

CHAPTER VI

DIVORCE CASES AT THE DARJEELING DISTRICT

COURT BETWEEN 1984-1990

AN ANALYSIS

The findings and the quest has been brought to the district level. For the purpose of this analysis, the data had to be collected from the District Court of Darjeeling for which the permission of the Calcutta High Court was obtained¹. There is an unique feature in this District Court. Darjeeling is situated at height of approximately 7000 ft, 79 km from the sub divisional town of Siliguri. This majestically indolent Himalayan town is wonderfully non-litigating in nature, Since the Act requires that, "every petition under this Act shall be presented to the district Court"² all the cases within the district of Darjeeling has to be filed under the Darjeeling District Court. However, since the litigants find it difficult to commute this mountaneous route frequently and since during the winter and monsoon Darjeeling is mostly inaccessible, the cases from the plains are transferred

1. See Appendix - III

2. Section 19, Hindu Marriage Act, 1955.

to the Siliguri additional district courts. So the collection of the cases have been done from the district court at Darjeeling and Additional District court at Siliguri.

I. The total number of cases in a Nutshell

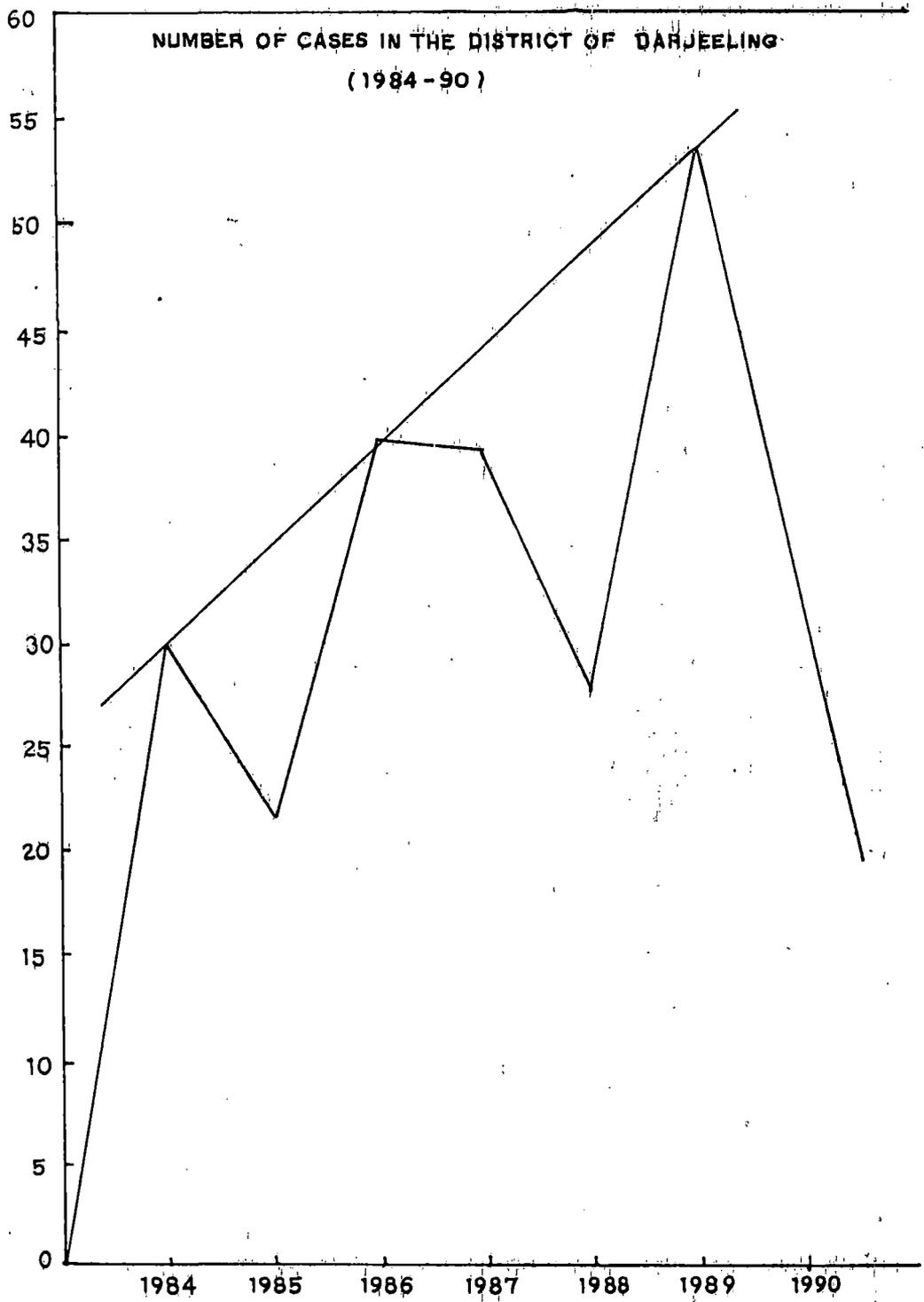
The data was collected from the year 1984 upto 1990 May. The total number^{of} cases were 268³. All of these cases were not found. Some could not be traced and others had been sent to the High Courts on account of appeal by the parties. Records prior to 1984 were not available at the court.

Table - 1

Total number of cases at the district level

Sl. No.	Year	Total Cases	Not traced	Other section	Usable cases	
1.	1984	34	15	4	15	
2.	1985	28	10	5	13	
3.	1986	44	10	5	29	
4.	1987	44	8	6	30	Average 26 cases per year
5.	1988	29	7	4	18	
6.	1989	63	5	9	49	
7.	1990	26	2	7	17	
6.5 Years		268	57	40	171	

3. See Appendix IV*



GRAPH - VI.1

If seen in totality, the district of Darjeeling in the last 6.5 years has recorded a total number of 171 divorce cases. Whereas at the state of West Bengal High Court (Calcutta High Court) level under which there are sixteen districts, the total number of cases in the last six and a half years is only fourteen. There are nineteen High Courts at the national level under each of which there are innumerable districts, but there are only 131 cases at the national level in the last 6.5 years. Under the Supreme Court, there are 19 High Courts, yet in the last 6.5 years, there are only eight divorce cases. Therefore, the indication is that, largest number of divorce cases are filed at the district level of which very few reach the High Courts on appeal. In most of the cases the verdict of the district court is accepted as final and only in negligible number of cases appeal to the High Court is preferred. Even lesser number of cases go before the Supreme Court in appeal. That is the reason why only eight cases were there in the Supreme Court between 1984-1990.

