of being tagged as 'activist' or being accused of going 'beyond the law'.

In a different context, lawyers in a big district court reported that judges have become very rigid over the years, more reluctant to take suggestions from lawyers for possible resolutions of cases, or even be informed of the latest case laws. "Sometimes they get insulted and decide the case flippantly. Ultimately we must follow whatever order is passed. It is almost as if they are passing the order to teach the lawyer a lesson. Unfortunately all this is at the expense of the litigant," remarked a senior lawyer.[185] A few senior lawyers highlighted how the case proceeded or how the law was interpreted on a particular day depended on the judge's mood. "Conflict of opinions between lawyers and judges are not good for the fate of the case," they cautioned.[186]

ii) The Sensitivity of the Judge:

a. Towards Economic and Social Rights Claim and Public Welfare Legislation

On the subject of economic and social rights claim and public welfare legislation, some lawyers were of the opinion that judges in the lower courts were unable to handle such cases because they were hesitant to take a risk. Elaborating this situation, one lawyer shared, "In all such cases, the judges must be daring and give bold judgments. But unfortunately the lower court judges are worried that if they pass judgments in such types of cases [economic and social rights cases], they may be stepping into an arena that is not within their jurisdiction and that may anger the High Court. They just refuse to take any such risks."[187]

The responses of the judges however revealed that many of them are – or at least attempt to be sensitive to socio-economic contexts. On the most appropriate procedure of adjudicating ESR claims, judges expressed that it was important to "consider the background of the person."[188]

b. Towards Context of the Case and Circumstances of Litigants

Lawyers expressed that judges rarely have a different approach to any specific kind of litigation. By 'different kind of approach' the lawyers understood 'the extent of sensitivity of the judge.' Lawyers in District B were more open and elaborate as compared to lawyers in District A. One senior lawyer said, "Judges are not at all sensitive. Unfortunately, they may understand the plight of the litigant but are unable to do anything because they are bound by procedure."[189] It appears, from his broader response, that what he may have wanted to say is that "judges cannot be sensitive." Lawyers felt that judges ought to spend a little more time and effort in explaining the reasons for their decision. According to the lawyers, this would go a "long way in reinstating the faith of common man in the court."[190]

183: Research team interview with judge, September 15, 2011
184: Research team interview with judge, May 7, 2011
185: Research team interview with lawyer, February 25, 2012
186: Research team interview with judge, October 13, 2011
187: Research team interview with lawyer, October 13, 2011
188: Research team interview with judge, May 7, 2011
189: Research team interview with lawyer, November 23, 2011
190: Research team interview with lawyer, November 2, 2011

A lawyer on the legal aid panel said that judges are sensitive towards cases that they know are being supported by the legal aid panel.[191]

On the point of whether judges tend to be sensitive to the context of a dispute and the socio-economic conditions of litigants, a Judicial Magistrate First Class [JMFC] in a taluka court responded quite defensively: "Why do you separate the legal perspective from the social perspective? Morality is a part and parcel of law. Law comes from morality. Since law itself is a social product, developed keeping in mind the social situation, law itself is socially sensitive. It would not be right, therefore, for a judge to have his own social view. The concept of law embodies all social views. Law is supreme."[192]

In response to whether the adjudicator faces any sort of a dilemma deciding between the procedure of the law and the situation of the party before him/her, a senior judge with over 30 years' experience said, "In certain situations, I take into consideration the emergency that must have compelled the persons to take recourse to an illegal act and I give precedence to the principles of natural justice over all other procedures."[193]

Interestingly, in the context of being sensitive to the context of the dispute and circumstances of the litigating parties, judges tend to be very cautious to not let their sensitive approach seem like bias. A judge from a taluka court said she often made an effort to inform the litigants about the law and even suggest the best route to reach a suitable solution, remarking, "But I am still careful while doing this. Ultimately it is upon the litigant how s/he absorbs this information. Sometimes it goes down the wrong way and we may be accused of exercising bias." [194]

F. Hurdles In The System:

There were only a small number of lawyers who felt that there were no hurdles in the system. It was observed that these lawyers were all established and had successful professional practices. They also took it as the duty of a lawyer to overcome all the obstacles faced by him/her in filing or pursuing a claim.

A majority of lawyers and judges, however, explained the various types of hurdles they face in representing and deciding cases, including those concerning economic and social rights. Some of these hurdles, as was observed, arose from systemic constraints, but many others were a result of inefficient working of supporting machineries, corruption and illiteracy of the litigants.

i) System of Recruiting Judges

Several lawyers expressed disappointment with the present system of recruiting judges without any litigation experience. Previously, a law graduate aspiring to be a judge had to have the experience of practicing as a lawyer for at least three years to be eligible to become a judge. Presently judges are being recruited after clearing a written examination conducted by the State Public Service Commission, which they qualify for soon after getting their Bachelors in law (LLB) degree. Lawyers feel that removing the criteria that mandated some years of practice was a wrong decision and proves to be quite a hurdle to the system. "Many times the lawyers have far more experience and knowledge than the judge, who is often a fresh graduate. The situation then becomes tricky because the person in the deciding position is the one who lacks skill, experience and knowledge," said a lawyer.[195] Sometimes because of this situation, judges tend to get confused and falter when senior lawyers begin arguing before them. Senior lawyers highlighted how these judges, who were often fresh graduates, did not interpret the law correctly. "Someone who writes a good essay may not necessarily deliver good justice," was the concluding remark of a senior lawyer in the taluka court.[196] Lawyers state that lack of experience hampers the delivery of equitable justice. In the opinion of senior judges, "Only an experienced judge can understand the parties with the right approach and give appropriate justice to them."[197] Another senior judge with over 15 years of experience felt practicing as a lawyer was critical to becoming a judge because it helped in

191: Research team interview with lawyer, October 11, 2011
192: Research team interview with judge, May 25, 2011
193: Research team interview with judge, June 28, 2011
194: Research team interview with judge, February 16, 2012
195: Research team interview with lawyer, May 18, 2011; February 23, 2011
196: Research team interview with lawyer, June 6, 2012
197: Research team interview with judge, October 1, 2011

reducing the misunderstandings between lawyers and judges."[198]

ii) Cases where the Government is Party:
In cases against the government, lawyers, both senior and junior, highlighted that the government pleaders were extremely slack and work very loosely. "They even get a lot of adjournments on petty grounds. Ultimately the judge can always rely on the several precedents that state that the court may adopt a liberal approach towards the State," said a junior lawyer.[199] Lawyers complained that they often had to chase government pleaders and compel them to appear and file the documents on time.[200] It seems that oftentimes a lot of corruption also takes place in order to get the government pleaders to act efficiently.

In land cases that arise in large numbers at the taluka level, the dealings of the revenue department create several hurdles for lawyers. These hurdles probably seem more aggravated because of the lack of awareness amongst litigants. A lawyer from in a taluka town tells us how gaining correct and accurate information in these disputes is a problem: "Most transactions are unregistered. When the actual problem regarding the property arises we have great trouble tracing the correct information because there are no records in place."[201]

While lawyers working on the panel of a government body use the time allowed by delays in the case to let the government body carry out corrective action, if any, the lawyers representing the claimants cite delays as the biggest hurdle in cases against government bodies.

Appearing for the government is not any easier, however. There is always a wide communication / information gap between the lawyer and the department concerned against whom the case has been filed. Unlike in their regular practice where the client provides them [the lawyers] with all the necessary documents of evidence and the real facts of the case, lawyers on the panel of a government body not only have to plan their pleading but must also chase the government officials for the relevant documents and information. "No one's personal interest is at stake and therefore the officials in these departments are very slack when it comes to court matters. The lawyers, therefore, have to be very proactive and persistent in order to pursue the case," related a lawyer on the panel of a municipal body.[202] The problem only becomes more complex when officers get transferred and those who come as replacements have no idea about the history and background of the pending litigation.

What often results from this is the non-appearance of lawyers for the government body, which is the exact problem highlighted by the lawyers appearing for litigants who have filed cases against a government body.

iii) Hurdles in Quasi-judicial & Specialized Forums:
Lawyers appearing in quasi-judicial forums remarked about the lack of legal knowledge among the official staff in such offices. As a result, the staff in these forums did not take litigation seriously and there was a lot of corruption.[203] Relating experiences from her practice in the Collector's Court, a junior lawyer, who is now a legal advisor in the Collector's office, said, "Not just the officials but even the Collector himself is not familiar with legal terms and phrases. Since not all Collectors are usually trained in law, they take long to understand legal applications. Additionally all the processes before the Collector are in Marathi, which poses a further problem for us lawyers who are trained [in the LLB course] to make all these applications in English." This lawyer also speaks about the lack of discipline in procedure and decorum before the Collector.[204]

iv) Inefficiency of Supporting Machinery:
The slack attitude of the police machinery is seen as a grave hurdle in the pursuit of matters in the lower court. In rural areas, villages are spread far and wide. While distances, in the rural areas, and

198: Research team interview with judge, September 14, 2011
199: Research team interview with lawyer, November 22, 2011
200: Research team interview with lawyer, November 23, 2011
201: Research team interview with lawyer, July 27, 2011
202: Research team interview with lawyer, July 28, 2011
203: Research team interview with lawyer, June 6, 2012
204: Research team interview with lawyer, November 21, 2011

temporary addresses of residence, in the urban areas, were practical factors that did challenge prompt service of summons, lawyers in small taluka courts stated that in spite of several attempts, the reports concerning failed service were 'person not at home', 'person unavailable' or 'address not found'.[205] Slow service of summons and notices was a hurdle common to all types of cases and particularly in maintenance applications. Speaking about the impact of delays caused by service of summons, a Chief Judicial Magistrate said. "The period for deciding a case under the Domestic Violence Act, 2005 has been fixed at three months under the statute. Practically, however, we can never finish the case in this period. The service of notice and summons takes the longest time. Many times parties reside in remote areas where there is no protection officer nominated and if there is, he is unaware of his role and responsibilities."[206] The period for service of summons prescribed under this Act is 2 days.[207]

Besides the police machinery, decreasing efficiency on part of investigating officers, whose services are required during the proceedings of criminal cases, is also seen as a hurdle. A public prosecutor appearing for the state in criminal matters said from her experience in dealing with cases of medical negligence which concern the right to health of individuals, "Investigation is a very crucial element in criminal cases. Investigating officers lack experience and skill in investigating matters of medical negligence. In cases of medical negligence, the investigating officers invariably have gaps in the information they produce before the court. Requesting a re-investigation involves time and expenditure and therefore we lawyers have to fill this gap through tactful and lengthy arguments."[208]

v) Illiteracy & Ignorance of the Law among Litigants as a Constraint

This was a hurdle for both lawyers and judges, particularly those in the taluka-level courts.

a. Inefficient Relation of Facts of the Case:

Judges and lawyers felt that litigants were unable to present their cases properly either before the court or to the lawyer on account of their illiteracy. "The litigant does not give us full information. S/he only explains his/her perception of the dispute without relating the full facts. As a result we are unable to make a strong case or have to deal with brand new facts that come to light in between arguments," said a senior lawyer in a taluka court.[209] In the experience of some lawyers, litigants intentionally did not reveal all the facts of their case. "Ultimately, they use this information to compromise the case on the sly with the help of the opposite party's lawyer," said a senior lawyer.[210]

b. Procuring Documentary Evidence for Litigants:

Illiteracy also results in lawyers spending considerable time in trying to retrieve the documents that would support their arguments.[211] Particularly, in cases where documents are to be procured from government authorities, lawyers have noticed that litigants who are illiterate and ignorant are totally harassed. "Since these litigants are not aware about the process and method, it becomes very difficult for them to get the required documents from government offices," said one lawyer in a taluka court.[212]

In claims against the government, litigants, being ignorant of the procedures, face a lot of trouble procuring relevant documents from the government authorities. While this is frustrating for the litigants, it is also very taxing for the lawyers. "This means that it is the lawyers who must do all the running around, convincing the authorities and gathering all the documents," remarks a senior lawyer.[213]

