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Marriage/Breakdown amongst Punjabi-Sikhs
in Canada: A legal ethnography of
disputants, (un)official forums, and
access to family justice in Ontario, Canada

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Thesis submitted for the degree of PhD

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Abstract

Marriage/breakdown amongst Punjabi-Sikhs in Canada: A legal ethnography of disputants, navigating (un)official forums and access to family justice in Ontario, Canada

Manprit Kaur Viridi

This doctoral thesis examines Punjabi-Sikhs, a transnational diaspora community, to consider the extent to which Canadian multicultural accommodation extends into the realm of Ontario family law and struggles with ethnic diversity. The findings of this thesis aim to prove the practical relevance of such research and it hopes to establish an interest in future projects on the access to justice needs of ethnic minorities. Marriage and marriage breakdown being the chosen site of analysis, the objective is to map the dispute processes parties employ, navigating between official and unofficial forums and actors. “Law as process” literature is employed, including legal pluralism and dispute settlement studies, to examine the dynamic process of mitigating marriage breakdown within and outside of the official law. This thesis demonstrates that kinship-oriented Punjabi-Sikh transmigrants approach the official family law assuming that their justiciable issues can be upheld, whereas official law actors, guided by the liberal, secular and individual framework of Ontario family law, struggle to adequately comprehend and/or resolve such disputes. While some navigational factors, such as the presence of physical violence entail necessary legal intervention to secure individual human rights, others involve the instrumental use of the law to punish or manipulate the other spouse. Within the unofficial sphere, this thesis establishes that Punjabi-Sikh disputants resort to a variety of kinship and Sikhi-focused forums and actors before, in parallel and after family law proceedings. It is established that the multiple framework approach of Punjabi-Sikh disputants means that the official and unofficial spheres are utilised simultaneously to address marriage breakdown. For this legal ethnography, a mixed methodology approach is adopted, consisting of legal casework, coding, critical discourse analysis, and semi-structured interviews. The primary fieldwork data comprises both family law cases and interviews with married, separated and divorced Punjabi-Sikhs in the Greater Toronto Area of Ontario, Canada.

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Canada

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Bill S-7 (Zero Tolerance for Barbaric Cultural Practices Act)

Canadian Multiculturalism Act, RSC 1985, c. 24, s. 3

Children's Law Reform Act, RSO 1990, c. C.12

Chinese Immigration Act, 1885

Continuous Passage Act, 1908

Divorce Act, RS 1985, c.3 (2nd Supp.)

Exclusion Act, 1923

Family Law Act, RSO 1990, c. F.3

Family Statute Law Amendment Act, SO 2006, ch. 1

Immigration Act, 1953

Immigration Act, 1976-1977, c. 52, s. 1

Multiculturalism Policy, 1971
Ontario Arbitration Act, 1991
Points System, 1967

India

Constitution of India, 1950
Hindu Adoptions and Maintenance Act, 1956
Hindu Marriage Act, 1955
Hindu Marriage (Amendment) Act (1964)
Hindu Minority and Guardianship Act, 1956
Hindu Succession Act, 1956
Marriage Laws (Amendment) Act (1976)
Special Marriages Act, 1954

United Kingdom

Arbitration Act, 1889
British North America Act 30-31 Victoria, c. 3 (UK)
Charter of Rights and Freedoms, 1982, Part I of *Constitution Act*, 1982; Schedule B to the Canada Act (UK), 1982, c. 27
Constitution Act, 1982, Schedule B to the Canada Act 1982, c. 11 (UK)

List of legal cases cited

Canada

Bath v Bath and another [2010] OJ 1668
Bhandal v Bhandal [1999] OJ 1475
Bhandal v Bhandal [1999] OJ 2220
Brar v Brar [2010] OJ 5146
Brar v Dhinsa [2008] OJ 1282
Burmi v Dhiman [2001] OJ 2010
Burmi v Dhiman [2001] OJ 2387
Bruker v Marcovitz, [2007] 3 SCR 607, 2007 SCC 54
Cheema v Lail [2009] OJ 1774
Garcha v Garcha [2010] OJ 1231
Gill v Jhajj [2003] OJ 1496
Grewal v Kaur [2011] OJ 1413
Kaur v Brar [2003] OJ 745
Lalli v Lalli [2002] OJ 1957
M. v. H., [1999] 2 SCR 3, 1999 CanLII 686 (SCC)

McLaren v. McLaren, 1979 CanLII 1819 (ON CA)
Moge v. Moge, [1992] 3 SCR 813, 1992 CanLII 25 (SCC)
R. v. Agawa, [1988] 43 CCC (3d) 266 (Ont. C.A.)
R. v. Big M. Drug Mart Ltd. [1985] 1 SCR 295 at 351)
Rahul v Rahul [2003] OJ 1480
Rathwell v. Rathwell, [1978] 2 SCR 436, 1978 CanLII 3 (SCC)
Takhar v Takhar [2009] OJ 3882
Takhar v Takhar [2009] OJ 5598
Sidhu v Chahal [2010] OJ 11
Syndicat Northcrest v Amselem [2004] SCC 47 at 46)

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Chapter 1

Introduction

At the bustling Brampton, Ontario courthouse in 2011, Madam Justice van Rensburg presided over the case of *Grewal v Kaur* where the Petitioner-Husband, Grewal, sought to annul the parties' marriage whilst the Respondent-Wife, Kaur, sought a divorce.¹

The Canadian aunts of both parties had been involved in arranging their marriage. Both women were eager to assist their Indian nieces to immigrate, and had an adopted son of marriageable age in Canada. Grewal and Kaur were both born in India and 30 and 31 years of age, respectively. When he was 8 years old, Grewal was adopted by his aunt and moved to Canada. He is a Canadian citizen with a high school education and a job in retail sales. His marriage to Kaur was his third marriage. Kaur, on the other hand, is an Indian citizen, with a university education, and had never worked nor been married. The parties' arranged marriage was part one of an exchange marriage agreed upon in the summer of 2006.² In February 2007 in Punjab,³ Grewal and Kaur were married, and the following week Grewal's sister and Kaur's brother were married, too. The parties cohabited for 40 days whilst travelling on honeymoon and visiting kin relations. Upon their return to Canada, Grewal and his aunt began the sponsorship process for Kaur and Grewal's sister, and by July 2007, Kaur's visa was approved. Grewal's sister's immigration application, on the other hand, had not yet been approved.