Table - 2

Cases between 1984-1990 in each forum

Period	Calcutta H.C.	National level	Supreme Court	District of Darjeeling
1984-1990	14 Cases	131 cases	8	171

Factors like litigating expenses, lengthy judicial process are a few economic reason for this. Emotionally there is an urgent desire on the part of the parties to distance themselves from an acrimonious situation, to escape the humiliation of being ripped apart in public. Socially, both men and women detest the social limbo in which they have to survive during the pendency of the case. During this time, the woman is neither a daughter nor a wife in the social eye and society knows no other identity of woman hood. So, during this period the existence could be very painful. On the other hand, the men too exist in a different yet difficult state. Men generally have three images in the social eye, a "covetable" bachelor, a "respectably" married man and a "playboy". The last category though painful, is precarious in the sense that being neither a bachelor, nor a married person, the playboy image is magnified which can be rather uncomfortable for men. In short both men and women, during the pendancy of the suit, and also where the divorce is declined, live in a state of suspended animation.

So, in a quest for speedy remedy and to avoid prolonged emotional and social battle and to save the children from the resultant trauma, usually, the decision of the District Court is accepted as the final verdict.

This is not to say that upto the district level the going is smooth. It is never so. Divorce litigations can be one of the most traumatic experience for any human being especially when the

whole enchilada of the divorce procedure is based upon the fault of the parties. This requires a bitterly fought battle, in fact such battle is compulsory in a divorce proceedings, the going becomes very tough.

II. REVIEW OF THE GROUNDS USED FREQUENTLY

Even though there are several grounds under the Act⁴ under which marriage may be dissolved, the most well known and frequently used grounds are those of cruelty, adultery and desertion. The grounds used at the district level from 1984-1990 are as follows:

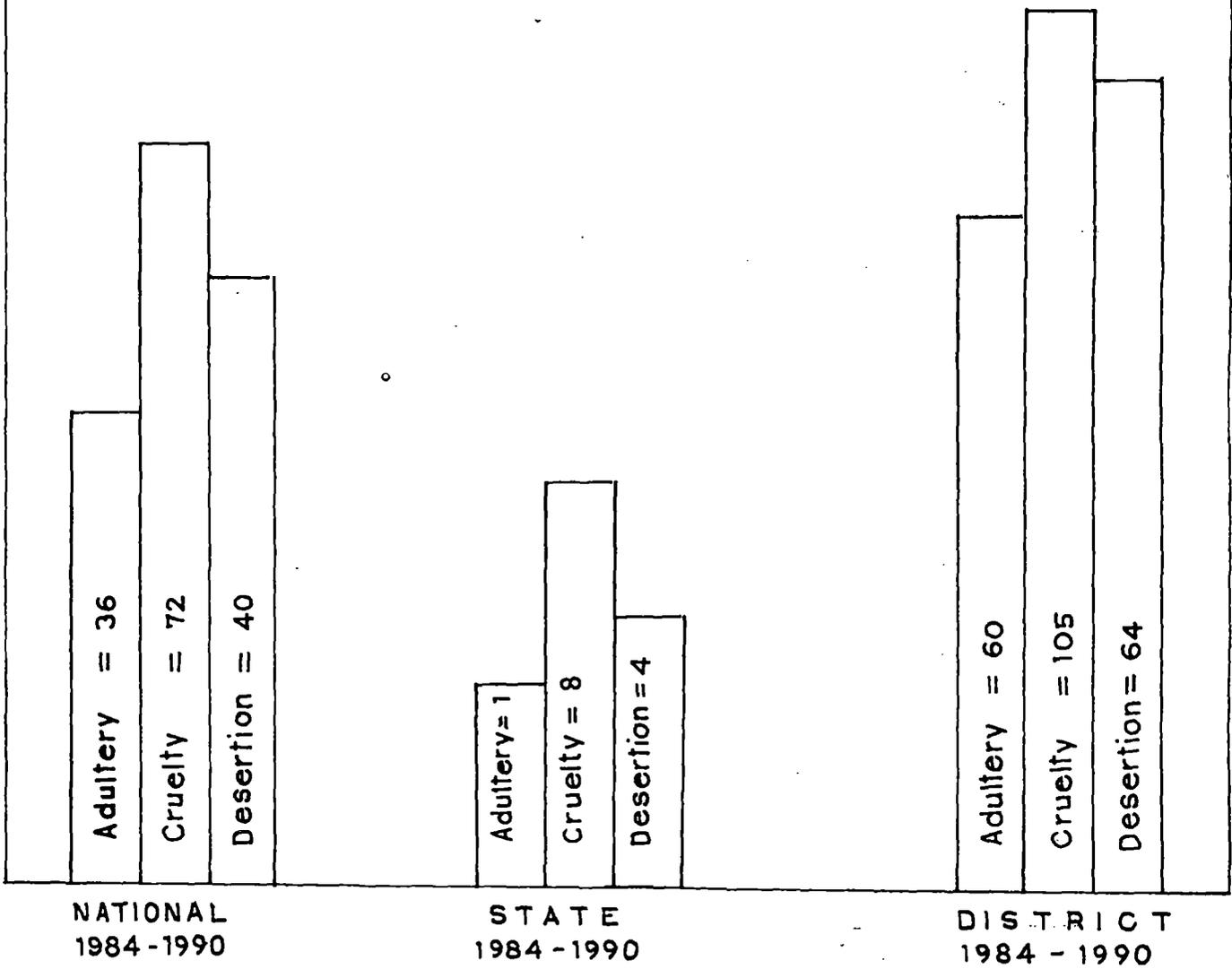
Table - 3

Review of the grounds used frequently

Sl. Nb.	Year	Adultery	Cruelty	Desertion	Mental disorder	Conversion	Non S.9	Mutual consent.	
1.	1984	6	5	4	0	0	0	3	Adultery = 60
2.	1985	6	6	5	0	2	0	3	Cruelty = 105
3.	1986	14	21	13	0	0	0	3	Desertion = 64
4.	1987	10	21	10	3	0	0	6	Mutual Consent = 34
5.	1988	7	12	5	0	1	0	2	Mental disorder = 5
6.	1989	14	32	20	2	0	0	11	Conversion = 3
7.	1990	3	8	7	0	0	1	6	Non-restitution = 1

4. See Chapter III

Ground used for divorce at the National State and District levels during 1984 - 1990



GRAPH - VI.2

For the purpose of the above finding the untraceable cases and those filed for relief other than divorce, have been excluded. It is seen from the above that the most frequently used ground in a divorce suit is cruelty, numbering 105. The same trend is observed at the national and state level. This is followed by 64 cases of adultery which reflects the situation at the state of West Bengal level and also at the level of district of Darjeeling but at the national level desertion occupies a third position. Adultery follows desertion with 60 cases at the district level which is only a confirmation of the trend at the state level. Adultery has a second place, between cruelty and desertion at the national level. However cruelty remains at the top in all the three stages.