205: Research team interview with lawyer, June 6, 2012
206: Research team interview with judge, April 5, 2011
207: A document by the Maharashtra Legal Services Authority explaining the 'Protection of Women from Domestic Violence Act, 2005'. Available at: http://legalservices.maharashtra.gov.in/Links/domestic_violence.pdf
208: Research team interview with lawyer, May 18, 2011
209: Research team interview with lawyer, June 6, 2012
210: Research team interview with lawyer, June 13, 2012
211: Research team interview with lawyer, July 27, 2011
212: Research team interview with lawyer, June 13, 2012
213: Research team interview with lawyer, July 27, 2011

c. Preparing Litigants for Cross-Examinations:

A lawyer in a taluka court estimates that lawyers spend 75% of their time speaking to litigants and 25% on actual work.[214] Elaborating on this hurdle resulting from litigants' inability to read and write and therefore understand the procedures correctly, two senior lawyers related: "We have to spend a lot of time explaining to the litigants what to say in cross examinations. We have to take this task very seriously. We have experiences where the litigant has made an admission wrongly and the entire case has been affected consequently."[215]

d. Delayed Filing of Cases:

A senior lawyer also pointed out how as a result of ignorance of the law, litigants ended up filing cases years after the dispute had occurred. "These cases are barred by the law of limitation and hence it is very challenging for us to bring it within the limitation period and explain to the court the cause for the delay in filing. The litigant's only response to this is, 'I did not know about going to court."[216]

vi) Interestingly, in large districts, lawyers remarked that more awareness has made litigants more rigid in the manner in which they approach a lawyer. Litigants who may not be very aware but are weary of the court and the tactics of lawyers, interact and speak with more than ten lawyers before deciding on the one who will represent them. In the course of this they themselves become more aware of the law concerning their case as well as the procedure and know exactly the role of the lawyer and the extent to which s/he can aid the process. A senior lawyer in a taluka court related his experience from appearing mostly for husbands in such maintenance applications. "Looking at the trend of judgments, the husbands take for granted that the woman *will surely* get maintenance. Therefore they feel that the lawyer is not going to be of much help anyways and are not willing to spend much time and money on the cause. The attitude with which they approach a lawyer is only to understand the procedure and the possible the extent to which they can challenge the amount of maintenance to be paid. They don't take any of the professional advice we give them very seriously. And as a result they are not even very willing to pay us a reasonable fee. They feel the lawyer hardly had to do anything in a case the fate of which is predetermined by law."[217]

vii) Financial Constraints of the Litigant:

In taluka courts and the district court of the relatively less-developed district, the common experience of lawyers has been that litigants are very poor and hence cannot even afford the expenses of litigation after a point.

Financial issues of the litigant also result in the lawyers' fees not being paid on time. This point was raised by several senior lawyers. As regards the large quantum of fees, which posed a hurdle to litigants, a taluka court judge observed that lawyers in his jurisdiction were unable to negotiate a high fee with any client because the pendency rate was low and there were a large number of lawyers available. "The client will simply find another lawyer who will represent him for less. This way it will be the lawyer's loss, because the quantum of litigation in itself is low in this taluka," he said.[218]

In most cases, the fact that the litigant is financially constrained comes to light only at a later stage, sometime during the hearing of a case. At such times many lawyers end up paying court fees and other expenses of the litigant out of their own pocket. "Everything is at the lawyer's expense; sometimes even their commutation to and from court," said some senior lawyers. They point out further that this may be the reason why many lawyers are reluctant to take up cases of economically-backward litigants.[219]

viii) Witness Protection

Witness protection, particularly in criminal proceedings, is also perceived as a problem by lawyers and judges. As a result of being threatened by the accused, witnesses and sometimes even the complainant himself/herself refuse to depose correctly and honestly in court.

214: Research team interview with lawyer, June 17, 2012
215: Research team interview with lawyer, November 23, 2011
216: Research team interview with lawyer, October 10, 2011
217: Research team interview with lawyer, June 7, 2012
218: Research team interview with judge, February 15, 2012
219: Research team interview with lawyer, July 25, 2011

Judges express their helplessness in curbing the hostile tendencies of witnesses who are bound to abide by facts, evidence and procedure. On most occasions, the true facts never come forth because actual witnesses are hesitant or are deterred from becoming informants of the police or being witnesses. "On one hand there is tremendous pressure on the witnesses and they have little protection from the state, but on the other hand, how many witnesses can the state protect? Do we have those kinds of resources?" said a judge in the criminal court.[220]

A tactic the police have developed to escape this situation is through the appointment of panchas – informants. "These people are habitual informants. For a small sum of money, they stand up as witnesses in Court for several matters. We can see through them, but they are sworn in before us and they speak the language of the case, so on what grounds do we dismiss them?" said a senior judge.[221] Often, these habitual informants are street hawkers or cobblers in the vicinity of police stations. They agree to give evidence as witness because the police allow them to continue their business in certain locations where ordinarily they may not have permission.

ix) Lack of Infrastructural Facilities

Senior and junior lawyers cited lack of chambers for lawyers, inadequate seating arrangements, library facilities, etc. as hurdles. This situation is uniform across both district and taluka courts.

x) Pressure to Compromise

A few lawyers in the taluka court in Khed noted that judges, in their attempt to meet the target disposal rate, tend to encourage, almost pressurize, the parties to compromise. This they said posed a hurdle for lawyers.

G. Making The System Work:

In spite of all the hurdles, lawyers had actually developed their own strategies to make this system work to their best advantage. The question to lawyers about whether they adopted any particular strategy or strategies while arguing cases evoked mixed responses.

A senior lawyer in a taluka court was of the opinion that every lawyer perceives and pleads a case differently and therefore the strategies used differ from lawyer to lawyer, sometimes in one case itself.[222]

i) A couple of lawyers, mostly senior, stated that they strategized to ensure maximum benefits to their clients. They also remarked that the type of strategy depended largely on the lawyer. While lawyers did complain that they had to spend a lot of time preparing witnesses for cross examinations, one senior lawyer spoke about this very preparation as a strategy. "If we teach the litigant what s/he must say in court, the cases will most likely move in a favourable direction," he explained.[223]

ii) Another strategy common to lawyers in district courts was 'to stick to procedure' in certain cases. Several lawyers said that the strategy adopted by a lawyer depends on the law and the case at hand. A lawyer articulated, "The strategy is how best one can use the law to his/her advantage."[224]

iii) Emphasizing the socio-economic condition / situation of a litigant was a tactic used to convey the gravity of the situation on the judge. Developing arguments from the socio-legal perspective and relying on the context of the case and circumstance of the dispute can form part of this strategy.[225] Often adopted while pleading maintenance applications, lawyers elaborated how they made efforts to convince the court that female litigants in these cases had no other source of livelihood and were completely dependent on the maintenance they would receive.[226] Where the land in dispute constituted the right to livelihood and right to housing of the litigant, lawyers tended to advocate the cases more aggressively. However, such a strategy is not always successful, as gathered from the response of a family court judge who related that

220: Research team interview with judge, May 2, 2011
221: Research team interview with lawyer, May 2, 2011
222: Research team interview with lawyer, June 6, 2012
223: Research team interview with lawyer October 11, 2011
224: Research team interview with lawyer, June 7, 2012
225: Research team interview with lawyer, January 20, 2012, November 22, 2011, November 23, 2011
226: Research team interview with lawyer, June 6, 2012

cases are not decided only on the basis of pleadings. "Appropriate assessment of evidence is the prime task of the judges. No case can be decided only the basis of pleadings," she said.[227]

iv) Many lawyers also thought it was best to inform the litigant about the actual status of his/her case and where it was likely to lead.[228]

iv) Many lawyers also thought it was best to inform the litigant about the actual status of his/her case and where it was likely to lead.

v) Approaching the media was also seen as a strategy by some lawyers. A senior lawyer who had appeared in a case where the litigant was being billed for electric supply that he never received[229] elaborated: "We used the media to print this as a news story. The litigant had not had electricity supply in his house for over 20 years, but he was still being billed for it. Ultimately when the newspapers covered the story, his electric supply was instantly restored." The lawyer cautioned however that "One must be careful because if you reveal too much information, the same media can also turn around on you,"

vi) Matrimonial And Maintenance Cases:

Relying on case laws was a strategy articulated by a senior lawyer in the taluka court. Giving an example of how he uses case laws tactfully, he said: "In one of my cases, the applicant was the second wife of the respondent. She had filed for maintenance from the husband under S. 125 of the Criminal Procedure Code. The Court denied her maintenance on the ground that being the second wife she was not entitled to maintenance under the said section. I cited a case law based on the same fact which was decided in favour of the second wife. I succeeded in getting an order directing the husband to pay his wife Rs. 1500 monthly maintenance."[230]

Conversely, a lawyer appearing often for husbands opposing maintenance applications added that trying to prove that the marriage was not valid was an oft-used strategy. A third lawyer, senior in experience, said, "In maintenance applications lawyers don't need to make any effort at all; maintenance is granted as a right!"[231] In the district court, a lawyer on the legal aid panel said that she made sure to mention before the court that the matter was being handled by the legal aid panel. "Additionally I try and establish some network with local revenue authorities, the sarpanch or police patil from the female litigant's village," She explained. This makes it easier for her when she wishes to procure documents, for which otherwise the women are totally harassed.[232] This lawyer also revealed that, as a strategy, she filed applications under the DV Act as against the IPC. Filing cases under the DV Act is also a common strategy used by lawyers arguing several matrimonial cases. Apparently, the mandatory strict adherence to the time period within which the case must be disposed of is advantageous. In District B, as against District A, attempting mediation before filing the matrimonial dispute in court was an often-used strategy. "As a first, we always try to bring the family together" was a popular response in District B. Why this difference in attitude and approach? Is it because District B is more provincial in outlook as against District A which is comparatively more modern, advanced and an emerging cosmopolitan city? These questions need a more in-depth study

vii) Different Strategies Used In Different Forums:

a. Collector's Court:

A lawyer appearing before the Collector told us that she used several case laws before the Collector: "This branch of officials is very hierarchy-conscious. So the moment we cite a precedent, they are more or less likely to follow it."[233] Another strategy used in this court is to make applications in Marathi, which according to lawyers helps quicken the proceedings. This helps to save time on having documents prepared in English translated into Marathi which at this level of the court is essential in the interest of the litigant.

227: Research team interview with judge, January 10, 2011
228: Research team interview with lawyer, October 14, 2011
229: Research team interview with lawyer, October 10, 2011
230: Research team interview with lawyer, January 19, 2012
231: Research team interview with lawyer, June 6, 2012
232: Research team interview with lawyer, October 13, 2011
233: Research team interview with lawyer, November 21, 2011

b. Cases against government bodies:
Losing in the lower court and arguing the matter in appeal is a strategy cited by lawyers appearing against government authorities. It was also important in such cases [i.e. in cases against the government] to ensure that the litigant had exhausted all other processes of corrective action before coming to court.

4

SECTION FOUR

ALTERNATIVE DISPUTE-RESOLUTION
Methods and Forums

This section provides an overview of the opinions of judges, lawyers and litigants as regards alternative forms and methods of dispute-resolution.

Respondent judges and lawyers discussed their views and expressed opinions on alternate dispute-resolution forums such as the *Tanta Mukt Gaon Abhiyan* (Dispute-Free Village Campaign) and the *Lok Adala*t and quasi-judicial bodies. The attempt here was to find out:

i) whether 'the court' was perceived as the best forum for dispute-resolution for all kinds of disputes; and
ii) whether a higher degree of informality in dispute-resolution forums was preferred, opinions about compliance with legal procedures and the expenses involved being part of this discussion.

This section includes comments on whether such methods and forums are feasible in their jurisdictions, whether they are actually effective and how these can be improved.