Through different paths, Canada was a key destination for the parties in this exchange marriage, not only because the country actively seeks skilled and professional migrants for an ever-expanding economy, but also because Canada is home to an established and vibrant Punjabi-Sikh diaspora community, particularly in the Greater Vancouver and Greater Toronto Areas.⁴ Primarily travelling through family sponsorship schemes, it is not

¹ *Grewal v Kaur* [2011] OJ 1413

² An exchange (*vatta-satta*) marriage refers to a marriage that is arranged only if an overseas family seeking a match for their son or daughter find prospective in-laws in Punjab who also have a marriageable boy or girl within the extended family (Thandi 2013, 254). This type of marriage is frowned upon because it does not observe the four-*gotra* rule, which prohibits marriage within the father's, mother's, father's sister's and mother's sister's *gotras* as well as the exchange of women between two families (Ballard 1990, 230). An exchange marriage not only transgresses Punjabi-Sikh marriage rules, it also disrupts affinal hierarchy and the close familial relationships (*rishita*) that the new marriage alliance bestows (Thandi 2013, 255; Vatuk 1975, 158).

³ Anytime Punjab is noted, I am referring to the present-day state of Punjab in India.

⁴ Ontario was reported as home to 62% of Canadians with South Asian origin (approximately 600,000 people) (StatsCan 2007). In 2001, some 30% of South Asians reported they were Sikh, 28% Hindu, 23% Muslim, 8% Catholic, 7% another religion, and 3% reported no religion (Tran et al 2006, 23).

uncommon for Punjabi-Sikhs abroad to adopt their Punjab-based sibling's children. Grewal himself and Kaur's brother were adopted at a young age and obtained Canadian citizenship; meanwhile, Kaur and Grewal's sister's immigration was facilitated through marriage migration. A strongly gendered phenomenon,⁵ marriage migration is a primary means through which the Punjabi-Sikh community has been able to establish large diaspora communities around the world (Thandi 2013).

The subsequent facts show that in July 2007 Kaur promptly flew to Canada. She briefly stayed in Ontario with a family friend instead of Grewal. She then flew to British Columbia, where her brother and aunt reside. Upon entry into Canada she recorded Grewal's address and then changed the address 2 days later to her aunt's address, where she has lived ever since. The court ruled that Kaur's immediate relocation to British Columbia suggested she never intended to live with Grewal and married him only to obtain immigration status. Madam Justice van Rensburg found that Kaur's account was not credible; she did not have supporting testimony from her aunt or brother and she gave inconsistent explanations for why the marriage failed. The Justice pointed out that Kaur never contacted Grewal after her visa was issued.

Meanwhile, one of Grewal's reasons for marrying Kaur was indeed to secure his sister's immigration but he also gave other bona fide reasons. Justice van Rensburg agreed that Grewal would not have married Kaur had he known she did not intend to live with him. He repeatedly attempted to contact her after the visa was approved and was told by Kaur's family that she was either ill or out of town. He became suspicious and flew to India only to discover she was already in Canada.

In the end, a divorce was granted since the court ruled that Ontario family law applied with respect to intention to marry and live as a married couple as well as domicile. Grewal raised public policy issues with respect to immigration fraud; however, the court advised that such issues were best addressed by immigration authorities, and the public policy issues did not affect choice of law.

The case of *Grewal v Kaur* serves as a snapshot of the complex exchange between official law actors and Punjabi-Sikh disputants when adjudicating marriage breakdown in the context of the Canadian diaspora. The case captures a number of phenomena this thesis is centrally concerned with. Firstly, in correspondence with Punjabi post-marital residence norms, this transnational arranged (*vilayti*) marriage necessarily required Kaur to

⁵ I use the term "gender" in this thesis, and not "sex", in order to refer to the social aspects of how men and women are expected to act instead of differences in genitalia. I also recognise, however, that sex is a product of cultural definition and therefore it also cannot be seen as a clear biological category. Merry (2009, 9) explains that the term gender

[E]xpresses the idea that differences between men and women are the product primarily of cultural processes of learning and socialization rather than of innate biological differences.

immigrate to Canada to join Grewal's joint family household. This norm, called patrivirilocal residence,⁶ is catalysed by the general desirability amongst Sikhs from Punjab of living abroad.

Secondly, the reproachable though not uncommon practice of exchange marriage was arranged, but not via the traditional route of the kinship network. The aunts of Grewal and Kaur, situated in Toronto and Vancouver respectively, met through the matrimonial ads of a Canadian Punjabi newspaper: "Over time the two developed a close relationship, working together to make other introductions before contemplating the marriage of Kaur and Grewal, as well as a marriage between Kaur's biological brother, and Grewal's sister" (*Grewal v Kaur* 2011, at 20).⁷

Thirdly, the court recognised that while consent of both parties was obtained, the intention of this marital arrangement was not primarily organised through romantic affect. Punjabi marriage suitability norms would dictate that Grewal's high school education and marital record of two previous failed marriages would be reason enough for a university-graduate and never-married Kaur to reject him. It follows, then, that there were other factors (which included immigration) that informed Kaur's consent to the marriage alliance. As Grewal's aunt explained to the court, "this [marriage] would help both families, as Grewal's sister and Kaur could then sponsor other family members to immigrate to Canada" (*Grewal v Kaur* 2011, at 19). Though the court addressed this central issue, the responsibility for the failed exchange marriage was not equally borne. Kaur's decision to fly to Vancouver, argued Grewal, was evidence that Kaur was not sincere in her intention to marry him. Though there were plausible explanations for Kaur's actions, such as attempting to reconcile the hidden fact that Grewal was married twice before, there were failed attempts to bring Grewal's sister to Canada, and also, Kaur unsuccessfully attempted to conduct kinship mediation with her aunt and brother to resolve the matter. The power imbalances inherent in marriage migration ultimately discredited her account and the oft-repeated and strategic use of the "sole purpose of immigration" or "primary purpose" argument was an apt reference for Grewal, his counsel and the presiding Justice (Menski 1999; Wray 2011).

Finally, on the issue of whether an annulment or divorce applied, the Justice ruled that while Indian family law allowed for annulment in a much wider range of circumstances than Ontario family law, she expressed concern applying "foreign law affecting marital status

⁶ Patrivirilocal marriage refers to a powerful cultural ideal where women cohabit in their husband's household and village following marriage (Ballard 1990, 229; Palriwala & Uberoi 2008) (Section 4.1.2).

⁷ In this and other direct quotations from legal cases, the quote has been adapted to protect the parties of the case. Names have been omitted and/or adjusted.

outside of its cultural context”, especially when they are “inconsistent with fundamental Canadian values” (*Grewal v Kaur 2011*, at 72, 73). Justice van Rensburg’s remarks are noted in light of on-going European discussions about the presence and (in)formal operation of minority legal orders (Foblets & Alidadi 2013; Malik 2012; Shah 2010a; Wray et al. 2014). Her remarks indicate a deeper discomfort amongst official law actors in Ontario with the complexities of adjudicating minority family law matters in an increasingly diverse society.