A. Cruelty: looms large in Divorce Suits

Cruelty is a question of fact, and is an offence against the vows of the marriage⁵. Both mental⁶ cruelty and physical cruelty form matrimonial offence. Where the conduct of the respondent spouse is so bad that the other should not be called on to endure it, cruelty is established; it is immaterial whether the respondent's conduct was aimed at the other spouse or due to unwarranted indifference attributable perhaps to selfishness or laziness⁷. The degree of the cruel behaviour is not in question.

5. Richardson Vs Richardson (1949)2All ER 330.

6. Preeti Parihar Vs Kailash Singh AIR 1975 Raj 7.

7. Trambak Narayan Vs Kumudini AIR 1967 Bcm 80.

The question of cruelty focus upon the degree of endurance by the other party. Every matrimonial misconduct like adultery, cruelty, desertion, drunkenness, drug addiction, studied indifference, neglect, beating, all involves an element of mental cruelty in it. Because of this reason and the subjective nature of its proving cruelty is the most commonly used ground for divorce.

The concept of cruelty varies depending upon (1) Socio-legal and economic status of the spouses (2) the degree of endurance of the aggrieved spouse (3) it includes and accepts subtle elements of irretrievable breakdown of marriage. Therefore, its proving is entirely subjective and relatively easy, for the aggrieved party only has to show that the opposite parties conduct was beyond his or her endurance.

Table - 4

Allegation of cruelty by males and females

Sl. No.	Year	Total Cases	Male allegers	Female allegers	Total cruelty cases	Total cases of cruelty at the three level
1.	1984	15	5	5	5	National level = 72 (55%)
2.	1985	13	2	4	6	
3.	1986	29	11	15	21	State level = 8 (57%)
4.	1987	30	8	15	21	District level = 105 (61%)
5.	1988	18	7	7	12	
6.	1989	49	24	19	32	
7.	1990	17	7	4	8	
		171	64 (37%)	69 (40%)	105 (61%)	

Almost 61% per cent of the cases are filed under the ground of cruelty. It is noticed that more women (40%) allege cruelty against men than men (37%) do against women. This is a point of digression from the national and state scene even though the difference is marginal.

It is seen that at the national level during 1984-1990 there were 72 cases but during the same period at the level of state of West Bengal there were only 8 cases but at the district of Darjeeling there were 105 cases of cruelty. At the national level the rate of allegation of cruelty is seen to be declining gradually from the year 1987 onwards. 1987 however is a rising point at the state level and at the district level 1985 is the rising point. At all the three levels it is seen that the highest number of cases are filed under the ground of cruelty.

The Allegers of Cruelty

In a divorce suit involving a charge of cruelty, the allegation is made by either party to the suit. It must be seen that maximum number of allegations is made by men against women at the national level and at the state level, but the situation reverses itself at the district level.

It is really an ironical situation that at a time when there is so much public furor regarding cruelty against women, crime against women, female infanticide, at the national and state level it is the men who have approached the court on the ground of cruelty in order to obtain divorce. The difference between male and female allegers at the district level is only about 3%.

Majority of petitioners are men, and majority of the appellants are also men. So when the decision have gone against them they could, because of their socio-economic independence, afford to persue the case to the higher courts. That is the reason why at the national and the state level the allegation of cruelty is higher by men than women. Women, have a very low percentage of socio-economic and educational independence. In such cases, very few can afford to persue the case upto higher courts.

B. Adultery : used in lesser numbers

The following table shows that adultery is a less frequently used ground in divorce cases at the state and district level but it occupies second position at the state level.

Table - 5

Number of adultery cases between 1984-1990 at the three levels.

Sl. No.	Year	National level	State level	District level
1.	1984	7	0	6
2.	1985	6	0	6
3.	1986	9	1	14
4.	1987	3	0	10
5.	1988	4	0	7
6.	1989	3	0	14
7.	1990	4	0	3
		36 (27%)	1 (7%)	60 (35%)

During the period 1984-1990 adultery ranks lower to desertion, even though during the period 1955 to 1990 adultery occupied the second place between cruelty and desertion at the national level. Proving of adultery is more difficult than desertion and cruelty, so takers of this ground are relatively few as it is difficult to prove.

The allegers of adultery

Table - 6

The Allegers of Adultery at the three levels

Sl. No.	Year	National		State		District	
		Male	Female	Male	Female	Male	Female
1.	1984	2	4	0	0	4	6
2.	1985	2	5	0	0	3	3
3.	1986	5	5	0	1	9	6
4.	1987	2	4	0	0	3	7
5.	1988	2	3	0	0	5	3
6.	1989	1	2	0	0	9	5
7.	1990	0	4	0	0	3	0
		14 (11%)	27 (21%)	0	1 (7%)	36 (21%)	30 (18%)

At the district court it was seen that men have used the ground of adultery (21%) to seek divorce than women (18%) have. The difference however is very small and marginal. Except at the district level, women in greater numbers are seen to be alleging adultery against men than vice versa. This is significant because the proving of adultery is relatively harder than cruelty. The

relatively higher use of such a ground by women at the state and national level is significant, especially at the national and state level where questions of appeal and the cost thereof is involved. It must be understood here that where majority of the petitioners are male, and the women are handicapped due to their socio-economic dependence on others, and they often cannot afford to make baseless allegation. Besides, more noteworthy is the fact that the decisions mainly go in favour of women. That being so it must be understood that their allegations stand proved.

F. Desertion: occupies a second place

Table - 7

Incidents of desertion at the three levels

Sl. No.	Year	National	State	District
1.	1984	7	0	4
2.	1985	8	0	5
3.	1986	7	0	13
4.	1987	4	0	10
5.	1988	4	2	5
6.	1989	5	2	20
7.	1990	5	0	7
		40 (31%)	4 (29%)	64 (37%)

Between the year 1984-1990, the district level shows 64 (37%) cases and the state level 4 (29%) cases. At the national level there are 40 (31%) cases. At the national level, the ground

of desertion occupies a third position whereas at the state and district level it has a second position.

The allegeders of desertion

Who alleges more desertion, the wife or the husband is of considerable socio-legal and socio-economic importance. Both

Table - 8

Allegation of desertion by men and women

Slr No.	Year	National		State		District	
		Male	Female	Male	Female	Male	Female
1.	1984	2	7	0	0	4	6
2.	1985	2	6	0	0	3	3
3.	1986	2	6	0	0	9	6
4.	1987	0	4	0	0	3	7
5.	1988	2	3	1	1	5	3
6.	1989	0	6	1	3	9	5
7.	1990	2	4	0	0	3	0
		10 (8%)	36 (27%)	2 (14%)	4 (29%)	36 (21%)	30 (18%)

at the national and state level more women have alleged desertion but at the district level more men have alleged desertion against women.