I. INFORMAL FORUMS OF DISPUTE-RESOLUTION:

The whole idea of 'absence of procedure' that dominates the working of alternate dispute-resolution forums was not well received by many judges. They felt that that the success of informal forums of dispute-resolution indicated a failure of the judiciary. They did not perceive compromise as delivery of justice. "People who go to alternative informal forums are those who cannot afford to go to Court. More often than not, you will find the socio-economically underprivileged person settling in to the demands of the more powerful party. This man will definitely not get the best price for his land. Is that justice?" demanded a district court judge, who was speaking specifically with reference to the *Tanta Mukt Gaon Samiti* (DFV Committee), an informal, village-level dispute-resolution forum that has been described earlier.[234]

While judges may not have had firsthand experience with the working of informal forums, they perceived such forums as biased and arbitrary, with weaker parties not being given an opportunity to be heard. The informality in the system was seen as the very cause for the failure of these forums.[235] The judges saw the absence of rules of procedures as allowing for power politics and undue biases. Emphasizing the importance of procedure, a judge who had experimented with running a *Sahayya Kendra* (legal aid support centre) in his jurisdiction, said, "With the support of knowledgeable lawyers, this legal aid clinic settled disputes and advised litigants on the best route to resolving their legal issues."[236] Judges' opinions revealed that disputes concerning water, electricity should necessarily be brought before the regular court since the other party is ultimately the government. "If such disputes are brought before alternative or local forums, there are greater chances of injustice being done to the claimant. These bodies are more prone to pressure. Hence they are more likely to pass orders in favour of the government bodies," said a district court judge.[237]

The Tanta Mukta Gaon Mohim [Dispute-Free Village Campaign]: A Case Study[238]

The *Tanta Mukta Gaon Mohim (TMGM)* is being promoted widely in Maharashtra by both the Home Department and rural police machinery with "rewards ranging from Rs. 100,000 to Rs. 1,000,000 for the best performing villages."[239] However, litigants, lawyers and judges had hardly any positive opinions about the working of the *TMGM.*

Many litigants stated that though a *Tanta Mukta Gaon Samiti (TMGS)* had been constituted in their respective villages, these were not active. Where the *TMGS* did not meet regularly, litigants did not know whether the Committee actually had any authority, who the members were and how they should be approached. In some villages, only a few members from the *TMGS* were inclined to resolve disputes and took an initiative accordingly. For instance, a litigant in a district court stated that the TMGS in his village was active only because of the efforts of the Police Patil, the local police authority in his village.[240]

From their own and the experience of others in their community, litigants related that for a case to be successful before the *TMGS,* both parties had to be willing to accept and abide by the decision of the Committee. There were also a few judges and lawyers who subscribed to this view. The example of a litigant now pursuing her case in the district court elaborates this point well: "I did approach the *TMGS* in my village. The *TMGS* made all efforts to convince the opposite party to settle the matter at the village level itself, but the opposite party was unwilling and avoided attending the meetings of the committee."[241] Since the decisions of the *TMGS* are not legally binding, parties do not feel obligated to abide by them. That may be why settlements brought about by the *TMGS* were not always effective and

234: Research team interview with judge, May 2, 2011
235: Research team interview with judge, April 27, 2011
236: Research team interview with judge April 25, 2011
237: Research team interview with judge, June 28, 2011
238: The establishment and structure of the Dispute Free Village Committee has been discussed earlier in first part of this report in Section I
239: See Dispute Free Village, Mahatma Gandhi Tantamukt Gaon Mohim, http://www.mahapolice.gov.in/mahapolice/jsp/temp/disputefree.jsp.
240: Research team interview with litigant, March 14, 2012
241: Research team interview with litigant, March 14, 2012

long term solutions. As against this, the decisions of courts were seen to have an authority that could not be easily challenged. Some of the reasons cited for the failure of the *TMGS* are outlined below.

i) Political Influence:
The impact of political power was seen to be the reason for biased or unfair decisions and even inactivity of the *TMGS.* Political and economic power went a long way in influencing the constitution of the *TMGS.* In the experience of parties who had approached the *TMGS,* the committees had been constituted by representatives of political parties[242] and large land owners, some of whom were illiterate or even alcoholics.[243] Power politics allowed scope for discrimination against minorities in this forum, increasing the likelihood of injustice, causing litigants to merely succumb to the pressure of powerful individuals.[244]

From the viewpoint of lawyers and judges, this scheme was merely a political unit, which, in their perception, impacted the neutrality of the forum.[245]

ii) Lack of Legal Knowledge:
There was unanimous agreement about the *TMGS*'s lack of legal knowledge. Statements such as – 'There is no sense of law in this forum,' 'People are pressurized into compromising the dispute,' and 'Settlements are made with no consideration of the law' were common responses to questions on the authority of this forum in both the taluka- and district-level courts. Sometimes, as a result of this lack of knowledge, the *TMGS* ended up deciding even those disputes that they had no jurisdiction to hear.

A junior lawyer in the taluka court stated that the forum was not successful because of the big gap between decisions of the *TMGS* and those of the court. "The *TMGS* is found compromising disputes that it isn't even empowered to hear. As a result, the compromise has no legal basis," he said.[246] From his experience with this forum, another junior lawyer added, "The *TMGS* members are illiterate. How does one expect them to be good judges?"[247]

That disputes ultimately ended up in court despite being heard by this forum was seen as the most glaring evidence of failure of this forum.[248]

iii) Lack of Procedure:
A few senior lawyers were of the view that any forum which did not follow the rules of evidence strictly was not a good forum. In the taluka court, a lawyer cited that since there was no system of appeal against the decisions of this forum, it was inadequate. The same lawyer, a junior, also stated that there was no mechanism to ensure implementation of the decisions of this forum.[249]

iv) *TMGS* and Land Disputes:
A judge with over 10 years' experience stated that forums such as the *Lok Adalat* and the *TMGS* were particularly useful for the resolution of partition disputes. "These forums ensure speedy disposal of such disputes. And since not everyone insists on getting back the land itself, settlements in terms of money are always satisfactory," she noted.[250] This judge also saw an advantage in these forums because parties could appear in person. However, the majority of respondents did not share the judge's opinion that "not everyone insists on getting the land back." Lawyers appearing in land acquisition claims informed us how litigants were always keen on getting the land back rather than receiving monetary compensation. "Most litigants in such claims are farmers, and with the money they receive as compensation they must once again buy a piece of land, which they have to ensure is fertile and cultivable. This can be quite trying at times, and therefore litigants insist on an order that returns them possession of the land in question," explained one of the lawyers.[251]

242: Research team interview with litigant, March 22, 2012
243: Research team interview with litigant, March 20, 2012
244: Research team interview with lawyer, October 14, 2011
245: Research team interview with lawyer, October 11, 2011; Research team interview with judge September 15, 2011
246: Research team interview with lawyer, July 25, 2012
247: Research team interview with lawyer, June 7, 2012
248: Research team interview with lawyer, June 6, 2012
249: Research team interview with lawyer, June 6, 2012
250: Research team interview with judge, April 27, 2011
251: Research team interview with judge, November 21, 2011

Litigants did not perceive the *TMGS* as an appropriate forum for land disputes because land-related disputes were 'complicated'. The *TMGS* was perceived not to have the legal knowledge required to decide land disputes. Legal knowledge included knowledge of the various land laws. Political pressures were also seen to influence the decisions of the *TMGS* in respect of land matters. In the case of one litigant whose dispute concerned a piece of grazing land owned by the community in the village, the *TMGS* was totally reluctant to entertain the matter because some parts of the land were owned by politically influential people as well. "They were concerned that a decision with respect to my share would impact them as well. Hence those people pressurized the *TMGS* into not entertaining this matter at all," explained the litigant.[252]

v) *TMGS* and Matrimonial Disputes:

Unlike land matters, many litigants, particularly the male ones felt that the *TMGS* was effective for resolving matrimonial and family-related disputes. Female respondents, however, seemed to differ on this point. According to most female respondents, the *TMGS,* usually dominated by male members, held patriarchal views and were prejudiced against female applicants. Women were usually compelled to return to their matrimonial life and begin living with their husbands again, without even being given a choice of options.[253] In one case, a woman whose case was pending in a taluka court stated that she approached the *TMGS,* but not the one in her marital village. "The members in my husband's village all knew the dispute, and were already in his favour. They would have never sanctioned me maintenance," she said.[254]

In another case, a woman who approached the *TMGS* in the village seeking maintenance from her son saw the application against her son pending because her son never appeared before the *TMGS.* At the point he [the son] did, the lady lost all hope of succeeding before the *TMGS,* because he had made friends with one of the *TMGS* members and bribed him into settling the matter in his (the son's) favour. "The *TMGS* suddenly became hostile and stated that I should rent a place of my own or else live in an Ashram," related the woman.[255]

vi) Corruption:

There were not many allegations of corruption against the *TMGS,* except for one litigant who related that the *TMGS* in his village often demanded money to settle a matter in a particular manner.

vii) The *TMGS*- Not a Successful Programme:

Overall the *TMGS* was not considered to be a successful programme of the government. The pendency and increasing number of suits still being filed in court was considered evidence of the fact that this scheme and the *TMGS* formed under it had not been successful.[256] Remarking on the publicity the *TMGS* was receiving in terms of hoardings and newspaper reports, a junior judge in the taluka court said, "Disputes seem to be created and resolved before the *TMGS* for media mileage."[257] Judges were of the opinion that only those disputes that the parties knew would not hold ground in court on account of being "fishy" were being "resolved" before these *TMGS.*[258]

viii) Some Positive Responses and Recommendations:

While the *TMGS* in its present form was not favoured greatly, lawyers and judges did feel that increased interaction on part of judges and lawyers with the *TMGS,* legal training and more discipline and decorum could make the *TMGS* a good pre-litigation forum.[259] The *TMGS* would also help in resolving several 'access to justice' issues[260] and would aid in reducing pendency in the formal judiciary.[261]

252: Research team interview with litigant, June 15, 2012
253: Research team interview with litigant, June 14, 2012
254: Research team interview with litigant, August 8, 2012
255: Research team interview with litigant, January 20, 2012
256: Research team interview with judge, April 21, 2011
257: Research team interview with judge, April 21, 2011
258: Research team interview with judge, April 19, 2011
259: Research team interview with lawyer, October 10, 2011
260: Research team interview with lawyer, February 16, 2012
261: Research team interview with lawyer, October 11, 2011

Lawyers and judges felt that selection of presiding members on the basis of those who are empowered (in a positive sense), educated, and honest and have an intention to settle the dispute would go a long way in establishing the efficacy of this forum.[262]

II. ALTERNATIVE FORUMS:

A) The *Lok Adalat*

The Indian Parliament enacted the Legal Services Authorities Act (LSAA) in 1987. Under this Act, a network of legal aid institutions at the village, district, and state level and the National Legal Services Authority (NALSA) were set up. These authorities usually comprise members of the judiciary and the executive at the local level. Although the LSAA envisages a proactive role for judges, its core area of activity has centered on the organizing of *Lok Adalats* since it is seen as a useful case management device. They are held periodically, on court holidays, within the court premises and the 'benches' comprise a judge, a lawyer and a social worker. There are no appeals from the decisions of the *Lok Adalat* that record a compromise.[263]

At the ground level, the *Lok Adalat*'s working and day-to-day proceedings are overseen by District and Taluka Legal Services Authorities. Even though it was introduced as an alternative forum, litigants did not perceive the *Lok Adalat* any differently from the court, neither in terms of procedure, nor in terms of its system of working. Since litigants, as we observed, are largely dependent on their lawyers for pursuit of the case, the decision regarding whether a case should be placed before the *Lok Adalat* or not is taken in accordance with the advice of the lawyer. A few lawyers perceived *Lok Adalat*s to be functional but slow. A senior lawyer expressed the view that a lot of time was saved in having land-related disputes resolved in the *Lok Adalat*.