Grewal v Kaur is a case primarily about transnational marriage breakdown and its gendered impacts, and secondarily, the legal proceeding to dissolve the marriage simultaneously extinguished Kaur’s legitimate entry into Canada. The marriage breakdown comprises important kinship and immigration repercussions. It will also entail particular gendered implications for Kaur, since she likely returned to Punjab accompanied by the inauspicious label of divorcée. The *Grewal v Kaur* case thus demonstrates four interrelated phenomena central to this thesis: one, the transnational nature of Punjabi-Sikh marriage and its breakdown; two, the strategic use of Punjabi kinship norms in the official law context; three, the disjunction between individualism in western multicultural societies and the collectivist ideals of Punjabi-Sikhs; and finally, the contested role of official law in regulating transnational marriage and its breakdown.

1.1 Law, kinship and marriage breakdown

De-centring the state’s governance of marriage, this thesis utilises legal pluralism, thereby acknowledging the deep diversity of normative ordering, with respect to rules, values and processes, in order to consider how kinship simultaneously relates to: (a) marriage and its breakdown, and (b) how Canadian state authorities handle such issues.

The relevance of examining both official law actors and Punjabi-Sikh disputants is dual. On the one hand, it exposes the strengths and limitations of multicultural accommodation in the realm of Canadian family law (Shachar 2000, 2005). On the other hand, it sheds light on the potentially distinctive manner in which Punjabi-Sikhs go about resolving issues pertaining to marriage breakdown outside of the Canadian official law context. In a broader sense, this dissertation examines one transnational diaspora community in order to consider the extent to which Canadian multiculturalism policies and accommodation extend into the realm of family law. As a result, the findings of this thesis aim to prove the practical relevance of such research and hopes to establish an interest in future projects on the access to justice needs of ethnic minorities.

Marriage breakdown is the site of analysis in this thesis because it represents an important crack in the social fabric of the Punjabi-Sikh community. It became the focus of this doctoral research project after preliminary qualitative research in 2009-2010 revealed

that Canadian Punjabi-Sikh women look upon divorce as a largely unaddressed and shameful social "problem" (Virdi 2013; Ames & Inglis 1973). The family unit is an essential social unit for anthropological analysis in the Punjab context (Das 1995; Hershman 1981; Gilmartin 1981; Minault 1981; Chaudhary 1999; Palriwala & Uberoi 2008) as well as the diaspora (Ballard 1994, 2008; Bhachu 1991a, 1991b; Walton-Roberts 2003, 2013). In the existing literature on women in South Asia and the diaspora, there has been a strong focus on the centrality of marriage (Ballard 1982, 1994; Basran 1993; Bhachu 1991a, 1991b; Bhopal 1997, 1999; Bradby 1999; Drury 1991; Jhutti 1998); however, much less attention has been paid to situations of marriage breakdown. The limited literature on transnational marriage breakdown amongst South Asians reflects this dearth (Guru 2009; Jhutti 1998; Mand 2002, 2006, 2008). The growing number of Punjabi-Sikhs who fall outside of this social norm is thus relevant and timely and the diasporic dimension adds a layer of complexity both for the people and the states involved.

The bi-jurisdictional nature of family law in Canada lends itself to a narrower focus on family law cases from the province of Ontario.⁸ With respect to the federal *Divorce Act* and the provincial *Family Laws Act* of Ontario, my thesis provides a critical understanding of the instrumental role of the official law in adjudicating whether or not the kinship practices of a particular non-western community receive recognition.⁹ I attempt to deepen this analysis by deciphering how or why recognition was or was not achieved. More succinctly, this doctoral dissertation problematises Ontario family law's liberal, secular and individual framework to consider whether it obstructs multicultural accommodation of kinship-oriented Punjabi-Sikhs by examining the various dispute resolution forums utilised before, in parallel, and after disputants approach the official family law.

Since this doctoral thesis equally concerns what occurs outside the official law, I also consider the kinship-oriented unofficial sphere of the GTA Punjabi-Sikh community. Two

⁸ Given Canada's colonial origin as a white settler colony, its legal framework is rooted in British common law, institutionalised in all provinces and territories save for the French-speaking province of Quebec, which utilises a civil system for private law issues. The bi-jurisdictional setup of Canada's legal system ensures that public and private law are separated and exercised by Parliament and the provinces respectively (*Constitution Act 1982*).

⁹ I utilise the terms "west" and "non-west" as a way of referencing the cultural representations associated with the modern industrialised democracies located in western Europe and North America primarily, in contrast to developing nation states that may or may not be democracies. Edward Said (1978, 2) writes about the ontological and epistemological distinction made between "the Orient" and "the Occident" and demonstrates that in mapping geography, race, and culture onto one another, orientalism fixes differences between people of "the West" and people of "the East" in ways that become rigid. I accordingly recognise that since the birth of anthropology, the relationship between the west and non-west has been constituted by western domination (Abu-Lughod 1991, 139). I therefore employ these terms in small caps in recognition of this historic domination. I also attempt to destabilise static notions of the west and non-west through my exploration of transnationality in the lives of Punjabi-Sikhs.

research questions pertaining to the unofficial sphere are prominent: Are there perceivable patterns in dispute resolution that can be identified when examining which forums Punjabi-Sikhs utilise before, in parallel, and after family law courts? What does an examination of unofficial dispute resolution of marriage breakdown issues reveal about kinship and gender dynamics?

The first aim of this thesis, then, is to analyse official law judgements in order to decipher how Canadian family law actors address issues pertaining to marriage breakdown amongst Punjabi-Sikhs. The second aim is to map and assess the various strategies and alternative dispute forums Punjabi-Sikhs navigate in the official and unofficial spheres. The third and final aim of this thesis is to problematise the concept of "access to justice" in order to propel further critical discussion of multicultural accommodation in Ontario family law.

1.1.1 Research hypothesis

It is hypothesised that Punjabi-Sikhs approach official family law assuming that the relief they seek are justiciable issues, however, official family law actors struggle to adequately comprehend and/or resolve such issues. Outside the official sphere, I hypothesise that kinship-oriented dispute resolution forums significantly impact on marriage breakdown, with respect to the events leading up to the breakdown as well as the measures taken to resolve it. Kinship is central to marriage breakdown in both realms because it is the socio-cultural site where entrenched gender roles and dynamics are perpetuated.

It is argued that Punjabi-Sikh disputants challenge, navigate and/or strategically employ numerous forums before, in parallel, and/or after the official law in order to address issues pertaining to marriage breakdown; however, when legal requirements, such as immigration or physical violence, are present, the official law's intervention is certain. With respect to dispute resolution forums located outside of the official sphere, it is argued that Sikh principles and precepts may be effectively utilised by disputants to dismantle entrenched gender roles and dynamics; however, this strategy is somewhat delimited within the context of kinship.

It is further argued that Canadian conceptions of liberal multiculturalism may facilitate new modes of negotiation for Punjabi-Sikhs, particularly women, with respect to certain legally regulated aspects of marriage breakdown. The fieldwork data suggests, however, that Canadian family law is constrained by its distinctly liberal, secular and individual view of family and marriage, which is notably incongruent with the kinship orientation of transnational Punjabi-Sikhs. This scenario is critically scrutinised in this thesis, in order to evaluate access to justice reforms in light of an increasingly super-diverse society (Vertovec 2007).