The havoc that man-made-law plays with man's life has endless dimensions. Closely linked with desertion is the question of restitution of conjugal rights. The grounds which provide a good cause of action under desertion also provide a good cause of action for restitution of conjugal rights, once a restitution decree has passed, if the other party does not make an effort to

get the decree executed and enforced, then desertion continues. Subsequently, within one year of passing such decree, the marriage can be dissolved on the ground that the restitution order was not honoured⁸.

D. The Petitioner

It is seen that, during the year 1984-1990, greater number of petitioners before the court were the men, a pattern which has been repeated at the state and national levels also.

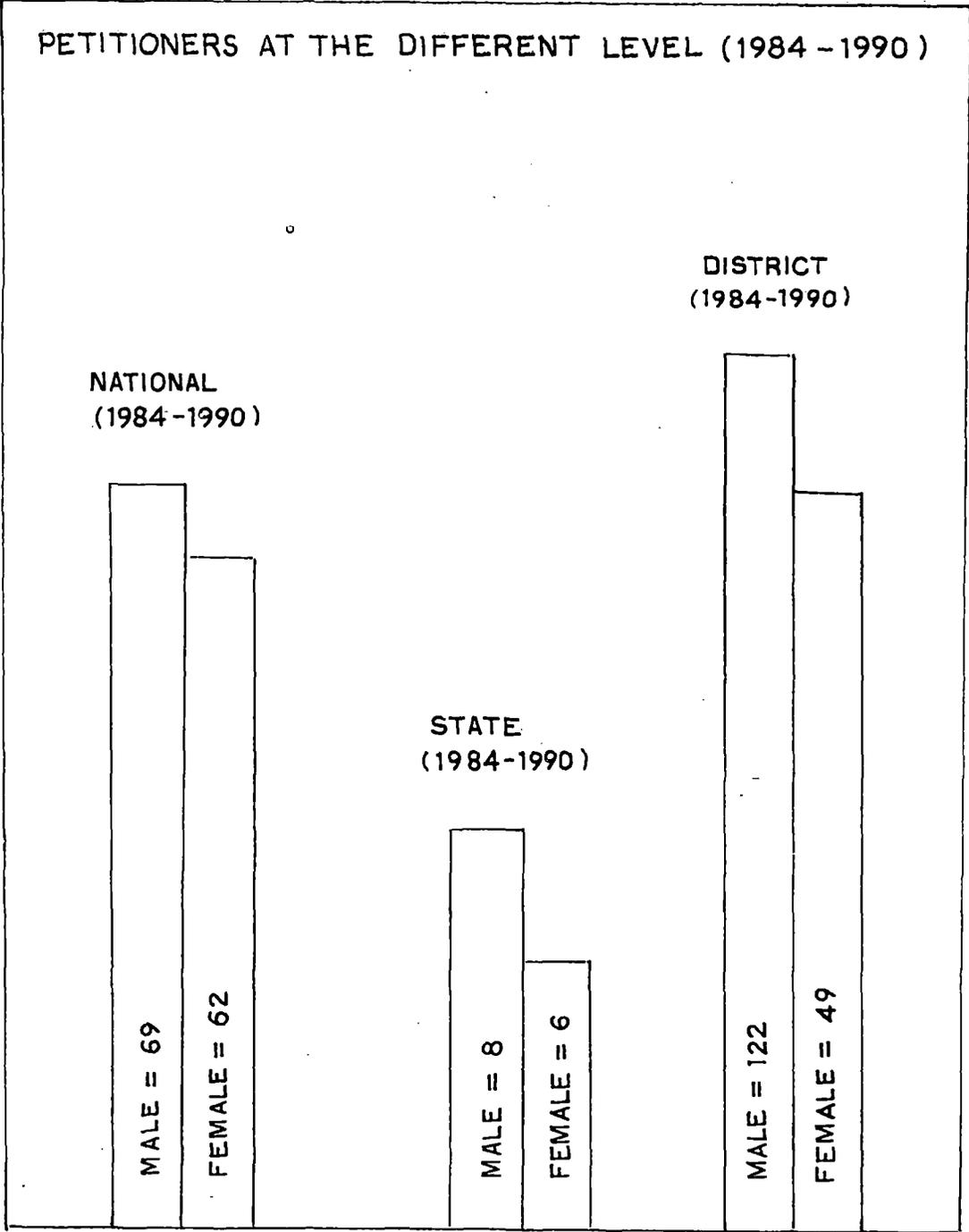
Table - 9

The male and female petitioner

Sl. No.	Year	National		State		District	
		Male	Female	Male	Female	Male	Female
1.	1984	7	10	-	-	10	5
2.	1985	9	13	-	1	9	4
3.	1986	13	9	1	1	18	11
4.	1987	10	12	-	-	20	10
5.	1988	10	7	1	1	12	6
6.	1989	11	5	4	1	39	10
7.	1990	9	6	2	2	14	3
		69 (53%)	62 (47%)	8 (57%)	6 (43%)	122 (71%)	49 (29%)

This is indicative of the fact that women still have a tendency to cling on to the marriage which really has become an empty shell. The reason for their doing so is basically socio-economic. Being economically dependent on others, the woman realises that she and her children, if any, will become a burden

8. Section 13(IA)(ii), Hindu Marriage Act, 1955, See Appendix I.



GRAPH - VI - 3 .

on her natal family and she cannot set up an independent home. Socially, there is a stigma attached to divorced women, besides, her emotions and ignorance are her enemies. The natal family too pressurises her to have patience, assuring her that everything will become alright in time⁹. Men are more economically independent. They can make and break a home. So, to them, seeking divorce is not a matter of great ordeal.

E. The Trends in the decision making

1. Decree Vs Decline.

In the earlier analysis at the state and district level it was seen that at the national level more divorces were decreed than declined and at the state level more divorces were declined than

Table -10
Trends in decision making

S/Yr.	Granted	Decline	Dropped for default	Dropped for non-prosecution	Withdrawn	Pending
1/84	6	0	3	5	1	0
2/85	5	1	3	3	1	0
3/86	16	1	3	6	2	1
4/87	12	1	9	6	1	1
5/88	12	0	6	0	0	0
6/89	15	0	11	3	3	17
7/90	1	0	1	0	0	15
	67	3	36	23	8	34

9. Jean D' Cunha, "Hindu Law Has Its Lapses", in Women's Liberation and Politics of Religions Personal Laws In India p. 25 Edited by Dr. A.R. Desai, Bombay (1990); Madhu Kishwar, "Dowry Deaths:

decreed. At the district level it is seen that in most of the cases divorce was decreed, and no cases were pending during the years 1984 and 1986. In very few cases divorce was denied. A new dimension comes to view at the district level. There are very many cases where either the proceedings were dropped for default or were dropped for non prosecution of the case. Some of the cases were withdrawn. Majority of the petitioners are men and the decision shows that there are many cases, in fact in majority of cases divorce was granted. Almost all the cases were pending in 1990, and more than one fourth cases were pending in 1989. Where the proceedings discontinued for some reason, the parties lived in a state of de facto divorce - a suspended animation.