In a small taluka, where the judges genuinely identified with the challenges of litigants in pursuing litigation, the judges along with the Taluka Legal Services Authority (TLSA) had developed a unique strategy to make the *Lok Adalat* effective. The judges along with the staff had developed a mechanism where they drew a village-wise list of the number of cases pending before this court. A fortnight before the *Lok Adalat*, the police patils, gramsevaks, talathis and presidents of the *Tanta Mukta Gaon Samiti* are called upon and given the list of disputes from their respective villages, which were pending in court. "We ask them [to use this time] to encourage compromise or settling of the disputes, details of which are forwarded to the *Lok Adalat* where the dispute is then formally settled with the help of lawyers," said this judge.[264]

Largely, however, lawyers in both districts, particularly senior ones, remarked that the court referred those cases to the *Lok Adalat* which it knew were already in the process of compromise.[265] Lawyers claimed that judges were not serious about the *Lok Adalat* as a forum for dispute-resolution. "It only helped the court to show a large number of cases having been disposed off," said the lawyers.[266] In the taluka courts, lawyers had experiences where they had informed the court of the dispute being settled, but the court kept the matter pending until the next *Lok Adalat*, to which it was then referred and shown as "decided in *Lok Adalat*."

This may not be completely untrue, as is seen from the response of a senior judge to a question about how he decides which cases to refer to the *Lok Adalat*. "We realize the trend of the parties once they come before us. If the allegations are not serious, then we encourage the parties to amicably settle the dispute. Where the parties agree, we refer the dispute to a *Lok Adalat*," he said.[267]

B) Quasi-judicial Bodies

Quasi-judicial authorities under the revenue department are most often approached both at the taluka and district levels where land-related cases are in large numbers. Approaching quasi-judicial authorities for dispute-resolution is thought to be less expensive and quicker than litigating in court.[268] However in spite of this,

262: Research team interview with judge, April 5, 2011
263: Murlidhar, 109-110
264: Research team interview with judge, February 15, 2012s
265: Research team interview with lawyer, January 20, 2012
266: Research team interview with lawyer, January 19, 2012
267: Research team interview with judge, April 25, 2011
268: Research team interview with litigant, March 14, 2012

litigants did not express much faith in quasi-judicial bodies as effective forums for dispute-resolution.

Lawyers who spoke in favour of this forum practice primarily in the taluka courts and had firsthand experience of quasi-judicial authorities being more accessible to litigants. "They understand the on-ground situation, there is no requirement of a court fee or a lawyer to appear before them and most importantly these authorities are more amenable to public pressure," explained a lawyer who is practicing in a district dominated by a tribal population.[269]

However, lawyers in large towns and big district courts felt that for disputes arising in such jurisdictions, quasi-judicial authorities were the most unsuitable forum. According to these lawyers quasi-judicial forums were politicized, and marked by lack of legal knowledge amongst the authorities and staff, which in turn affected the decision-making process of these forums. Lawyers in district and taluka courts expressed the need for quasi-judicial authorities to be accompanied by judicial officers during the process of hearing claims and resolving disputes. The urgency of this requirement was particularly felt in the revenue department, where the dispute-resolution procedure was largely complex, confusing and chaotic.

Judges in district and taluka courts felt no differently. They were of the view that the jurisdiction of the district and taluka courts should be extended to cover subjects falling before quasi-judicial authorities, particularly before revenue officers. Without articulating the drawbacks in the working of these forums, judges tactfully stated that such forums were not capable of delivering equitable justice. Take the response of a senior district judge, for example. This judge felt that as a result of paucity of time and want of legal knowledge, these authorities could not pay proper attention to the process of adjudication. "Look at what all the revenue officers have to do at the taluka level. They have a variety of duties from supervising schemes to maintaining records. There is a lot of burden of them. How can such a person have the time and energy to deliver justice?" asked this judge.[270] He further remarked that because these forums were controlled by political leaders, there was scope for exercising bias.

Another aspect of quasi-judicial bodies that seems to have made them infamous is the high rate of corruption. Litigants and lawyers noted that corruption was rampant in these forums, making them most unsuitable. A litigant related an experience not unique to her alone, "The Talathi took a bribe from my uncle, against whom I have filed a case, and transferred all the property to his name."[271]

On the issue of corruption, the experience in state-level quasi-judicial bodies has been very different from those at the district level. An environmental activist who has appeared in many cases before the Maharashtra State Electricity Commission said, "District level forums are more popular and people often approach them for dispute-resolution, which is why we have so many opinions on corruption in these forums. As against this, state-level forums are specialized and very few people even know of them." This activist therefore felt that opinions regarding district-level forums could not be extended to state-level quasi-judicial forums.[272]

Like with other forums, people whose cases had been resolved favourably by quasi-judicial bodies were satisfied with the forums.[273]

269: Research team interview with lawyer, March 23, 2011
270: Research team interview with judge, May 2, 2011
271: Research team interview with judge, March 14, 2012
272: Research team interview with litigant, April 7, 2011
273: Research team interview with litigant, March 14, 2011

III. ADDITIONAL FORUMS:

A) The *Gram Nyayalay*:

Only a handful of Gram Nyayalayas are actually in existence in Maharashtra. However, these too are not active on a regular basis because the rules under the Act establishing these forums are still to be formed.[274] Overall, however, judges and lawyers were quite apprehensive about the working of this forum and did not look towards its establishment very favourably. They feared that the judiciary would lose its grandeur and prestige if *Gram Nyayalayas*, which would take the judicial system practically to people's doorstep, were established.[275] Sans lawyers, litigants would be pleading points in law directly before judges, which some lawyers felt would work to the litigants' disadvantage.[276] Lawyers and judges also expressed the concern that a forum such as the *Gram Nyayalay* would be organized in villages, where judges would be presiding over matters without the support of proper infrastructure and security. "In the *Gram Nyayalay*, the judge sits without any protection before society at large. S/he is bound to feel pressurized in this scenario and take a decision of popular appeal," remarked a senior judge.[277]

Judges were also concerned that the establishment of *Gram Nyayalas* in addition to the already established *TMGS* would result in multiple forums and further cause multiplicity of cases surrounding a single dispute.[278] The jurisdiction of *Gram Nyayalayas* in terms of the disputes they can entertain is far larger than that of the *TMGS*.

B) Evening Courts:

All lawyers had a unanimous opinion on the subject of Evening Courts – they all felt that it was not a successful programme of the judiciary.

The following reasons were associated with its unsuitability in general:

1. The same judges who sit in the regular court continue to sit in the evening court. This tires them out and impacts the working of the regular court the next day.
2. The evening court leaves lawyers with no time to attend to their clients and their families.
3. The evening hours are not suitable to litigants. In small taluka towns and for litigants travelling from distant villages, the public transport is irregular. Litigants cannot return to their villages late in the evening after the court is over.
4. Timings of the evening court were found unsuitable for female lawyers and litigants.

Only one lawyer stated that this arrangement of evening courts was beneficial to reducing the pendency in court. However, through further conversation with this lawyer it was learnt that he had never attended a session of the evening court. In light of all the above mentioned drawbacks, a taluka court in District B had already suspended this arrangement.

Skepticism on the Part of Judges[279]

A senior judge with over 20 years of experience laughed on being asked for an opinion on Evening Courts. "It has not been a success anywhere. The duration of evening courts is very short. One cannot record evidence in this forum. It is probably appropriate for disposing summary matters," she said.[280]

"Spare me" was the immediate reaction of another senior judge in a district court where the lawyers had gone on strike against the initiation of the Evening Court. "Where the community for whom the forum is created in not interested, why

274: One judge in a taluka court expressed tremendous support in favour of this forum for the following reasons: "The Gram Nyayalay is most suitable forum because disputes are resolved 'there and then'. I feel that parties before such forums are more willing to listen to the advice of the forum and cooperate probably because they notice that even the judge presiding over that forum has heard them out patiently. Here in Court we have to handle so many cases that we cannot afford to deliberate for long over one case. Many times the litigant only wants to be heard, but we are unable to do so because of the constraints of procedure and cases overload." Additionally, this judge observed that the absence/ minimal interference by lawyers is an advantage in this forum. Research team interview with judge, April 19, 2011

275: Research team interview with lawyer, October 13, 2011

276: Research team interview with lawyer, July 25, 2011

277: Research team interview with judge, May 2, 2011

278: Research team interview with litigant, April 21, 2011

279: Research team interview with judge, April 25, 2011

280: Research team interview with judge, October 1, 2011

should the judge be made to sit until late hours to render services at the cost of his health? Even the judges do not want to be sitting in the evening courts spending their time 'counting hours' until they can leave,"[281] he said a little aggressively. Giving the example of Gujarat where evening courts have gained a lot of popularity, this judge explained that the propaganda surrounding the forum, media support and advertisements led to the success of Evening Courts in Gujarat. "But here, the picture has been different. In the first place, the lawyers have gone on strike to campaign against these courts and litigants hesitate to plead their case in court without a lawyer. Forums that do not work should be done away with. If the judge has no choice but to preside over the forum, then the same compulsion must apply to lawyers as well – they must appear whether they like it or not."[282] The insistence of the judiciary in continuing with these evening courts makes this judge feel that the judiciary is more after statistical and not substantial success.

IV. ALTERNATIVE METHODS OF DISPUTE-RESOLUTION

A) Mediation:

Mediation as a method of dispute-resolution was discussed extensively in the taluka courts particularly in the context of matrimonial disputes. Mediation committees in a court consist of lawyers and judges. The court refers matters indicative of being settled by mediation to the mediation centre in the court. Matters are allocated to the various mediators on the Committee. A mediator must attempt to compromise a case within 60 days from the time it is assigned to him/her. The mediator speaks to each party individually and jointly. There are about 3-4 sessions possible in this period. If the matter remains unresolved within this period, it is remitted back to the court. It would then proceed within the regular legal framework. Where the matter does get settled, a settlement deed is drafted by the parties along with the mediator. The deed is then sealed by the court. Such settlements occurring through mediation are not appealable.[283] A trend in the lower courts reflects matrimonial disputes being largely referred to mediation. Judges felt that mediation was a suitable method for resolving matrimonial disputes because the environment at the time of mediation, unlike in court, was not daunting.[284] It gave the parties a chance to talk directly to one another[285] and helped them arrive at an appropriate solution themselves.[286] "In matrimonial disputes, the parties only need to be spoken to peacefully. The Court doesn't have the time to do all this. Therefore, matrimonial matters should necessarily be referred to mediation," said a senior lawyer in a taluka court.[287] Lawyers felt the reluctance of litigants to refer disputes to mediation could be attributed to the fact that a 'judge' did not preside over mediation proceedings. "People trust the authority of judges. Therefore, his/her suggestions and mediation strategy would be given more weight and therefore be more convincing," said a senior lawyer.[288]

The court cannot refer a matter to mediation without the consensus of the parties. Convincing litigants to agree to mediation can be quite challenging. A judge in the district court, who emphasized the importance of mediation in matrimonial disputes involving children and suits filed by senior citizens said: "Female petitioners are insistent on being compensated in monetary terms. Even old people who file suits want to pursue the matter in court. Only half way through the course of the process they start realizing that mediation may have been more viable, which is when they work towards a settlement. Were parties to attempt mediation right at the beginning, it would reduce the burden of the courts in a large way."[289]

But judges' enthusiasm and support for mediation was not just limited to matrimonial matters. A judge in a taluka court spoke of having resolved, along with his colleague, through

281: Research team interview with judge, April 27, 2011
282: Ibid
283: Research team interview with lawyer, October 11, 2011
284: Research team interview with judge, April 21, 2011
285: Research team interview with judge, September 14, 2011
286: Research team interview with judge, October 1, 2011
287: Research team interview with judge, February 15, 2012
288: Research team interview with lawyer, February 16, 2012
289: Research team interview with judge, April 21, 2011

mediation 1665 cases out of the 2700 pending on in their files.[290] Another taluka court judge said that where he found a case before him capable of smoothly being resolved through mediation, he promptly intervened to that extent. "This is even if the case has reached the stage of evidence [by which time the case has been pending in court for very long]. I speak to the parties directly, explain to them the possibility of compromise and more often than not, they do agree."[291]

One of the main reasons for the failure of mediation proceedings in the cases which were remitted back to the court by the mediation centre was the hesitancy of lawyers to support mediation. It was felt that lawyers did not encourage mediation possibly because they may lose out on what they earn from each hearing in court or maybe because their clients might start believing that they [the lawyers] are encouraging mediation because the litigant's case had no strength.[292]

On asking a mediator whether he uses any particular strategies to mediate effectively, he said: "We do not use any strategies that go beyond the law. Mediation means understanding each party's point of view and then conveying it in its right spirit to the other party. Whatever methodology we use as mediators is not drawn from any book, but from experience of society. It is based on commonsense and good sense."[293] This probably explains the immense faith that various stakeholders appear to display towards this alternative methodology.