Official law actors appear reluctant to accommodate alternative conceptions of marriage and family rooted in kinship values. As a result, the official law is perhaps not a "justice" dispensing institution for the subjects of this study, but rather, one (albeit powerful) forum for addressing the legally regulated aspects of marriage breakdown.

1.1.2 Subjects of Study: Punjabi-Sikhs

This study of marriage/breakdown is situated as a study of diaspora Punjabi-Sikhs in Ontario, Canada. *Statistics Canada* reports that the large majority of Canadians of South Asian origin is concentrated in the provinces of Ontario and British Columbia. In 2001, British Columbia was reported as home to 22% of all Canadians of South Asian origin (210,000 people), whilst Ontario was reported as home to 62% (approximately 600,000 people) (Tran et al 2005). Canadians of South Asian origin thus account for a total of just over 5% of the populations of both British Columbia and Ontario, and the majority of them live in the Greater Vancouver or Greater Toronto areas (Tran et al 2005). Another feature that will be clearly visible is the transnationality prevalent amongst Punjabi-Sikhs, which has resulted in the establishment of a global network of diaspora communities (Dusenbury 1997, 740; Ballantyne 2006; Axel 2002; Bhachu 1985; Mand 2002). For many Punjabi women and men, the hope of a marriage abroad offers the possibility of a brighter future.

Punjab is known as the "breadbasket" state of India, and its agricultural production has been widely celebrated as a success of "modernisation." However, the region's growth and productivity have not resulted in improved social development (Purewal 2010, 64; P. Singh 2008). This critical inconsistency between economic and social development has contributed to a long-standing history of emigration since the turn of the twentieth century (P. Singh 2008). This trend continues unabated, perhaps is even accentuated, as a result of environmental degradation, health concerns, economic stagnation, drug addiction, corruption, as well as political confrontations with the Indian state in the post-Independence period (particularly from the 1980s onwards), to name only some of the complex socio-economic and political factors (Axel 2002). This broad parameter of ethnic and/or religious identity, as a result, provided a rich ethnographic terrain upon which to map the iterative process of dispute resolution in cases of marriage breakdown.

The specification "Punjabi-Sikh" is not intended to simply weave together two autonomous formations, but rather involves the recognition of their mutual enmeshing and imbrications; both terms are extremely heterogeneous since they are internally differentiated. The interview participants in this doctoral thesis have varied countries of origin, paths of migration, caste affiliations, class backgrounds, mother tongues, and relationships to Sikhi. There is, furthermore, an important analytical distinction between Sikh as a religious category and Sikh as a form of ethnicity, and while the two aspects are

inherently connected, the lived experiences of interview participants demonstrate that their connection to Sikhi is extremely varied.¹⁰ However, as Brah (2005, 159) points out, what makes Sikh ethnicities distinctively Sikh concerns their relationship to and embeddedness within a genealogy of ethics, values, institutions and practices associated with Sikh history and the Sikh scriptures, Gurbani. The category of Punjabi-Sikh that I therefore employ in this thesis is attributed to people, whether Canadian-born or otherwise, who could be identified through a matrix of key words through my legal case search, or who self-identified through my fieldwork research, as people with origins or ties to either the Punjab region, or the Sikh religion, a minority religious community originating in Punjab.¹¹

1.1.3 Caveats

This thesis does not address marriage breakdown in the Punjab context though it draws on existing research available from India. Despite the existing research on Punjabi-Sikh diaspora and transnationality there are no existing law-focused studies of Punjabi-Sikhs in western legal jurisdictions (but see Ballard 1982, 1990, 1994, 2008, 2011 as law-related studies). This thesis presents a legal ethnography of an under-researched ethnic minority community that comprises the largest and oldest South Asian religious group in Canada (Tran et al 2005; Agnew 2003).

A final caveat is that this thesis does not suggest detailed policy amendments or revisions to existing legislation. That is not one of the objectives of the present study, but could well be the focus of future work. Simply, my point here is to examine marriage breakdown amongst Punjabi-Sikhs in order to assess what access to justice looks like in practice for ethnic minorities and to explore the dialectic relationship between Canadian official law actors and Punjabi-Sikh disputants by examining marriage and marriage breakdown.

¹⁰ The development of the Sikh tradition (*Sikhi*) has, from the beginning, been intrinsically intertwined with the history and politics of Punjab and neighbouring regions. The choice to refer to the Sikh tradition as “Sikhi” as opposed to the more commonly used English term “Sikhism” is an act to subvert this later construction imposed by colonialist and orientalist observers (Singh 2016, 1).

¹¹ These ties might be highly contested, as some of the women I interviewed felt socially ostracised after marriage breakdown and were still reconciling their affiliations with their Punjabi heritage and/or Sikh faith.

1.2 Access to justice in Canada

In a well-functioning liberal democracy, the legitimacy of democratic processes is founded on a commitment to equal access to, and equal justice in, public and private institutions of governance. The mere mention of “access to justice” then, is to acknowledge that a gap exists between citizens and the official law (Genn 1999; Currie 2000; Macdonald 2003). Challenges are present for the official law and those who operate it as well as those who might seek to bring, or may have to bring, their claims to official forums.

Access to justice emerged in the post-war period as part of the welfare state in several western European and British Commonwealth countries (Macdonald 2003, 2).¹² Access to justice was subsequently reformed by the representation of “diffuse interests” where class actions and public interest litigation emerged alongside the establishment of public interest centres. In 1975, another transformation in access to justice began with the acknowledgement of the inadequacies of the “legal aid” approach and the limitations of legalistic strategies to solve problems. Following the enactment of the Canadian *Charter of Rights and Freedoms* (1982) (*Charter*, herein), reformers increasingly viewed access to justice as an issue intrinsically tied to equality, with respect to capacity, opportunity to litigate, and legal outcomes.

There is increasing acknowledgement that the formal justice system is ill equipped to effectively address the complex problems brought to civil courts and other formal institutions of justice (Currie 2000; Macdonald 2003; Rosenberg 2000). Legal strategies thus far devised do not address the roots of the access to justice problems encountered by the poor and disenfranchised. The correlation between health, social service, employment, victimisation by violence and lack of access to civil justice form a strong impetus to shed the traditional idea that justice is the exclusive preserve of the official justice system. Consequently, researchers and lawmakers alike increasingly acknowledge that effective and durable solutions lie in the development of partnerships with communities and co-operation across disciplines and institutions.