At the various levels it is seen that:

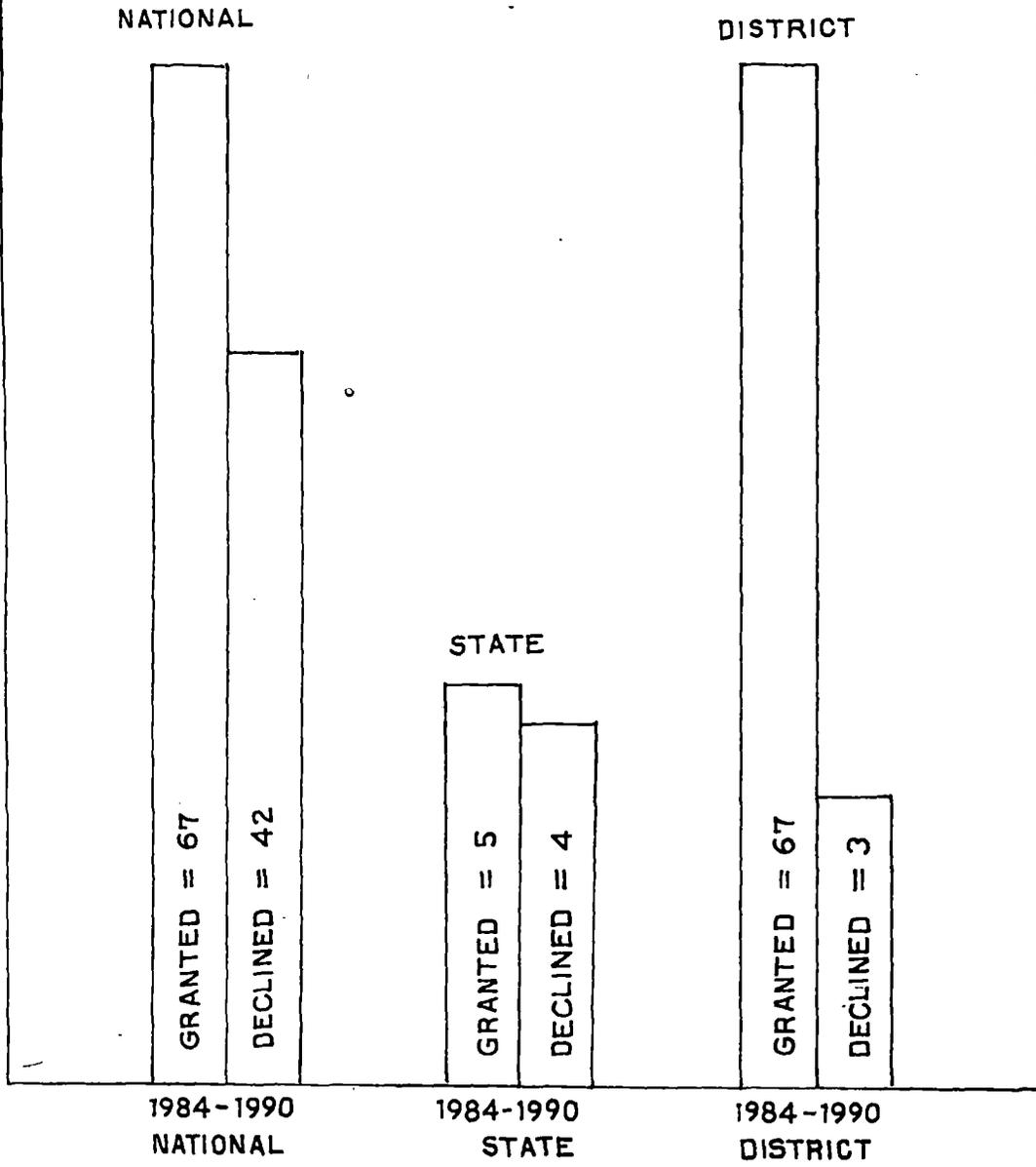
Table - 11

Table showing the rate of grant and decline of divorce

Sl. No.	Year	National		State		District	
		Grant	Decline	Grant	Decline	Grant	Decline
1.	1984	10	5	-	-	6	0
2.	1985	10	8	1	-	5	1
3.	1986	15	5	1	-	16	1
4.	1987	10	4	-	-	12	1
5.	1988	10	8	-	2	12	0
6.	1989	7	2	3	-	15	0
7.	1990	5	10	-	2	1	0
		67	42	5	4	67	3
		(51%)	(32%)	(36%)	(29%)	(39%)	(2%)
		Others = 18%		Others = 35%			

The Real Murderers" Express Magazine, Indian Express (Sunday Edition) April 9, 1989, Sanobar Keshwaar "Scream Silently or the Neighbours will Hear". The crying Need for a law Against Domestic Violence" Lawyer, April 1991 page 4.

Rate of granting and declining divorce at the three levels during 1984 - 1990



GRAPH- VI-4

At the national, state and the district level there is a tilt towards granting divorce.

2. Whom does the decision favour

Every decree or decline of divorce is to be in favour of one spouse and against the other spouse. Fundamentally, this is what the divorce law of the present times requires. The divorce laws of the present times is based upon the fault theory of divorce. In other words it must be proved by the one spouse that he has been on the right and it is the other spouse who is guilty of having committed an offence against matrimony and therefore must be punished. By granting divorce, so the common belief goes, that punishment is successfully meted out. So, inevitably, every decree or decline of divorce is, in reality it is believed, in favour of one spouse against the other. Such favouring one spouse against the other be speaks of the wrong understanding of the divorce proceedings of the common man.