V. THE COURT IS THE BEST FORUM:

As seen earlier, several alternative and additional forums and methods of dispute-resolution have been introduced in an attempt to reduce pendency in courts and to make the system more accessible to the common man. But this, as empirical evidence shows, has not been fully achieved. Interestingly, however, the Court continues to be perceived by litigants, lawyers and judges as the most reliable and effective forum for dispute-resolution. Many lawyers determined the effectiveness of the judiciary on the basis of the large number of people from all economic classes that have faith in the judicial system and access it.

Litigants' responses to the question on 'satisfaction with court procedure' were determined largely by whether they were successful in the court or not. A litigant who had filed a maintenance application in a taluka court related how she was unhappy with one litigation experience where she lost the case because of alleged corrupt practices, but was quite satisfied with her experience with the same litigation in another court where she was successful.[294] Similarly, a litigant involved in a land dispute had his case pending for 15 years, but was nevertheless satisfied with the court because the final decision was in his favour.[295]

Where litigants had already been informed by their lawyers about the delays involved in land cases litigants seemed more or less prepared and less troubled by the pendency of the dispute.

Litigants' faith in the court also arose from the manner in which a case was heard by the court. "The court examines each and every aspect of the dispute and then arrives at a verdict," observed one litigant.[296]

Like lawyers and judges, litigants also stated that cases against government authorities took especially long to be decided. Some of the litigants in claims for compensation against land acquisition stated that they had been pursuing their cases for more than 11 years. When asked why they were still so motivated, they shared the view that in cases that had been finally decided, the court had been very fair and awarded the litigants a hefty compensation, which is why they were still so optimistic.

All lawyers in district- as well as taluka-level courts voted 'the court' to be the best forum for dispute-resolution. "In land acquisition cases, the farmer gets some justice only because of the

290: Research team interview with judge, June 11, 2012
291: Research team interview with judge, February 15, 2012
292: Research team interview with judge, February 16, 2012
293: Research team interview with mediator, July 27, 2011
294: Research team interview with litigant, June 14, 2012
295: Research team interview with litigant, June 15, 2012; March 16, 2012,
296: Research team interview with litigant, August 8, 2012; January 19, 2012; July 7, 2012

court. Were it left to government authorities, he would get nothing," explained a senior lawyer.[297] Lawyers expressed the advantages of court orders being binding.[298] "No one goes back without justice," said a senior lawyer in a taluka court.[299]

While most responses dealt with the regular civil and criminal courts at the district and taluka levels, there were also lawyers who described the benefits and expressed the need for more specialized tribunals such as family and labour courts. In the context of the issues of pendency, lawyers suggested establishment of courts specially designated to look at matters of land acquisition and cases against a government authority. A lawyer on the legal aid panel also recommended a court specifically to oversee matters supported by legal aid. "There should be one court looking only at matters where one of the parties is being represented by the legal aid panel. This way it can even be ensured that the judge appointed to this court is a person who is socially sensitive and understands the language of rights and equality. The Court would function more efficiently and possibly more people would then access the legal aid panel for support," said this lawyer.[300]

Judges, however, did not widely support the need for specialized and multiple forums. "All matters ultimately find their way to the formal courts. So why have multiple forums when we (read: district courts) have to decide disputes of every kind?" asked a senior judge with 31 years of experience.[301] According to him and his colleagues, who were jointly interviewed, there should be only "three forums – civil courts, criminal courts and the higher courts."[302] Judges emphasized the importance of pre-litigation, which they felt would contribute to improving the overall efficiency of the courts.[303]

The appropriateness of forum also differed in the context of disputes. For instance, the *Lok Adalat* was seen as a suitable forum for matrimonial and electricity disputes.[304] The *TMGS* and even the *Lok Adalat* were suitable forums for disputes where the parties were willing to negotiate and compromise.[305] Conciliation and mediation were also perceived as efficient methods of dispute-resolution for matrimony-related matters.[306]

300: Research team interview with lawyer, October 11, 2011
301: Research team interview with judge, May 2, 2011
302: Research team interview with judge, May 2, 2011
303: Research team interview with judge, April 21, 2011
304: Research team interview with judge, September 16, 2011
305: Research team interview with lawyer, July 27, 2011; October 11, 2011
306: Research team interview with lawyer, October 11, 2011

5

SECTION FIVE

MISCELLANEOUS

This part deals with the opinions of lawyers and judges on various issues including corruption, bar associations, the impact of religion and caste on court, out-of-court settlements and consultations. Since these issues related mostly to the working of the system, very few litigants, if at all, had any comments on these topics. They have been incorporated as and when appropriate.

I. LEGAL AID

Section 12 of the Legal Services Authorities Act lists the categories of persons automatically entitled to legal aid without having to satisfy a means test. This includes a member of the historically and socially disadvantaged groups (Scheduled Caste or Scheduled Tribe), a victim of trafficking in human being or forced labour, a person with disabilities and 'a person under circumstances of underserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster'.

There was limited response to the question on the use of legal aid in the district and taluka courts. Lawyers primarily spoke about the meager fees the lawyers on the legal aid panel receive. It appeared that either only junior lawyers joined the panel as a step towards establishing themselves or that those who were on the panel were largely disinterested and indifferent because of low financial gains.

In District B, a lawyer on the legal aid panel observed that it was mainly members of the Dalit and Pardhi communities that most often approached the legal aid unit. "In maintenance applications, it is women from the Bahujan community that approach the panel lawyers for support," she said.[307] The Dalit, Pardhi and Bahujan communities are mainly backward communities with low levels of education and dire socio-economic conditions.

Judges, being often involved in the legal aid programmes organised by the District or Taluka Legal Aid Services Authority, had mixed opinions about the benefits of legal aid. Judges unfortunately receive no prior training about the role they are expected to play at such programmes, and as a result sometimes, young judges do tend to face some challenges. For instance, two junior judges, posted as Judicial Magistrates of the First Class in a taluka, said from their experience of conducting legal aid training, "It is challenging for us to translate the law into the local language and explain to the people at the grassroots the purpose of certain laws."[308] On the other hand, judges with substantial years of experiences expressed the opinion that providing legal aid to villagers was also an effective way of aiding dispute-resolution and particularly with respect to ESR-related claims. In the experience of one taluka court judge, the TLSA in that taluka court had even mediated between disputants in the course of informing people about their rights and the various laws. According to this judge, the TLSA emphasized amicable settlement as the best solution. "The quantum of vexatious litigation has increased in court. Probably most of the cases pending are those filed to harass another person. We cannot direct/ compel parties to settle a matter. Therefore via the medium of the TLSA, we recommend amicable settlements through these alternative forums, even before village elders."[309]

But then there were also some judges who had reservations about availability of legal aid. A judge in a district court felt that easy accessibility to legal aid would increase the incidence of crime in society. "Several persons who commit petty crimes plead that they can afford neither the court fee nor a lawyer. The lawyers on the legal aid panel work as a legal gang. Under the seal of legality, they work against society rather than protecting it," he said.[310]

II. THE BAR COUNCIL & BAR ASSOCIATION

The Bar Council of India, established by Parliament under the Advocates Act, 1961, is a statutory body that regulates and represents the Indian bar. The Bar Council of India performs certain representative functions by protecting the rights, privileges and interests of advocates and through the creation of funds, provides financial assistance to organize welfare schemes for them. Additionally, the Bar Council also sets standards for legal education, grants recognition to Universities whose degree in law will serve as qualification for enrolment as an advocate, prescribes standards of professional conduct and etiquette and also exercises disciplinary jurisdiction over the bar.[311]

307: Research team interview with lawyer, October 11, 2011
308: Research team interview with judge, April 29, 2011
309: Research team interview with judge, April 19, 2011
310: Research team interview with judge, May 7, 2011
311: http://www.barcouncilofindia.org/about/about-the-bar-council-of-india

Bar Associations are responsible for the regulation of the legal profession in their jurisdiction. In Maharashtra, every court – at taluka and district level – has a Bar Association. The primary aim of the Bar Association is to facilitate greater interaction and understanding amongst the legal fraternity and to strengthen the relationship between the Bar and the Bench. Many Associations conduct seminars, symposia, conferences on critical issues of contemporary interest to impart knowledge to the public at large.

A majority of the lawyers felt that even though membership to the Bar Council was compulsory, it did not yield any benefits, particularly because district-level representatives in the Bar Council had very limited decision-making powers.[312] In the taluka courts particularly, there was a great deal of dissatisfaction about the Bar Council on various issues, including the failure to meet lawyers' demands for the creation of a provident fund,[313] limited number of district representatives in the Bar Council, failure to conduct regular and effective trainings for district- and taluka-level lawyers and lack of pro-active relations between the Bar Association and Bar Council.[314] "There is no connection with the Bar Council, except at the time of elections when we vote," said a senior lawyer from a taluka court.[315] However, even this voting process was flawed, according to some lawyers. "The election letter is sent by post, but it is collected in person. Several times, therefore, lawyers end up voting as pressurized, possibly by the person who comes to collect the votes," said another lawyer at the taluka-level court.[316]

Lawyers' opinions on the other hand with regard to Bar Association were mixed, ranging from ambivalent to very supportive. The Bar Association was largely seen as a platform where lawyers could have their grievance redressed and their rights secured.[317] Appointment to official posts in the Bar Association such as that of President, Vice-President, Secretary and other office bearers were by elections in some jurisdictions and on the basis of seniority in others.

Lawyers at the taluka and district level felt that it was important to be a member of the Association because the Association was like a Union that provided support to the lawyers and ensured unity within the lawyers' fraternity. Explaining how the lawyers come together on several occasions, a senior lawyer from the taluka court spoke about the recently-established civil judge senior division court in this taluka: "We had to travel regularly to the court in the district headquarters for the Senior Division Matters. It was expensive. So the lawyers came together and made several visits to the *Mantralaya* (State Secretariat) and to the High Court for a senior division court to be set up here. The process took time but finally it has been established."[318]

In District A, which had a large Bar Association, lawyers stated that it was not obligatory for any lawyer to join the Association. In District B on the other hand, senior lawyers and existing members of the Association felt very strongly about junior lawyers becoming part of the Association. "It helps these lawyer gain support of the other senior lawyers and the legal network," explained a senior lawyer in one of the taluka courts.[320]

The composition of Bar Associations and the nature of elections in Bar Associations did reflect the influence of political, caste and religious lobbies. Lawyers, however, were hesitant to discuss the nature of this impact. Lawyers in these courts admitted to have political leanings and associations but stood by their assertion that their engagement with political associations was restricted to their activities outside the court.[321]

Dissatisfaction with Bar Association was not a common response. A few lawyers expressed their disappointment over Bar Associations often going on strikes,[322] the reluctance of their Bar

312: Research team interview with lawyer, November 2, 2011
313: Research team interview with lawyer, November 2, 2011; October 14, 2011
314: Research team interview with lawyer, June 11, 2012
315: Research team interview with lawyer, August 8, 2012
316: Research team interview with lawyer, January 19, 2012
317: Research team interview with lawyer, July 27, 2011
318: Research team interview with lawyer, February 16, 2012
319: Research team interview with lawyers, July 23, 2011
320: Research team interview with lawyers, October 10, 2011
321: Research team interview with lawyer, January 19, 2012; June 7, 2012
322: Research team interview with lawyer, June 14, 2012

Association to initiate a welfare fund, which would secure lawyers after their retirement[323] and the inability of the Bar Association to improve the standing of lawyers in local quasi-judicial forums.[324]

Women lawyers in the taluka region shared their grievance, namely that they had no space in the Bar Association, both in terms of any hope of holding an office, and physical space such as separate rooms or facilities.[325]

III. PARALEGAL VOLUNTEERS

One of the issues that came up frequently in the responses of lawyers, judges and litigants was that of pendency. In this context, this research study also tried to explore whether strengthening the system of paralegal volunteers would aid the reduction of pendency in the courts in any manner. In small districts and at taluka levels, lawyers and judges appeared wary about the training of paralegal volunteers. They justified their reluctance in light of the large number of touts who were active in these areas. Touts are local people who usually have some experience with court procedures and use this to their benefit by helping prospective litigants from their area find appropriate lawyers and procure documents for the case. Some of these touts even indulge in mediating between disputing parties and encourage settlements, the validity of which is signified through signatures on a stamp paper containing the terms of settlement. In return for their work, touts charge a minimal fee, which may be in cash or kind.