The current approach to access to justice, however, mainly draws attention to the tension between law and justice. Macdonald (2000, 47) aptly remarks, though lawmakers proclaim the importance of “access to justice”, what they really mean is “access to law.” Speaking of “access to justice” is thus both evocative and double-edged, since legal change is prioritised; yet the place of law and legal procedure are reaffirmed as *prima facie* sufficient means to providing justice. The very recommendations that inform the current approach involve extending the reach of official legal control, promoting the penetration of legal

¹² See Currie (2000) and Macdonald (2003) for a comprehensive overview of the development of access to justice in Canada.

norms into social relations, and provide the basis for the public's equation of fair procedures with substantive justice (Sarat 1981, 1911-12). Macdonald urges lawmakers to rethink "attitudes and expectations about who owns law, about what it can realistically accomplish, and about how it can most effectively be deployed to promote a more just society" (Macdonald 2000, 45).

Access to justice concerns how system inputs, like abstract declarations of legal rights and entitlements, relate to system outputs, which concern whether citizens can effectively exercise the rights allocated to them. In the public sphere, universal suffrage and democratic practice are informed by an access to justice rationale where social justice is a concern of everyone (Macdonald 2003, 2). In the private sphere, the belief that individual and collective action should be equally available to everyone is supported by principles such as freedom of contract and private property. A liberal democracy is thus founded on the belief that "all people should have equal right to participate in every institution where law is debated, created, found, organized, administered, interpreted and applied" (Macdonald 2003, 2).

1.2.1 Access to family justice in multicultural Canada

Legal scholars and policymakers alike have struggled to appropriately conceptualise family law, since the very structure of law, as theoretically imagined, is often felt to be inappropriate to resolve family disputes (Fodden 1999, 5). In a 1993 Canadian Bar Association report, the task force reported that issues in family law are marginalised and therefore outside the realm of "real law" because family law disputes are devalued as essentially private (Wilson et al. 1993, 211). This finding is put into the context of the relative lack of public funding devoted to this critical area and the gendered approach of the legal system in general, which is based on standards of the male life experience, values and priorities (Wilson et al. 1993, 211). Though dated, the report reflects the on-going concerns of family justice and gender advocates. Recent policy changes to enhance access to family justice in Ontario have indeed closed this gap but it would be factious to assert a dramatic improvement has transpired.

In Ontario, access to justice appears to be a major issue. DeGreeve et al (2010, 116) report:

There is speculation that the middle class are having problems financially accessing the system as civil trials are down approximately half from twenty years ago. The huge increase in self-litigation has become something of a burden on the courts. Extremely long trials have become common.

Unified family courts, called the Family Court of the Superior Court of Justice, currently exist in 17 judicial districts in Ontario. The unified family courts are one component of the larger *Family Law Strategic Plan (Strategic Plan, herein)* rolled out by the Superior Court of Justice

in 2009. It addresses the growing quantity and complexity of family law cases, and the imperative for front-end services. It also provides a framework for the development of policies, practices and initiatives to achieve the goal of meaningful access to justice for family law litigants at Superior Court sites in Ontario (SCJ 2008).

The *Strategic Plan* addressed access to justice reforms in Ontario family law in order to integrate alternative dispute resolution (ADR) into the official legal system. ADR achieves resolution by agreement between the parties involved, facilitated to some extent by a neutral third party (Mack 1995, 123 at 2). A range of dispute resolution processes are encompassed under ADR, which fall outside of the official judicial process, such as mediation, arbitration, adjudication, and pre-trial litigation. Relevant to the current discussion is mediation, which was highlighted in the *Strategic Plan* as a cost-effective and non-adversarial approach to resolving “justiciable” family law issues.¹³ In accordance with the *Strategic Plan*, a number of processes have been put in place at the Brampton Courthouse in order to ensure mediation occurs in a more fair and equitable manner; however, issues concerning ethnic minorities remain a significantly under-addressed aspect (Currie 2006, 24).

It is well established that the realm of family law is gendered (Fineman & Thomadsen 2013; Shachar 2000; Wilson et al 1993). Ontario family courts are obligated “to encourage and strengthen the role of the family” through the recognition of the “equal position of spouses as individuals within marriage” (Family Laws Act 1990, c. F.3). The interconnected, kinship orientation embedded in Punjabi (and South Asian) law and society indicates there are relevant gendered ramifications to this legal commitment. Access to justice is grounded in the principle that all persons are entitled to protection of their rights by the judiciary, however, the administration of family justice in Ontario is marked with increasingly long trials, lack of legal representation and the unaffordability of going to court (DeGreeve et al. 2010, 116). A 2011 report identified women as most likely to experience a civil legal problem and most likely to report family relationship problems as their reason; yet, women represent the group least likely to seek legal assistance (Sossin 2010, 11). This disjunction is exacerbated for ethnic minorities, who face these hurdles in more accentuated forms (Wilson et al 1993, 213).

“‘Multiculturalism,’ means—among other things—the coexistence within the same political society of a number of sizeable cultural groups wishing and in principle able to maintain their distinct identity” (Raz 1998, 197). Canada’s advancement of a liberal concept of multiculturalism is intrinsically tied to the inter-relationship between law and culture

¹³ In her seminal study of access to justice in the UK context, Genn (1999, 5) defines a “justiciable problem” as one for which a legal remedy exists. .

(Kymlicka 1995; Raz 1998). This proposition may jolt some legal scholars, since dominant notions of the Rule of Law concern the doctrinal recognition of a need for equal treatment of equal cases before uniform, consistently applied law. However, socio-legal theorists today would insistently assert that the criteria evaluated in deliberating the Rule of Law are themselves intrinsically cultural (Mezey 2003). Law and culture are conceptualised as distinct realms of action and only marginally related to each other, however the meaning of law and culture are bound up in each other in a complex entanglement (Cotterrell 2004, 2; Mezey 2003, 37).¹⁴ In an increasingly interconnected, ethnically diverse world, however, we see that there is a lack of consideration of how multiculturalism has legally evolved to address rapidly changing national contexts. The heated "Sharia law debates" as they are popularly called (Chapter 5), have signalled an intolerant public opinion about the accommodation of non-western religious precepts in official law (Baines 2009). State intervention in private religious arbitration in family law matters in order to protect women from gender bias, specifically in Islamic family laws and practices, also confirms that the gendered nature of the Canadian legal system continues to be reinforced (Bakht 2005, 2006). The uncomfortable public environment for debate and discussion of the accommodation of religious and cultural difference in the family law context is therefore somewhat stunted.

Developments in family law coincide with the emergence of "transmigrants", which are migrants that move back and forth between the West and the Rest (Glick-Schiller 1995). Enabled by advances in communication and technology, a transmigrant travels in a circulatory fashion between her/his country of origin and the diaspora, often facilitated through kinship networks, and equipped with pre-existing (and evolving) cultural and legal understandings (Werbner 2004, 896; Shah 2005; Ballard 1990). The increasing presence of the transmigrant has important repercussions since it fundamentally challenges particular kinds of power relationships between different legal components that co-exist within a state's legal system (Menski 2013, 42). Punjabi-Sikhs more or less unknowingly bring with them their cultural and legal baggage, which inform the legal claims made in the Canadian context. This migration from a "religious particularist" model of family law, where religious or customary communities are vested with legal power over matters of personal status, to a modified "secular absolutist model" where the state retains ultimate authoritative power to

¹⁴ In Ewick and Silbey's *The Commonplace of Law* (1998, 33-53), a dynamic understanding of law as culture is developed. A constitutive theory of social relations and cultural practices observes law not so much as operating to shape social action but *as* social action. In simpler terms, law's power is discursive and productive as well as coercive (Mezey 2003, 46; Silbey 2005).

regulate citizen's marriage and divorce affairs, presents an interesting site for analysis (Shachar 2000, 212-213).