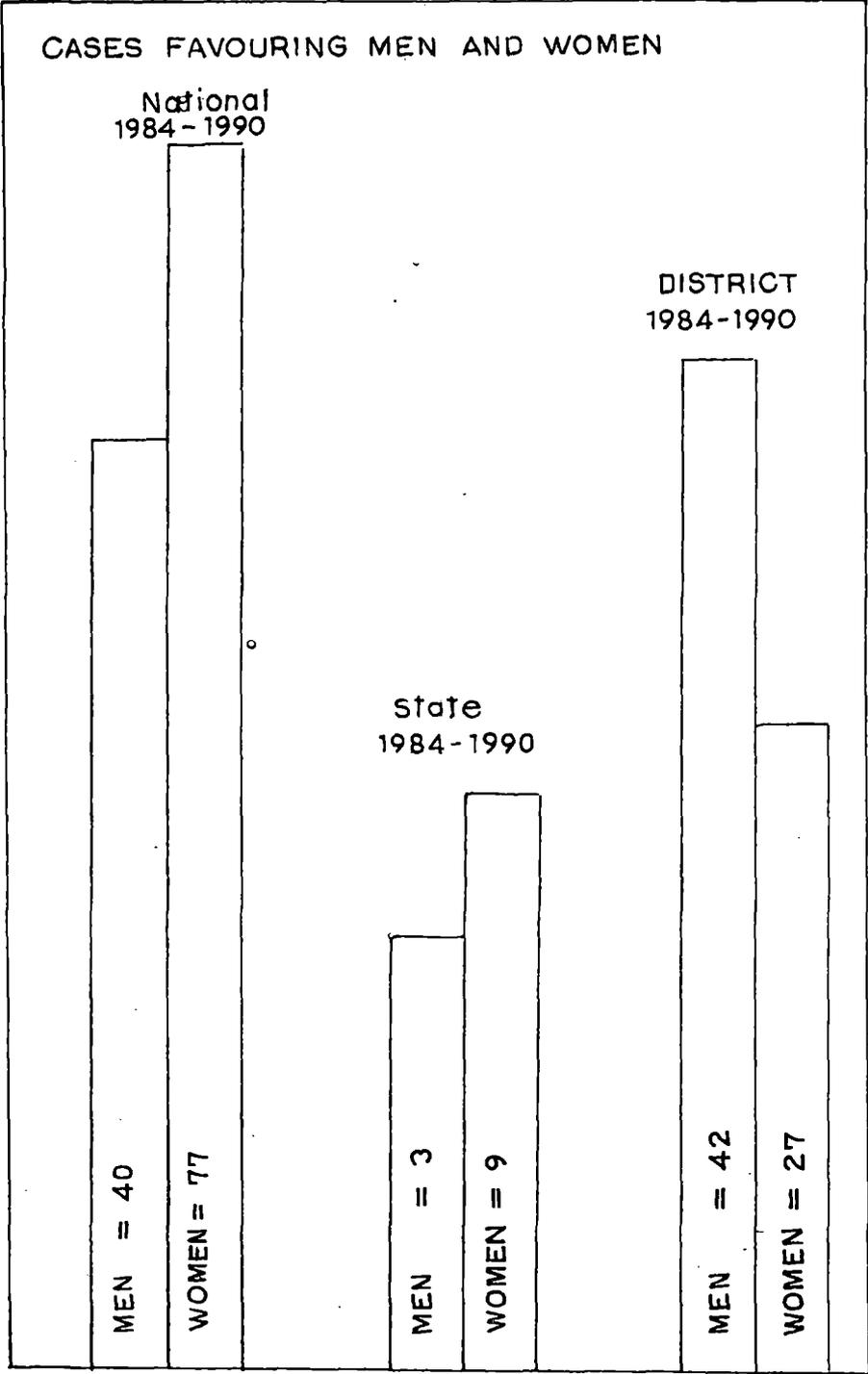
However, an analysis of whom did the decisions favour presents a very interesting study.

Table - 12

Decision favouring men and women

Sl. No.	Year	National =131		State =14		District=70	
		Men	Women	Men	Women	Men	Women
1.	1984	5	12	-	-	2	4
2.	1985	5	17	1	-	3	3
3.	1986	11	7	1	1	9	8
4.	1987	7	12	-	-	9	4
5.	1988	4	11	-	2	8	4
6.	1989	4	7	1	5	12	3
7.	1990	4	11	-	2	-	1
		40 (31%)	77 (59%)	3 (21%)	10 (71%)	43 (61%)	27 (39%)
		None = 10%		None = 7%			

At the district level it is seen that majority of the petitioners are men and most of the cases too go in favour of men. The majority of the appellants at the state and national level are also men, but it seems the judiciary, rather the bench, is engaged in a balancing act of its own. Here at the national and the state level most of the decisions have gone in favour of women. This unique feature is not an express or official policy of the judiciary rather it is a subconscious act of balancing that the judiciary is engaged into.



GRAPH - VI.5 .

F. The sound of silence; Uncontested Ex-parte divorces

^{le}
Since, sometimes can be more deafening than the loudest of noises. A new aspect of divorce litigation reveals itself in the form of a stony silence maintained by one spouse in the face of violent accusations of the other.

Table - 13

Number of Ex-parte divorce

Sl. No.	Year	Silence of women	Silence of men
1.	1984	5	4
2.	1985	6	4
3.	1986	10	10
4.	1987	9	12
5.	1988	8	5
6.	1989	19	7
7.	1990	7	1
Total number of cases 107 i.e. 63%		64 (60%)	43 (40%)

In fact, there were sixty four women (60%) and 43 (40%) men who have not pleaded any counter allegations out of a total number of 107 (63%) cases. A number of reasons for this comes to mind. For example, it may be that (1) Indian women who face relatively little exposure in life do not realise that under the present laws they have a right to defend themselves, (2) Those who know that they have right to defend themselves may not know : (a) how to go about it (b) there are help to be obtained from legal

aid and services (c) that, if she so desires she can obtain maintenance pendente lite (3) The marriage may have reached such a painful state that she is beyond caring about her marriage especially what happens to it and who alleges what against her. Almost the same is true of men. Other than a few very exceptional cases of financial hardships, men generally can defend their cases, but when they abstain from doing so it either means (1) they do not know that they have to defend themselves or (2) they particularly do not care for the marriage and so they do not want to defend themselves.

However, in the divorce litigations at the district level, the sound of silence is the loudest, Almost 63 per cent cases are there inclusive of men and women, wherein rather than the voice of the parties, their silence speak for them.

It appears like a protest of the divorce litigants against the present fault theory and the fault finding procedure of divorce. Majority of the spouses, simply avoid being there in order to avoid being broken in spirit for the rest of their lives. This must be avoided. Divorce law in India should be such that if the spouses so desire, they may be able to part as good friends but bad life partners.

G. Subsistence of Marriage.

Justice Krishna Iyer has said that:

"Daily, trivial differences get dissolved in the course of time and may be treated as teething trouble of early matrimonial adjustments. While the stream of life lived in married maturity may wash away smaller pebbles, what is to happen if in transient compatibility of mind

breaks up the flow of the stream? In such a situation, we have a breakdown of marriage itself and the only course left open is for law to recognise what is in fact and accord a divorce¹⁰.

In Santosh Kumari Vs Parveen Kumar¹¹ the Punjab and Haryana High Court has held that cruelty cannot be claimed in four to five days of living together.

Few hours or few days or perhaps an year of living together, irrespective of judicial opinion has provided maximum cause of action for divorce. The early married period, statistics show, is almost like walking on egg shells. It calls for a maximum degree of tolerance and adjustments. Trivialities of life which can be called a reasonable wear and tear of matrimonial life cannot constitute a cause of action for divorce. Precisely for these reasons a period of one year is specified after which a divorce petition can be brought before the court¹².