According to lawyers and judges, touts can be quite a menace. Lawyers perceive them as a challenge to the success of their own established legal practice, whereas judges feel that touts often fleece poor litigants and hinder in smooth delivery of justice.

The unfortunate consequence of this situation was the reaction of lawyers towards paralegal workers. On the subject of training paralegal volunteers at the grassroots level, the lawyers vehemently opposed it and expressed the fear that such paralegals were likely to become 'mischievous', 'a nuisance' and 'trouble-makers.' Senior and junior lawyers both expressed concern that paralegal volunteers would become touts or agents. In the experience of lawyers, touts were mischievous entities who recovered money from potential litigants to advise them about court procedures and also procured money from lawyers for having brought them clientele, in turn negatively impacting the relationship of lawyers with their clients.

Lawyers, who were slightly more open to the idea of training paralegal volunteers, emphasized that such persons should be of a good morale and character and also necessarily be conversant with court procedures. One lawyer also mentioned that expecting paralegals to work extensively on a voluntary basis was unfair, particularly in rural areas. "People from backward areas and drought-prone places are constantly in need of work to earn money. In this situation, it is completely unfair to insist that they work on a volunteer basis," he said. This lawyer had also been part of an initiative to train people from colleges and women from self-help groups about the laws and issues concerning access to courts. Unfortunately, this effort did not yield result due to lack of support from the Bar Association and High Court.

IV. SETTLEMENTS

Settlements between litigants in the lower courts may occur though formal mediation procedures, at the instance of judges or merely through the negotiations by lawyers, family members and even touts. Such negotiations that are brought about by lawyers, family members, touts and informal forums often occur with minimal judicial intervention and are termed as 'out-of-court' settlements.

Comparatively, lawyers in District A had more favourable opinions about settlements as compared to those in District B. According to one lawyer in District A, the law should only be used as an instrument rather than a solution. From her experience of extensively practicing in the taluka courts in rural areas, she said that 80% of the disputes concerning malfunctioning of the Public Distribution Scheme, labour, children's custody and cheating can be successfully settled out of court.[326]

323: Research team interview with lawyer, 20.01.2012
324: Research team interview with lawyers, June 6, 2012
325: Research team interview with lawyers, August 8, 2012; October 11, 2011
326: Research team interview with lawyer, March 23, 2011

In District B, the responses of several interviewees revealed that the maximum number of out-of-court settlements occurred in partition cases.

Lawyers observed that settlements were rare in cases involving the government primarily because of procedural hurdles. Based on his experience as a panel advocate for a government institution, a lawyer related: "In this instance, the department feels that a matter would end more efficiently, if settled. I will have to begin by placing such a proposal for settlement before the Standing Committee for its approval."[327] Standing committee approvals, like all other bureaucratic procedures, proceed slowly and are therefore avoided by the lawyers.

The trend towards settling out-of-court also differed community-wise. It is gathered from the responses of lawyers that Adivasi litigants were more willing to settle outside court, as compared to non-Adivasi litigants. One of the possible factors encouraging settlements amongst Adiviasi communities may be their lack of financial resources. Lawyers observed that the rate of settlement amongst Adivasi litigants is 60%, as compared to that between non-Adivasi litigants, which is only 40%.

Reasons Why Settlements Were Promoted:

Whether lawyers would initiate or encourage settling the matters outside court was decided strategically and depended on factors such as the nature of the case, the personality of the litigants and the extent to which the lawyer himself/herself would benefit from such a settlement. A lawyer in a taluka court explained how he suggested out-of-court settlements only in cases between parties from his own family, his village or his community.[328] Another taluka court lawyer who had a large criminal practice stated that he encouraged settlements because, that way, he was sure to receive his fees quickly.[329] Similarly, settlements were also encouraged in line with the practice of lawyers collecting a percentage of the settlement as their fee.

Lawyers in favour of settlements were also seen to adopt various tactics so as to compel the opposite party to settle preferentially. According to a very senior lawyer in a taluka court, negotiating out-of-court settlements was a matter of skill. "I always want to ensure that it is my client who will benefit most out of the compromise. Therefore, I argue the case in the court strategically, bringing it many times till the last stage. The opposite party must be left with no other choice but to compromise. This way they agree to whatever terms we propose for settlement."[330]

Where litigants had some knowledge of law and were aware about the time, money and energy consumed by legal pursuits, out-of- settlements were carried out suo-moto.

Reasons Why Settlements Were Discouraged:

Settlements were deterred for various reasons, most of which came to be highlighted through the responses in District B. In the experience of some lawyers, settlements were not a permanent solution and the same dispute would often recur between the same parties. According to a senior lawyer, the reason he discouraged out-of-court settlements was because such settlements did not always have a legally concrete basis that could be relied upon, which placed him a difficult position as regards assuring his client that the opposite party would not drag the client back to court even after the settlement.[331]

Out-of-court settlements were not encouraged by many lawyers for the fear of incidentally encouraging the practice of touts, who were very active in small talukas and particularly in remote villages. Touts are conversant with the law and convince parties to settle the matter and agree to it on a stamp paper making it appear to have legal validity, thereby adversely impacting the practice of lawyers.

Though settlements are not possible in non-compoundable criminal offences, a public prosecutor said that these were nevertheless rampant. In instances where the matter is settled, witnesses turn hostile and the accused

327: Research team interview with lawyer, July 23, 2011
328: Research team interview with lawyer, June 11, 2012
329: Research team interview with lawyer, June 14, 2012
330: Research team interview with lawyer, February 19, 2012
331: Research team interview with lawyer, November 2, 2011

consequently is acquitted. "The correct evidence never ends up being brought on record," she said.[332]

Settlements In Matrimonial Cases

Matrimonial disputes were an area that witnessed a large number of out-of-court settlements. At the taluka level, judges and lawyers spoke about settlements mostly in the context of maintenance applications. Many lawyers were of the opinion that the root cause of matrimonial disputes was usually a misunderstanding between the parties, which was best resolved through peaceful discussion and counseling.[333] Out-of-court settlements, therefore, were encouraged in such cases. A lawyer on the legal aid panel of a district court said that settlements were always encouraged in the hope that this would be an attempt to bring the husband and wife back together.[334]

In matrimonial matters, sometimes settlements occurred at the initiative of relatives and sometimes they were a result of the efforts of lawyers and mediators with encouragement from judges as well. But primarily, lawyers and judges both felt that the success of the settlement depended on the intention of the litigating parties.

Interestingly, two senior lawyers, on whose dockets the only ESR-related claims concerned matrimonial disputes, however, felt that out-of-settlements were not advisable in matrimonial matters for reasons including lack of legal basis to such negotiations, uncertainty regarding the dispute being re-filed in court and possible submission (which was not uncommon) of the female litigant to the terms of her husband.

Even though parties to a matrimonial dispute were largely encouraged to settle the matter peacefully, figures revealed that the rate of such settlement was not impressive. For instance, according to the presiding member of a mediation team in the court, only 10% of such disputes actually got settled.[335] The accounts of judges in this respect did not differ much either. A female judge in a taluka court was quite disappointed with the rate of settlements in matrimonial disputes. "The response is not as much as I would have expected – it isn't impressive," she said.[336] According to her, whenever she suggested mediation, the parties agreed in her presence but most failed to attend the mediation sessions. And when they did appear before the court the next time the matter was on board, the parties never came together to the court. Therefore, the party present had an excuse to blame the absent party. Consequently, even judges are unable to understand why parties avoid mediation. Like many lawyers, this judge also feels that matrimonial disputes are not limited to the husband and wife alone. Often the parties are pressurized by their families to continue litigating without conceding to settlement.

Providing a possible explanation for the low rate of settlements in matrimonial disputes, a senior lawyer, who was also appointed as a member of the mediation committee in a taluka court stated: "When a maintenance claim gets settled out of court, the form of settlement is usually a lump-sum amount to be payable to the wife. Men in this area (at taluka level) do not earn enough to have savings of the kind where they can afford to pay these lump-sum amounts and therefore are hesitant to settle. The successful settlements are probably only those where the husband and wife can be convinced to start living together again, which however is very rare."[337]

V. CONSULTATIONS

Inviting experts to verify the validity of certain evidence or to provide their opinion on questions of a specialized nature, such as those concerning technology, medicine, development issues and so forth is not a common practice in the lower courts of Maharashtra. Expert opinion in itself is not viewed as conclusive evidence. It is considered useful only where it corroborates the primary evidence.

Popularly, experts are primarily brought in to depose on issues of technical, psychological or medical nature. They include:

331: Research team interview with lawyer, November 2, 2011
332: Research team interview with lawyer, May 18, 2011
333: Research team interview with lawyer, June 13, 2012
334: Research team interview with lawyer, October 11, 2011
335: Research team interview with lawyer, October 11, 2011
336: Research team interview with lawyer, February 16, 2012
337: Research team interview with lawyer, June 6, 2012

- Doctors: Particularly in matrimonial cases on issues of fertility and psychological problems
- Land survey officers
- Tahsildars and naib tahsildars, and
- Technical experts.

However, even the number of these consultations is few. In a taluka court, a senior lawyer remarked: "The percentage of such consultations is very small."[338] Lawyers cited that consulting case laws, other senior lawyers[339] and even retired judges[340] proved fairly efficient to sort of out complex issues.

Almost never did lawyers from both the districts studied have the experience of consulting activists, journalists or academics for their knowledge on specialized issues. A rare instance was that of one senior lawyer who had established contact with the authors of some books on law to seek clarifications on certain subjects.[341]

In District A, which was relatively more developed, there were some lawyers who stated that the probability of calling to court experts with field or practical experience to emphasize the importance of 'rights' of the litigant cannot be ruled out. In District B, however, there were some lawyers in the district court, who stated that they had never consulted anyone in the entire period of their careers.

Judges too did not have a reputation of seeking the opinion of experts. A senior activist lawyer who had brought to court environment activists and academics as expert witnesses said that his experience with using resource persons in courts had been quite dismal. "Judges tend to feel that they ought to know everything about everything (and therefore claim to know everything) and over the years they become very rigid in their approach towards entertaining the opinion of anyone else as expert."[342]

Judges themselves admitted to having consulted only handwriting experts and signature experts, but mostly so in criminal matters. A chief judicial magistrate supported this evidence and stated that, in criminal matters, experts were often called to determine the amount of alcohol in a drink, or they were called in cases involving medical negligence and mental health issues.