1.2.2 Marriage breakdown and family justice for ethnic minorities

Family breakdown is a profound social problem that can have negative consequences primarily for family members but also the community at large (LCO 2013, 6). Of particular interest to this thesis is the breakdown of marriages. Approximately 40 per cent of all marriages and relationships in Canada end in a break-up (LCO 2013, 6). It is the number one reason why most Ontarians access the civil justice system (Sossin 2010, 57). There is a spectrum of formality with respect to how couples approach separation. In the “mainstream” community, Boyd (2004, 20) reports, many separating couples settle their affairs without the involvement of third parties. Some may draft an informal, unwritten or written agreement, while others may physically separate, lose touch and never resolve outstanding issues that might remain. Still other couples may come to an agreement with the facilitation of an advisor, who may or may not be trained, such as a relative, friend, religious leader or counsellor.

Most couples receive some form of legal advice either from their lawyers, legal aid advice counsel, or employee legal service plans. The majority of these couples reach settlement without formal dispute resolution services, and in particular, without ever having to go to court. (Boyd 2004, 20)

In the event that one or both parties retain lawyers, the lawyers negotiate between themselves, or in four way meetings with their clients.

Marriage breakdown is a primary reason that Ontarians access the family justice system despite the complicated, time-consuming, and strongly gendered nature of the process (Currie 2009, 14). Yet, it is within the realm of the family that authority with respect to marriage, separation and parent-child relations comes not only from the state but also from religious and cultural institutions and systems (Van Praagh 1993, 233). Fieldwork confirms this, and it is why this thesis considers the interaction between official and unofficial spheres (as opposed to solely the official law context), as well as the female and male perspectives (as opposed to solely the female perspective). This dual-context approach assists me in determining the extent to which Punjabi-Sikhs already access the family law system and helps to understand what the strengths and limitations of these interactions might be. Attention to the female and male perspectives permits a deeper engagement with issues of patriarchy and domestic violence, as advised by South Asian social workers whilst on fieldwork.

As signalled by Madam Justice van Rensberg, Ontario Justices presiding over family law cases may be discomforted in dealing with ethnic minority cultural and/or religious issues (Boyd 2004, 106). Marion Boyd's seminal report on religious arbitration of family

law matters notes that there is "an 'apparent cultural anxiety' in Ontario associated with entering the 'religious thicket', a place that the courts cannot safely [enter] and should not go [into]" (Boyd 2004, 106-7). The presiding Justice Wein in *Sidhu v Chahal*, another case this thesis examines (Section 6.3.1), spoke in an equally ambivalent manner. He responded to the issue of annulment, quoting Justice Sproat in *Grewal v Kaur*:

Certain individuals may be motivated by the belief that for cultural and/or personal reasons an annulment is preferable to a divorce. While these beliefs may be sincerely held, I see no good reason to recognize a legal right to an annulment. The courts are already having difficulty dealing with the existing volume of pressing criminal, family and civil matters. I see no public interest in adding to the caseload if the principal motivation relates to saving face or conceptions of personal or family honour. (*Grewal v Kaur [2009] OJ 5130*, at 25 cited in *Sidhu v Chahal [2010] OJ 11*, at 14)

Justice Wein's remarks connote the lack of space, time or comprehension with respect to the issues brought forward by Punjabi-Sikh disputants. His remark signals that a number of issues remain at a fundamental level with respect to making family justice accessible to ethnic minorities. Given the mounting pressures on the civil justice system to meet increasing demands and expectations of Ontario's diverse population, it is questionable whether additional formal reforms that cater to the socio-legal needs of non-western ethnic minorities will transpire. If the official system does not respond, then there will be growth in the unofficial sphere.

While family law officials openly remark that they are not interested in "cultural" arguments and explanations in the name of public interest (*Grewal v Kaur*), it then begs the question of which public the family courts represent. Could the justiciable needs of Punjabi-Sikhs ever become worthy of consideration in places like Canada? "Justice" therefore has many interpretations in this thesis, and though it is undeniable that the law serves an important function in providing some level of formal justice (oftentimes effectively addressing blatant forms of gender discrimination and power imbalances, such as *Lalli v Lalli*), it cannot and does not contend with the formidable cultural pressures, primarily related to kinship and gender, which this thesis centrally explores.

It is questionable if the Punjabi-Sikhs in this study seek this multicultural accommodation within official family law. While some Punjabi-Sikhs are comfortable with secular approaches, such as counselling or psychotherapy, interview participants and counsellors themselves note that this approach is not always adequate. And while court-mandated mediation cannot be avoided, mediators note the scepticism with which South Asians approach such options (PMS 2011; LAO 2015). The *dharmic* outlook, where the individual forms the nucleus of self-realisation who is assisted by her/his close/far kin relations, community and the state in successive order, instructs a different approach (Menski 1988; Chaudhary 1999). To dispense substantive justice, then, the Punjabi-Sikhs of

this study might prefer the development of unofficial dispute resolution strategies that are seen as and believed to be culturally appropriate yet gender-sensitive.

By employing a socio-legal approach, this thesis examines the difference in perspectives between Punjabi-Sikh plaintiffs and Ontario family law courts within the dispute process of marriage breakdown. The repercussions of marriage breakdown are observed in various official and unofficial fields, not the least in relation to immigration status, as noted. Punjabi-Sikhs originate from a legally plural context where multiple frameworks, such as customary law, Hindu personal law, and Sikh-centred approaches and precepts, are observed and utilised concurrently in order to meet "justiciable" needs (Genn & Beinart 1999).¹⁵ Yet those multiple frameworks were primarily navigated in a specific South Asian national legal context. Meanwhile, in the Canadian context there exists only secular family law. Unlike other western legal jurisdictions, especially the United Kingdom, Canada has no institutional and/or colonial memory of South Asian family laws and their internal pluralities.¹⁶ The shift in legal jurisdiction necessarily challenges Punjabi-Sikhs as they struggle to re-define their "justiciable" needs. At the same time, it challenges Canadian family law and its key actors, who have become concerned to maintain a semblance of order in the face of increasing super-diversity. This is a result of Canada's long-standing history of immigration, which continues to attract many South Asian migrants today.