10. Aboobacker Vs Mamu Koya 1971 K.L.T. 663.

11. AIR 1987 P&H 33.

12. Hindu Marriage Act, 1955 Section 14 States that:

No petition for divorce to be presented within one year of marriage-

1) Notwithstanding anything contained in this Act, it shall not be competent for any court to entertain any petition for dissolution of a marriage by a decree of divorce, unless at the date of the presentation of the petition one year has elapsed since the date of the marriage:

Provided that the Court may, upon application made to it in accordance with such rules as may be made by the High Court in that behalf, allow a petition to be presented before one year has elapsed since the date of the marriage on the ground that the case is one of exceptional hardship to the petitioner or of exceptional depravity on the part of the respondent, but if it appears to the Court at the hearing of the petition that the petitioner obtained leave to present the petition by any misrepresentation or concealment of the nature of the case, the court may, if it...."

Table 14 Subsistence of marriage at national and state level

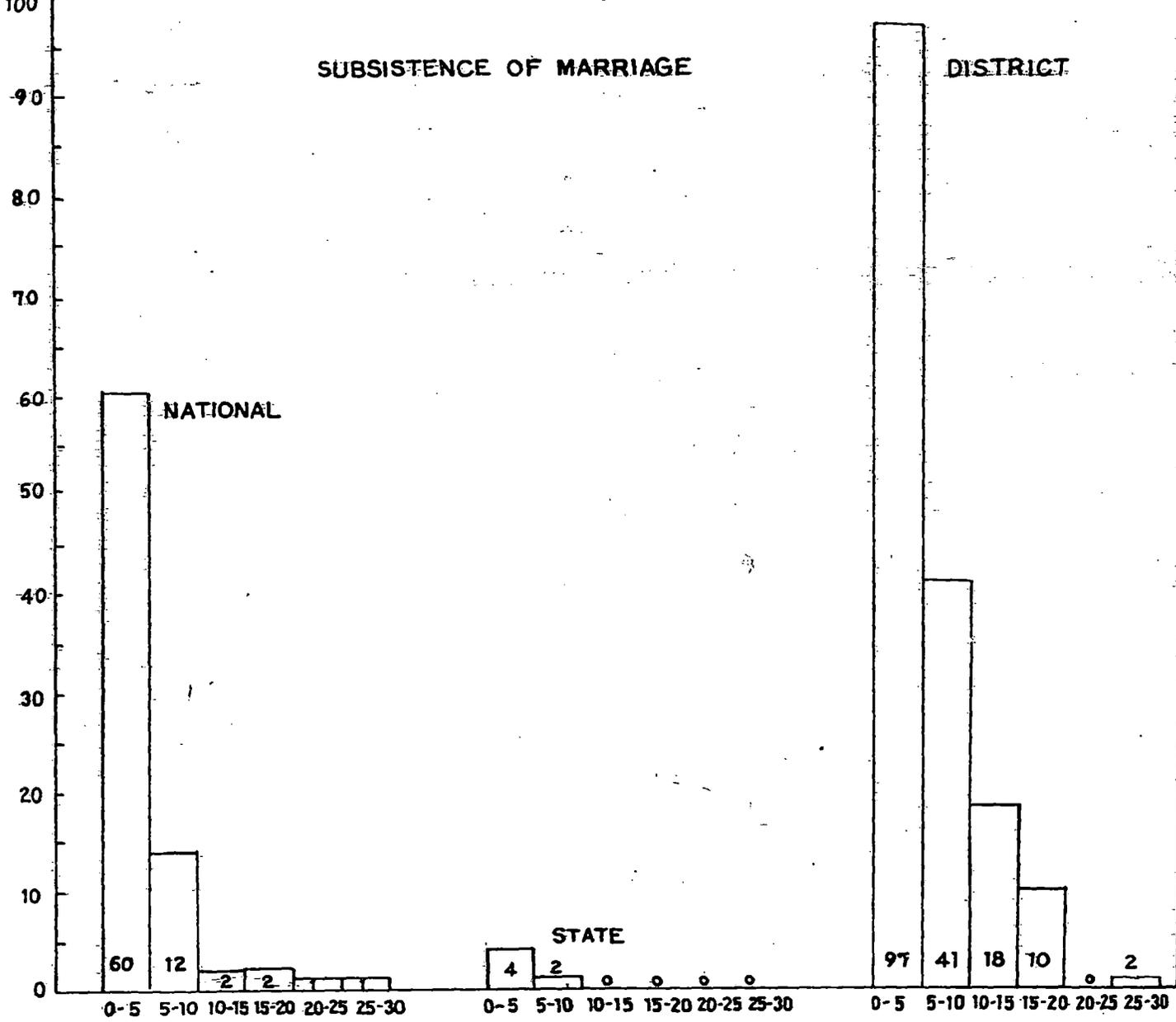
Sl.	Year	0-5 Year		5-10 years		10-15 years		15-20 years		20-25 years		25-30 years	
		N	S	N	S	N	S	N	S	N	S	N	S
01	1984	10	-	3	0	1	0	2	0	-	-	0	-
02	1985	11	1	1	0	0	0	0	0	-	-	0	-
03	1986	12	1	1	1	0	0	0	0	-	-	0	-
04	1987	10	-	2	0	0	0	0	0	-	-	1	-
05	1988	7	1	3	0	3	0	0	0	-	-	0	-
06	1989	6	1	0	1	0	0	0	0	1	-	0	-
07	1990	4	-	2	0	1	0	0	0	0	-	0	-
7 years		60	4	12	2	5	0	2	0	1	0	1	0
		(74%)	(67%)	(15%)	(33%)	(6%)		(3%)		(1%)		(1%)	

N = National level

S = State level

Table -15
Subsistence of marriage at the district level

Sl.	Year	0-5 years	5-10 years	10-15 years	15-20 years	20-25 years	25-30 years
1.	1984	9	2	3	1	-	-
2.	1985	4	6	1	1	-	-
3.	1986	16	6	3	2	-	1
4.	1987	18	6	4	2	-	-
5.	1988	7	6	3	1	-	1
6.	1989	32	11	4	1	-	-
7.	1990	11	4	0	2	-	-
		97 (58%)	41 (24%)	18 (11%)	10 (6%)	0	2 (1%)



GRAPH - VI-6.

It was seen at the district level that maximum number of divorce took place within few months of marriage. The period of 1-2 years and 3-4 years also in-decade the peak of marriage break-age. Interestingly enough every five years of marriage indicates a relatively high number of divorce for example 5th year of marriage shows 12 cases, tenth year shows 10 cases, fifteenth year 6 cases, twentieth year 8 cases so on.