VI. OPINION ON ELECTED REPRESENTATIVES

Activists largely felt that locally elected officials had been of no help in helping resolve disputes concerning economic and social rights. Elected representatives were most often approached by members of civil society groups in the hope of resolving civic issues at the community level itself. However, very few such activists had had a good experience in this respect. In civic issues and particularly labour union disputes, elected representatives were often seen to find a method of intervention. In the experience of litigants in labour disputes, elected representatives did not aid dispute-resolution, but instead used their petty power to extort money, usually from the employer and sometimes from the employees as well.[343] It was alleged that elected representatives were often corrupt and furthered their own interests at the expense of common man's cause.[344]

An experience, a litigant recounted with elected representatives when a river from her city was flooded and the water overflowed into her house is helpful in this regard. The litigant noted: "When our home got flooded, the media covered it and politicians took notice of that. The mayor came to my house and so did the elected representative to the local municipal corporation. They came soon after the floods and they even assured to help us. But when we contacted them later, no one responded. Now I feel that they came only for the sake of publicity."[345]

Another example came from an activist on energy-related cases, who explained the dismal role played by elected officials in the dispute-resolution process. He gave an example of a

338: Research team interview with lawyer, June 7, 2012
339: Research tem interviews lawyer, June 14, 2012
340: Research team interview with lawyer, June 14, 2012
341: Research team interview with lawyer, October 13, 2011
342: Research team interview with lawyer, March 15,2011
343: Research team interview with litigant, March 14, 2011
344: Research team interview with litigant, April 6, 2011
345: Research team interview with litigant, May 26, 2011
346: Research team interview with litigant, April 7, 2011

district commission set up under the Electricity Act, 2003. "This commission is meant to monitor the distribution of electricity. It consists primarily of MPs and MLAs. We have been trying to work with the commission, but it's far too difficult to even organize a meeting that will bring all the MPs and MLAs together at the same time. Then to speak about their functioning as a dispute-resolution forum becomes irrelevant."[346]

At the taluka level, the experiences of litigants were no different. Litigants related how elected officials became disinterested in the problems of villages after the election period and how elected representatives were interested only in helping the economically powerful people

As regards the support of elected representatives in matrimony-related dispute resolution, the response was however, mixed. A women's rights activist from District A stated that elected representatives and political persons were active in spreading awareness regarding women's rights and reducing the incidence of domestic violence in the areas that she is working in. According to her, "In the rural areas, it is the *Sarpanch* and *Police Patil* who help women."[347] A few female litigants were of the view that at the village level, elected representative were sometimes quite supportive if the woman could establish that it was the husband who was in the wrong.

Some litigants involved in matrimonial disputes pointed out that elected representatives normally stayed away from matrimonial matters because these were 'private disputes'. "If at all, elected representatives help people in cases concerning land, water and accidents," said one female litigant in a matrimonial dispute.[348]

It was generally observed that litigants who had been successful in seeking the support or help of elected representatives either belonged to the family of the elected representative or were closely related. The instance of a female litigant who related that she had been able to file her case in court only because of the support and cooperation of the *Sarpanch* in her village[349] is an apt example. The *Sarpanch,* as the woman said, was good friends with her father.

VII. CORRUPTION

Corruption was an issue that was discussed with the respondents at three levels – at the level of the judges, the lawyers and of other judicial staff and supporting machinery.

In District A, as compared to District B, the litigants were very aware of the types of corrupt practices and the levels at which corruption is rampant.

At The Level Of The Judges

Opinions on corruption amongst judges differed between district and taluka courts and among junior and senior lawyers. In the district level judiciary, there was a mixed response. While litigants in general rarely had any direct experiences of corruption with the judges, some lawyers were quite vocal on the subject. Since these accounts were mostly based on personal experiences and hear-say, contradictions in responses of lawyers in the very same court were not uncommon. For instance, while all the senior lawyers in one district court denied any trace of corruption amongst the judges, there were several juniors in the same court who openly alleged that judges were corrupt and biased.

At the taluka level, however, all lawyers expressed the view that judges were transparent and not corrupt. An opinion of a very senior lawyer in a taluka court is evidentiary. He stated, almost as a testimony, "In the 32 years of my practice, there have been not more than 2 -3 judges who were found not to be transparent."[350]

Since most taluka courts were composed of only 2-3 judges, they were relatively small and operated within a closely-knit circle of lawyers and sometimes even litigants. According to local lawyers, not only judges but even lawyers and sub-staff were deterred from indulging in corruption at the taluka level because talukas are small, with everyone knowing everyone else, and any news about an act of corruption would spread widely. Lawyers in the taluka court explained how litigants in the taluka courts, many being from poor economic backgrounds, were unwilling to pay hefty bribes to get a favourable decree.[351]

347: Research team interview with women's rights activist, January 12, 2012
348: Research team interview with litigant, June 15,. 2012
349: Research team interview with litigant, March 14, 2012
350: Research team interview with lawyer, June 6, 2012
351: Research team interview with lawyer, January 19, 2012

According to taluka court judges, since all the proceedings took place before the people (lawyers and litigants), there was no scope for corruption at this level. A judge in a taluka court in District B said there was no corruption in the taluka courts because taluka courts sent monthly reports of their working to the High Court. "If the High Court finds any discrepancy, there is an immediate enquiry for clarification," he explained.[352]

At the level of the district court, lawyers in District A did not hesitate to voice their feeling that judges were by and large corrupt, as against lawyers in District B, where only a few lawyers spoke openly about corruption among judges. In the experience of lawyers, the instances of corruption amongst judges were lower in maintenance matters as compared to in land-related cases. A junior lawyer's explanation for this was: "There is a greater chance of judges being unfair in land matters because the higher probability of being 'managed'."[353] 'Being managed' was the local terminology for instances where a decision of the court could be manipulated in favour of a particular party through an act of corruption. A lawyer often representing in land acquisition claims related from his experience that corruption among judges was more likely to be in the form of gifts than by way of actual cash. One lawyer claimed to have witnessed more than one such instance of corruption. This lawyer observed, "In a case I was arguing, I was informed through the junior clerk that the judge had asked for some furniture for his house if I wanted my client to receive a good sum of compensation in a land acquisition claim."[354] Reflecting a similar opinion, another senior lawyer added: "Favouritism towards certain lawyers or litigants is also a type of corruption, whether it results from caste bias or otherwise."[355]

Commenting on these various understandings and types of corruption, a judge in District B pointed out that the influence of politics on the judiciary can be sometimes exaggerated. According to him no one person's powerful reputation or economic status really influences the judgments in the district court which is why he claimed that very few politicians or influential people as claimants or accused appeared in that court. "They know that their power is of no worth before this Court and they will be treated like any other civil person – therefore they try to settle most of their cases outside court", he added.[356]

Senior lawyers mostly perceived the judiciary as free of corrupt practices, particularly in relation to lawyers and judges. "There is no corruption at any level in the judiciary," was the response of two senior lawyers, one in the district court and another in the taluka court.[357] "The judiciary is more transparent than all the other systems," said another senior lawyer.[358] When these observations of lawyers were countered with examples of corruption cited by other respondents, their response was that there was the possibility of about five per cent being corrupt. One senior lawyer said that since the judges kept getting transferred, it was difficult to generalize whether there was corruption or not. A senior lawyer explained, "When judges overlook the morality of their positions, then they begin to indulge in these practices."[359] This lawyer felt that present day judges tended to increasingly overlook the morality their chair is obligated to.

Since specialized forums were located in the district headquarters, the experiences related to corruption were similar to those in the district-level judiciary. A litigant who was also a trade union activist illustrated this, citing his own experience with corruption among judges in the Labour Court: "A company, in an attempt to lay off a large number of employees, sent them to a unit in Daman. Since this was a strategy to remove them from employment, there wasn't any work for them in Daman and they were all cramped into a small basement where they had to spend all their hours of employment merely sitting around. A case for unlawful removal from employment was filed before the Industrial Disputes tribunal. The proceedings went well and it seemed likely that the employees would

352: Research team interview with lawyer, June 6, 2012
353: Research team interview with lawyer, October 11, 2011
354: Research team interview with lawyer, November 22, 2011
355: Research team interview with lawyer, November 23, 2011
356: Research team interview with judge, April 5, 2011
357: Research team interview with lawyer, November 22, 2011; June 6, 2012
358: Research team interview with lawyer, October 11, 2011
359: Research team interview with lawyer, October 14, 2011

succeed. However, after the final arguments, the employer's advocate petitioned for a transfer of the case to another judge. This petition was dismissed by the President of the Labour Commission since the employer could not prove any good reason for transfer of the case. An appeal against the order of the President was laid before the High Court, which transferred the case to the Industrial Disputes Tribunal in Mumbai. The proceedings all became very odd. To begin with, a case from a district was placed before the Tribunal in Bombay, which meant an additional expense for the litigant. Secondly, the judge held that the dismissal was valid, in spite of all the factual evidence proving to him that the transfer to Daman was only a farce." The litigant concluded that more the inconsistency between the decision and facts at hand, more the likelihood of corruption.[360]

While judges did not deny the existence of corruption in the judiciary, they did hesitate to comment openly on the subject. A response from a Family Court lady judge is telling: "We have taken an oath before sitting on this chair. Our role is to give justice to the common person because this individual comes to the court after having exhausted all other methods of dispute-resolution. The court is the last resort for such persons."[361] As is evident, she evaded responding on the extent or existence of corruption in the judiciary. Another senior judge in the family court had a self-righteous response: "I was born non-corrupt. Now why should I bother myself with trying to know whether the other judges are corrupt; the high court has put in place machinery to look into that process."[362]

Sometimes, a question on the subject of corruption even offended the judges. The immediate reaction of a senior judge in a district court to this question was: "How can you question the integrity of a judicial officer? Where a judicial officer's integrity is questioned, he ought not to be on that post at all."[363] A senior division civil judge explained that questions of corruption cannot be raised in the lower judiciary, particularly because of the strict limits on the judge's socializing and expenditure. "We need the permission of the High Court to buy anything above Rs. 10,000. Where the property purchased is movable, it must be from an authorized dealer. We also have to justify how we sourced the money used to pay for it," he stated.[364] This judge was also opposed to the proposal that judges must disclose their assets. "We do disclose all our assets, but to the High Court. Why does the common man need to know about our assets? And even if they do, they can use the RTI," he said.[365]

In some instances, judges also justified their perceptions about the judiciary being free of corruption. Such reasons as provided by judges were more in terms of establishing the minimal scope for corruption in the lower judiciary. Take for instance the response of a senior division judge, who did not rebut entirely the existence of corruption, but stated at the same time that it occurred only in the rarest of rare cases. He explained that his opinion was based on his experience of more than 15 years, in which period he has been transferred four times and had heard of only one case of corruption on the basis of which he concluded that the proportion of corruption among judges was rare. He further made an interesting observation about the pay scales of judges which had increased after the Sixth Pay Commission recommendations were implemented and that their services were now more secured. They had status and respect in society and importantly, as they claimed, unlike other forums, there was no pressure from the executive or political parties. In such circumstances, he asked rhetorically, "So where is the scope for corruption?"[366]

An Additional Sessions judge explained how judges were unfairly accused of being corrupt and biased merely because the judgments were not accepted in the right spirit. He mentioned that there had been complaints against judges in the court to which he was presently posted and these complaints had also been investigated by the Special Investigation Department in Mumbai. He observed, "In court, there is one party which is

360: Research team interview with litigant, March 14, 2011
361: Research team interview with judge, October 1, 2011
362: Research team interview with judge, June 30, 2011
363: Research team interview with judge, September 14, 2011
364: Research team interview with judge, April 25, 2011
365: Research team interview with judge, April 25, 2011
366: Research team interview with judge, April 25, 2011

always unhappy. Different interpretations are given of the judgment being the way it is and it is always the judge who is said to have been biased. Sometimes it is alleged that there was caste politics and on other occasions the judge is alleged to be corrupt. Ultimately, we have to continue doing our work in spite of these accusations."[367] In the course of the conversation, the judge later revealed that there had been enquiries against him as well against complaints that were ultimately found to be baseless. He remarked, "This is the price a judge pays for being bold."[368]

Corruption At The Level Of The Lawyers

There were mixed experiences with respect to corruption amongst lawyers. Most of the experiences were hear-say and related primarily to lawyers being bought over by the opposite party[369] (by payment of money) or extracting money from the clients under the garb of having to tip clerks or bribe judges. Lawyers themselves, however, totally denied this allegation and their defense is well summed up in the response of a taluka court lawyer: "Advocates and judges are most afraid of the law. They know the law and therefore they know the consequences of their acts that are either unethical or illegal."[370]

AT THE LEVEL OF THE JUDICIAL STAFF AND SUPPORTING MACHINERY

At the level of the judicial sub-staff, it was alleged that corruption was common and pronounced to be 'trend' or something of a 'routine', so much so that some lawyers even admitted that the sub-staff did not work unless they were paid. The judicial sub-staff were reputed for their reluctance to complete a task in time without a tip and that they cooperated only with those who 'bribed' them. Litigants in both districts shared how the judicial sub-staff often asked for tips or asked litigants to buy them tea or breakfast in the court.[371]

The judicial sub-staff were said to ask for tips when litigants requested a convenient next-date for the case to be on board, or when they were enquired about when the case was placed on board next or requested a copy of the *roznama.* Relating his experience, a litigant said: "Everyone from the clerk to the person who calls out the case number in the court asks for a bribe. The clerk demands money at every stage of the case."[373] In one instance a taluka court litigant who refused to tip the clerk, realized that the next date the clerk had allotted to him for the matter to be on board fell on a Sunday. "In vengeance, the clerk placed the case on a date that was a Sunday. I brought this matter to the attention of the judge, who immediately gave me a convenient date."[374] Had this litigant not been so alert or had he been illiterate, he may have ended up spending money to come to court to find it shut on a Sunday. Such instances cannot be overlooked, particularly in the taluka areas.