Outside of the official law context, this thesis also considers the unofficial attempts and strategies Punjabi-Sikhs employ in order to mitigate issues surrounding marital breakdown. Over 71% of Ontario's South Asians are born outside of Canada (StatsCan 2008, 20). While all immigrants integrate to varying degrees this process is neither complete nor uniform. The official state law dictates family law in the Ontario context; however, South Asians do not immediately observe state law as a central justice dispensing mechanism (Menski 2006, 193). Before parties reach the courtroom, a number of intermediary steps are attempted, which may be grounded in South Asian understandings of law and society. This thesis will consider the attempts that Punjabi-Sikh parties take to resolve marital breakdown.

¹⁵ In her seminal study of access to justice in the UK context, Genn (1999, 5) defines a "justiciable problem" as one for which a legal remedy exists.

¹⁶ This is in no way an endorsement of colonial understandings of South Asian legal traditions, norms or practices. It is merely to point out the lack of legal experience Canadian official law actors have in comparison to British legal actors.

1.3 Chapter outline

This thesis is comprised of ten chapters in total. Chapter One has presented and discussed the purpose of this doctoral research project, the research questions, hypotheses and main arguments, as well as the wider context in which it is situated.

The second chapter outlines the theoretical framework and conceptual schematic of this thesis. It is argued that “law as process” literature, which draws on legal pluralism in combination with dispute settlement studies, is the most appropriate theoretical framework for the present doctoral research project because it recognises the unequal collaboration between state law and unofficial laws and legal postulates. A legal pluralist approach is necessary because taking a doctrinal legal approach would not have allowed this thesis to gain access to the wide range of materials actually available to throw light on how Panjabi-Sikhs in Canada experience the operation of the legal system and how the state law deals with ethnic minority family law matters. The second half of Chapter Two provides the philosophical underpinnings of the legal, national and cultural context of marriage breakdown amongst Punjabi-Sikhs in Canada. Organised into the three-part schematic of official sphere (Chapter 6), unofficial sphere (Chapter 7) and navigating factors (Chapter 9), it is argued that the proposed conceptualisation provokes new ways to think about access to family justice in multicultural western legal jurisdictions.

Chapter Three sets forth the methodology for this doctoral thesis. An ethnographic lens is utilised to examine the various ways disputants address marriage breakdown. A multi-method approach is adopted, which includes legal casework, semi-structured interviewing, fieldwork notes and materials, coding via qualitative data analysis software (Nvivo), and critical discourse analysis.

The fourth chapter provides a socio-legal background on Punjabi-Sikhs in Punjab and the global diaspora. The purpose of the chapter is to substantiate the claim that Punjabi-Sikhs employ a multiple framework approach to marriage breakdown, where they challenge, navigate and/or strategically employ numerous forums in conjunction with the official law. The chapter outlines key concepts in Punjabi law and society to provide the reader with an appreciation of the kinship orientation of Punjabi-Sikhs. The second part of the chapter considers marriage breakdown in contemporary Indian family law, primarily examining Hindu personal law and Punjabi customary law. The third section addresses the Punjabi-Sikh diaspora, patterns of transnational migration and marriage breakdown. It is demonstrated that Sikhs have an established history of transmigration, and that marriage migrants transport the entwined concepts of kinship and custom. The section concludes with an analysis of marriage breakdown in the global diaspora context.

The focus of Chapter Five is to provide a deeper insight and understanding of the Canadian context with respect to marriage breakdown and its official regulation. Ontario family law is constrained by its individual, secular and liberal conceptualisation of family and marriage, and it is argued that this conceptualisation is compromised by the realities of accommodating ethnic minorities, like Punjabi-Sikhs. This chapter contributes significantly to the core thesis argument that the Canadian family legal system struggles to address the needs of ethnic minority family disputants.

Chapters Six, Seven, Eight and Nine fall on enacting the theoretical approach of "law as process" by examining the various forums utilised by disputants and how they relate to each other.

Chapter Six specifically examines marriage and marriage breakdown in the official sphere. Primarily utilising the legal cases, the main purpose of this chapter is to test the hypothesis that Punjabi-Sikhs approach the official law assuming that the relief they seek are justiciable issues that are intelligible to Ontario family law actors. Divorce cases that were harvested are analysed in order to consider the role of Ontario family law courts with respect to terminating transnational marriages, as well as equalisation. Finally, the chapter examines marriage in the official sphere to understand how Ontario family law courts address the varied and complex customs and practices of transnational Punjabi-Sikhs, since many of the marriages were contracted abroad.

Turning to the unofficial sphere, Chapter Seven considers the features and characteristics of marriage and marriage breakdown within the context of kinship. This chapter is organised into two sections in order to explore the continued relevance of the entwined concepts of kinship and custom in the Canadian diaspora context where, western, Punjabi, and Sikh values and norms intersect and compete. This chapter helps to ascertain to what extent various norms, practices, customs and usages continue to have relevance amongst the Punjabi-Sikh interview participants. In particular, the chapter considers to what extent gendered cultural prejudice persists in the Canadian context.

The forums and actors in the official and unofficial spheres that Punjabi-Sikhs utilise when faced with family or marital conflict are examined in Chapter Eight. This chapter utilises data analysis software, Nvivo in order to identify which forums and/or actors disputants resorted to before, in parallel, and/or after family court proceedings. Attention is paid to norms and practices that originate from the kinship realm, and also norms and practices that have an impact on the official sphere.

Chapter Nine considers the final component of the conceptual schamtic, navigating factors. The main purpose of this chapter is to consider how four particular factors, including children, kinship values, legal navigation and control, violence and mental health, catalyse a switch from the unofficial to official spheres and vice versa. The relationships

between the forums are tracked and assessed, in order to consider to what extent culture is instrumentalised in the official and unofficial contexts, and for what purposes.

In Chapter Ten, a summary of the main findings of the thesis is provided, the relevance of the conceptual model is demonstrated, and the limitations of the model are discussed. I draw together the key findings with respect to marriage breakdown and the official and unofficial spheres and navigating factors in order to assess the main argument and research questions. This is followed by an analysis of how this study might provide some clues regarding the impacts of Canadian multiculturalism in the realm of family law. I also reflect on how this research project contributes to legal pluralism and dispute settlement literature. I conclude with some reflections on the limitations of this project as well as the key areas for development for future research on the subjects of this study.

This thesis demonstrates that kinship-oriented Punjabi-Sikh transmigrants approach the official family law assuming that their justiciable issues can be upheld, whereas official law actors, guided by the liberal, secular and individual framework of Ontario family law, struggle to adequately comprehend and/or resolve such disputes. While some navigational factors, such as physical violence entailed necessary legal intervention to secure individual human rights, other factors involved the instrumental use of the law to punish or manipulate the other spouse. Within the unofficial sphere, this doctoral thesis establishes that Punjabi-Sikh disputants employ a multiple framework approach and resort to a variety of kinship and Sikhi-focused forums and actors before, in parallel and after family law proceedings.