The readings at the national and state level also records a gradual decrease in the marital dispute with the progress of married years.

At the district level the data shows that, again during the first five years the rate of divorce was very high and this is true of all the levels that is the national, state and district. As the year progresses the spouse seem to settle down to the matrimonial life. Therefore even if law lays down that trivial friction and general wear and tear of life should not constitute a cause of action for divorce, their cumulative effect does lead the spouses to the door step of the court.

H. The Innocent Third Party In Divorce Proceedings

Marriage does not mean only husband and wife. Marriage also means home hearth and children. When marriage takes a turbulent turn the innocent children are caught up in it. The trauma that the children undergo during the marital conflict and also the post divorce trauma leave far reaching impressions on them. Children therefore constitute a very important factor in marriage. During the period 1984-1990 it was seen that at the appellate

Table 16 Parties with children at the three level

Sl.	year	National			State of W.B.			Darjeeling District		
		Total cases	With Children	Without Children	Total Cases	With children	Without children	Total cases	With children	Without children
1.	1984	20	8	12	-	-	-	15	7	8
2.	1985	22	11	11	1	-	1	13	9	4
3.	1986	21	7	14	2	-	2	29	17	12
4.	1987	21	5	16	-	-	-	30	18	12
5.	1988	20	4	16	3	-	3	18	12	6
6.	1989	16	7	9	6	1	5	49	23	26
7.	1990	11	5	6	2	-	2	17	9	8
7 years		131	47 (36%)	84 (64%)	14	1 (7%)	13 (93%)	171	95 (56%)	76 (44%)

stage most of the couples are without children. Of 131 cases at the national level, 47 couples (36%) are with children and 84 (64%) couples are without children. At the state level too there were 14 cases between this period. Only one couple (7%) with children were there and the rest of couples (93%) were without children. At the district level of 171 cases 95 couples (56%) were with children and 76 (44%) couples were without children.

The complexity of the situation involves important socio-economic questions. At all the levels it is the men who constitute majority of the appellants and petitioners but most of the cases are decided in favour of women. But after the first round of litigations at the district level. Most of the couples with children do not go in appeal. Probably the question of the child welfare, maintenance, alimony and litigation expenses begin to pinch him. Women with children rarely go in appeal, unless they are forced to do so. That is because women, especially the custodian woman is heavily constrained financially. She is dependent upon the others and does not have the liberty to spend as she pleases.

^{Table 17}
It_^ only indicates that Brahmins are still embedded in the ancient culture in their beliefs and in the social mores. As for the other castes, they were not really under the vicious grip of religion, and the Hindu Marriage Act, really did not do anything special for them. They were more governed by custom than the Dharmasastra.

Table 17 Caste factors in divorce

Sl.	Year	Total		State of West Bengal				District of Darjeeling				NB
		S	D	Bram.	Kay.	Vai	Others	Bram.	Kay.	Vai.	Others	
1.	1984	-	16	-	-	-	-	3	4	1	1	7
2.	1985	1	13	-	1	-	-	1	3	2	0	7
3.	1986	2	29	1	1	-	-	2	9	5	1	12
4.	1987	-	30	-	-	-	-	1	6	4	1	18
5.	1988	3	18	1	2	-	-	3	3	-	1	11
6.	1989	6	48	2	3	1	-	10	14	2	1	21
7.	1990	2	17	1	1	-	-	3	6	0	0	8
		14	171	5 (36%)	8 (57%)	1 (7%)	-	23 (13%)	45 (26%)	14 (8%)	5 (3%)	84 (49%)

The Findings in a nutshell

The data at the district court records show that between the period of 1984 to 1990 (May) a sum total of 268 cases had been filed. Of these only 171 cases could be used for the purpose of this work. Since the analysis called for finding of the position both at the state and national level during this period of 1984-1990 it was seen that during this period 1984 to 1990 at the national level there were about 131 cases and at the state level there were about 14 cases during this period. In keeping with the trend at the other two forms, a rising trend in divorce cases were also seen during this period.

Ground of divorce: In keeping with the trends in the national and state levels, cruelty occupies the highest rank. Like the state level desertion has the second position here at the district level too. Similarly, unlike national level but like state level adultery occupies the third position. In other words the Darjeeling district of West Bengal confirms the trend available at the Calcutta High Court level.

The allegation made by the litigants: One of the unique things is that more women alleged cruelty than men. This of course is not true at the state and national levels. In these two levels it is the men who have used this ground more frequently. Unlike the other two levels, women have used the ground of adultery less frequently than men. Again a diversion from the national and state trends is noted here and also in that more men have used the ground of desertion.

Trends in the decision making: Like in the National and State levels, there are more male petitioners than female petitioners. The difference is quite large at the district level though marginal at the state and national levels. In all the three levels the rate of granting divorce is higher than rate of declining divorce. Whereas at the national and state levels the decisions have favoured women, at the district level the decisions favour men. Again a degression from the state and national level is visible here.

The sound of silence: an unique feature: Cases where one of the parties to the divorce litigation choose to abstain from defending him/herself may not be unique or special to the district of Darjeeling but they are certainly a speciality of the lower court of jurisdiction, namely the district court.

In the Darjeeling district it was found that in about 63% cases, either of the parties to the suit refrained from any form of rejoinder in his or her defence. Of these 63% cases, there were about 60% women and 40% men.

The reason for the silence of the women could be that (1) Indian women who face relatively little exposure in life may not be aware that they have a right to defend themselves (2) those who are aware of their right of legal defence, may not know how to go about it nor do they know anything about legal aid or legal service (3) they may be unaware of maintenance pendente lite, and (4) the marriage may have reached such a painful stage that she simply does not care as to what happens to her marriage,

she is beyond caring.

The men generally enjoy greater exposure than women and so when they abstain from defending themselves, it either means they are so hurt in wedlock that they are beyond any feeling for it or it means that they do not know that they have a right to defend themselves. One last crude possibility is that, they simply save the litigation fees by avoiding responding to the charges brought against him by his erstwhile counterpart.

Subsistence of marriage, children, caste factors: There are no digression in the trend regarding subsistence of marriage. At all the three levels, most of the marriages that are dissolved are within first five years of marriage.

In about 56% cases at the district level presence of children were specifically mentioned. During this period of 1984 to 1990, 36% cases were with children at the national level and 7% were with children at the state level.

Regarding caste also the findings at the district level, highest number of divorce can be seen amongst the Kayasthas, followed by the brahmins, probably because the brahmins have not been able to pull themselves above the shastric precepts and viscious religious grip.

In conclusion it can be said that despite small deviations, a definite trend or pattern in divorce litigation and decision making can be seen. The patterns at all the three stages largely compliment each other.