It was found that tips ranged anywhere between Rs. 50 to 100 and were commonly given to clerks depending on the urgency of the task requested.

According to most lawyers and judges, corruption was perpetuated at the sub-staff level, because litigants wanted to get their work done quickly.[375] As a result, the judicial sub-staff have got accustomed to receiving a tip for such tasks, almost as though these are considered 'obligatory'. A junior lawyer jokingly remarked that learning how and when to tip the sub-staff is a part of their apprenticeship and skill set.[376]

Surprisingly, though, quite a few lawyers did not view paying the sub-staff as corruption. They perceived such tipping as compensation for the disproportionate salaries of the judicial sub-staff in comparison to their workload.[377] Some lawyers also justified the tipping on the ground that it was a price the litigant paid for skipping the procedural delays at the clerical level. However, some seniors who disagreed with this practice felt

367: Research team interview with judge, September 15, 2011
368: Ibid
369: Research team interview with litigant, March 14, 2012
370: Research team interview with lawyer, June 11, 2012
371: Research team interview with litigant, March 16, 2012; August 8, 2012
372: Research team interview with litigant, March 22, 2012
373: Research team interview with litigant, January 1, 2012, June 14, 2012
374: Research team interview with litigant, June 13, 2012
375: Research team interview with judge, May 2, 2011
376: Research team interview with lawyer October 11.2011
377: Research team interview with lawyer October 13,.2011

that corruption could be minimized if lawyers did their work more promptly.[378] Interestingly, the judicial sub-staff are also alert and aware about whom to seek tips from. Clerks usually desisted seeking tips from senior lawyers with an established legal practice and socially- and politically-active lawyers.[379]

Litigants usually related fairly sour experiences of corruption at the level of the supporting machinery and particularly the revenue department. A common notion at the taluka level was that financially well-off litigants were more likely to succeed because of their capacity to make fraudulent documents, if required. The general feeling among these litigants was that those who had money could easily alter the direction of the case and have it decided in his /her favour.[380] The revenue department at the taluka levels was not just notorious for refusing to supply documents (required as evidence in court) without tip,[381] but also infamous for mutilating, misplacing and creating bogus documents to the advantage of someone paying them to do so.[382]

The sentiments of a litigant in the taluka court reflect the situation well. "At the beginning I was quite optimistic about the case being decided properly in court. But now I have realized that since I have no money I have very few chances of winning the case. I feel that I will lose the case in court as well because the opposite party is economically and politically more powerful. They even have the support of many," he said.[383] The plight of several other litigants is similarly represented.

Lawyers and judges also expressed the opinion that corruption was a big issue in the police machinery, a system that judicial proceedings are highly dependent on.[384] Corruption in the police machinery impeded the smooth operation of procedures in the judiciary. A striking example of this interface was the delay in service of summons. Explaining the situation, a taluka lawyer explained: "The summons is not successfully served because the bailiff or policeman who served the notice is bribed. But the report of this person will read: 'summons not served as person not available; addressee not home; etc."[385] Judges also emphasized the need for a stricter accountability system in the supporting machinery, particularly at the level that these two different departments of the state must interact. "There is of course some amount of underhand transactions that delay this service of summons. When it comes to the work of the police, our hand are also tied, because we have to believe the police constable when he says that the defendant or witness was not at home to receive the summons," said an additional sessions judge.[386]

V. TRANSPARENCY IN THE SYSTEM:

Lawyers, judges and litigants were all in consensus on the point that the judiciary was very transparent. Transparency was measured in terms of:

a. Judgments being dictated on the dais and an absence of chamber practice, unlike in the High Courts.[387]
b. Easy access of litigants to all papers and proceedings of their case.[388]
c. The small number of RTI applications received by the judicial office with regard to matters of efficiency, transparency and corruption.[389]
d. The strict code of conduct that binds the lower court judges.[390]
e. A fair method of appointment for judges, unlike in the High Courts and Supreme Court where judges are appointed through a collegium system.[391]

378: Research team interview with lawyer, February 15, 2012
379: Research team interview with lawyers, November 2, 2011; February 19, 2012
380: Research team interview with litigant, January 19, 2012
381: Research team interview with litigant, June 15, 2012
382: Research team interview with litigant, June 15, 2012
383: Research team interview with litigant June 12, 2012
384: Research team interview with judge, May 7, 2011
385: Research team interview with lawyer, May 30, 2011
386: Research team interview with judge, September 15, 2011
387: Research team interview with judge, April 27, 2011
388: "Litigants are able to access of the papers and proceedings referred to by the court. Sr division judge
389: Research team interview with judge, May 16, 2011
390: Research team interview with judge, April 21, 2011
391: Research team interview with judge, April 21, 2011

6

SECTION SIX

CONCLUSION AND RECOMMENDATIONS

CONCLUSION

This study has attempted to understand the systemic factors and constraints that affect the extent to which litigants in urban and rural sectors in Maharashtra are able to access their economic and social rights. The reason for choosing to concentrate on these sets of adjudicatory forums was to primarily address the knowledge gap that surrounds the operation of the lower tier of the judiciary. The effort of the study was to examine whether tangible remedies are being offered and delivered to those in need by those in authority. The other concern was to better understand public perceptions towards these forums and the extent to which they are seen as instruments of justice by all involved.

The current study revealed that even the regular lower judiciary, specialized alternative forums, and administrative courts at the grassroots deal with claims concerning economic and social rights. But the route towards ensuring the enforcement of economic and social rights at the level of the lower judiciary is a rough road, not easy to traverse for a person with limited resources.

Everyday claimants have great difficulty with the most basic aspects of trying to redress their grievances which begin with deciphering the correct forum to approach, engaging a proficient lawyer at a reasonable fee, understanding the legal language, complying with innumerable procedures and procuring relevant documents required as evidence.

This confusion and lack of synthesis may end. The amount of time and energy wasted trying to decipher the complicated procedures and pathways to the correct adjudicatory sites could all be saved if the government were simply to provide clear and proper guidelines to both claimants and lawyers. Procedurally, the system could be better streamlined and the regular, specialized, and administrative courts could be organized in more efficient ways.

RECOMMENDATIONS:

Additional resources and greater financial commitment by the government to the lower tier of the judiciary appear to be most critical to the creation of an effective and efficient lower judiciary. Fully aware of recommendations from previous studies, government commission reports and other proposals relating to the lower judiciary, the current recommendations offer an important, empirically-based layer to the discourse.

To being with, the study recommends an increase in the number of judges in district and taluka courts. The dockets of the sitting judges are filled beyond capacity. A single judge is seen handling multiple suits of multiple natures and specializations. In jurisdictions where the rate of litigation is high, these factors contribute to the increase in pendency of suits.

Along with an increase in the number of judges, there is also a need for a greater number of trainings at regular and more frequent intervals. Simultaneously it is equally important that such training encompasses the interface of law with a diverse range of subjects which will help broaden the perspective of judges while deciding disputes. To improve the quality and efficiency of justice being delivered, there needs to be an enhancement in the training and education for current judges as well as for those students studying to become judges.

In order to draw a greater number of motivated, thoughtful and talented people to the Bench, it is recommended that efforts be made towards improving the remuneration, living accommodation, terms of work and the infrastructural facilities available to judges. It is an acknowledged reality that in the present circumstances, unfortunately, a prestigious and honorable position in the Bench pales in comparison to a potential position as a reputed and well-established lawyer.

The lawyers are the first point of access for a litigant in the judicial system. The lawyers are the ones who are supposed to serve as the zealous representatives of the law for needy clients, they are to advise and guide them through the complicated maze of procedures that line the lower tier. But unfortunately, it was observed that dealing with these very legal practitioners poses one of the most severe hurdles for litigants. In light of the urgent need to address this situation, the most important recommendation with respect to the Bar is that Local Bar Associations establish a clear structure of fees for lawyers, particularly in relation to the socio-economic conditions of their jurisdiction.

Improved working environments can motivate and contribute to fair and efficient legal practices by legal practitioners and judicial staff. Better infrastructure in terms of clean and spacious work spaces in the court, regular supply of electricity and well-equipped libraries would be a first step in this regard.

With lawyers having no time for discussions during the court's working hours, it is the court staff, including the judicial clerks, the bailiffs and the shipahis who are an important point of contact for litigants. From issues as basic as information about where a particular court room is located right up to understanding what transpired in their case on a particular day, litigants approach the judicial sub-staff on a range of issues. In this context, the government needs to ensure that court staff is better equipped to deal with claimants' queries regarding the litigation process (including expanding new initiatives like electronic case management services), because often these staff administrators themselves are unsure about the facts.

Additionally, there is the knowledge amongst litigants that the only time that court-staff members care about providing assistance is when such workers financially benefit, namely through the receipt of an extra-legal payment. This perspective is noteworthy and nuanced because, again, while there is such a negative view towards the staff, there remains optimism and a favorable opinion towards those who are the leaders of the courts – the judges. Given the relative respect that lower tier judges have within their communities, it is not unreasonable to imagine a situation where these officials could enact measures to root out the corruption in the system.

Appeals were cited as one of the crucial causes of delay in litigation. The right to appeal was seen to be used a delay tactic by several practitioners, resulting in an extensive expenditure of time, energy and money by the litigant. Curtailment of the inordinate number of appeals that lawyers are allowed to make under the procedural codes may help redress this situation.

And lastly, but most importantly, the study highlights the need to urgently address the gender disparity and gender discrimination as reflected in lack of available and clean washrooms, the absence of security to protect them from routine harassment and intimidation, the unavailability of safe transportation to bring them to and from the courts to their residences, not enough seating in (male-dominated) waiting areas, and the gender-based verbal prejudice they receive. These are just a handful of reprehensible conditions that require remedies.

The study ends acknowledging that much more needs to be done, but it is hoped that the lessons from this study will begin a substantive dialogue on how best to understand the problems plaguing claimants at the grassroots and then to find ways to make their lives better.

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NATIONAL CENTRE FOR ADVOCACY STUDIES(NCAS)

Pune, Bhubaneshwar

Serenity Complex, Ramnagar Colony, Pashan, Pune – 411 021, Maharashtra, India
Telefax:(91+20) 2295 2003/2295 2004
Email: ncas@ncasindia.org
Web: www.ncasindia.org