Chapter 2

The navigation of official and unofficial forums in multicultural western legal jurisdictions: Theoretical and conceptual framework

In their 1998 publication *The Commonplace of Law*, Ewick and Silbey (1999, 1027) focused their study on “how people encountered and constructed legality in their daily lives” in a way that was “unmoored from formal legal settings.”¹⁷ Ewick and Silbey gathered a representative sample of New Jersey’s racial and economic composition, and outside legal institutions, the researchers analysed legal consciousness by examining representations of law where law is not something outside of social life, acting on or being acted upon, but rather, law is found in ordinary lives and everyday events (Ewick & Silbey 1991-92, 732).

Legal consciousness “refers to people’s expectations of the law, their sense of legal entitlement and sense of rights” (Merry 1992, 210). As a form of “popular legal consciousness,” it is not necessarily congruent with professional understandings of the law, and this consciousness is “fundamental in influencing who goes to court with what problems because it shapes which problems are defined as worthy of legal intervention and which are not” (Merry 1992, 210).

The relatively new literature on legal consciousness (Engel 1984; Merry 1992; Ewick & Silbey 1991, 1999; Engel & Munger 2003) resonates with the twentieth century work of Ehrlich (1936, 15) who was amongst the first scholars to conceptualise “living law”:

[A] complex amalgam of rules laid down as official and social and other norms that affect their operation. “Living law” is thus never just a “custom” or the law as officially laid down by the state, but the law as lived and applied by people in different life situations as an amalgam. (Menski 2006, 96)

These studies of living law and everyday understandings of law and legality are the catalyst for this legal ethnography of marriage breakdown in the multicultural Canadian context. I am interested in the multiple non-western understandings of law that transform through the processes of immigration, settlement, integration and citizenship where official Canadian law is necessarily *learned* and fused with existing socio-legal understandings (Menski 1988).

¹⁷ Legality is “understood as an emergent structure of social action that manifests itself in diverse places, including but not limited to formal institutional settings. Legality operates as an interpretive framework and a set of resources with which the social world (including the part known as the law) is constituted” (Ewick & Silbey 1999, 1027).

Chapter 2 provides the theoretical framework and the conceptual schematic in order to support the aims and objectives of this thesis. This chapter argues that legal pluralism helps us to consider what the official law cannot comprehend, and furthermore, that empirically examining “law as process” contributes to thoughtful theorising on access to family justice for ethnic minorities. There are accordingly two parts to this chapter. The first part of the chapter outlines the theoretical framework of this thesis. I utilise “law as process” literature, which comprises legal pluralism and dispute settlement studies, to examine the dynamic process of resolving marriage breakdown within the official law as well as outside of it. There are no studies on the living law of divorce among ethnic minorities in Canada and this doctoral thesis on Punjabi-Sikhs in Canada contributes to this dearth (Payne & Payne 2011; Brownstone 2009; Wilson et al 1993; Mossman 1992, 2003; Abella 1981a, 1981b; L’Heureux-Dube 1997; but see Syrtash 1992; Boyd 2004, 2007).¹⁸ The second part of the chapter explicates the conceptual schematic, which comprises official and unofficial spheres and navigating factors. While it is acknowledged that a simplistic binary between the official and unofficial may be overstated, this chapter argues that conceptualising the various forums and processes utilised in marriage breakdown as existing within or between these spheres provides new ways of thinking about access to family justice in multicultural western legal jurisdictions.

2.1 Theoretical framework

The purpose of this section is to provide the reader with the theoretical underpinnings of this doctoral dissertation. In this chapter section, I consider the distinction in legal pluralism literature between “law as norms” and “law as process” in order to introduce the reader to key concepts and literature in legal pluralism and dispute settlement studies. It is demonstrated that “law as process” is an apt way to utilise legal pluralism theory in order to conceptualise how disputants navigate official and unofficial sphere forums before, in parallel and after family law proceedings. This chapter section therefore contributes to the thesis because it provides the theoretical foundation for an analysis of the official and unofficial spheres and navigating factors. It also contributes to the main thesis argument because, as aptly captured by Ewick and Silbey’s empirical research on everyday understandings of law, this chapter provides the basis for exploring the disconnect between western official law and non-western disputants who may adopt a multiple framework approach to dispute resolution.

¹⁸ Existing literature primarily addresses the Jewish community and Muslim communities (Syrtash 1992; Founier 2001, 2006, 2010a, 2010b; Bakht 2005, 2006; Bunting 2004).

2.1.1 Legal pluralism literature review

Since the 1980s, legal pluralists have sought to explore and analyse the diverse manifestations of non-state law in modern, western, multicultural societies. Before exploring these manifestations, a succinct background on classic and non-western legal pluralism provide the necessary context for further discussion.

Classic legal pluralism

Classic legal pluralism concerned the anthropological study of law amongst the "non-West", "the Orient", or the "colonised". In the early twentieth century, state law was viewed as the dominant conception of law and emerged in Europe through the creation of the modern state.¹⁹ Concurrently and in part an effect of Enlightenment thought, positivist views of law ascended. These combined developments resulted in hegemonic ideas about law as state law and as secular law, since a positivist view of law meant it was separable from religion amongst other things (Parashar 2013, 11).

In the early days of classic legal pluralism, law was considered oppositional to custom. There was a tendency to think of co-existing legal orders in oppositional terms, where non-western societal norms and practices were thought of as either conflicting or completing with western European norms and practices (Allott 1970; Twining 2004, 14). A distinction was drawn between law and custom by defining custom as the pre-colonial law recognised and accepted by the colonial rulers after conquest or takeover (Hooker 1975). However, this simplistic conceptualisation of custom implied that the process of defining law was unidirectional instead of collaborative (Merry 1988, 880), and sounded as if it designated a straightforward set of rules when in reality the entity to which it referred was a cultural construct embedded in relationships that were historically shifting (Moore 1986, xv). Recognising that customary law was to some extent a product of the colonial encounter itself is thus an important aspect of "classic legal pluralism" (Allott 1994, 291). Seminal studies established that the introduction of European colonial law created an enhanced plurality of legal orders otherwise called legal pluralism.²⁰

While it is often assumed that law was imported to fill a vacuum or replace pre-existing laws (Twining 2004, 25), "classic legal pluralism" was developed through the discovery of indigenous forms of law in interaction with European laws in colonial and post-

¹⁹ State law was characterised by the centralisation of political power, which in turn replaced various kinds of law, effectively making state law the only source of official law (Parashar 2013, 11). The modern state, then, is rooted in a concept of sovereignty that is intrinsically tied to state law.

²⁰ This realisation, however, was limited since the already existing complexity of previous legal orders was predominantly overlooked (Merry 1988, 869).

colonial societies (Merry 1988, 869-74; Malinowski 1926; Ehrlich, 1936).²¹ Social scientists were interested in how indigenous people maintained social order without European law and their studies revealed a rich variety of social control, social pressure, custom, customary law, and judiciary procedure within small-scale societies (von Benda-Beckmann 1979; Fitzpatrick 1980; Galanter 1963, 1968; Moore 1986).

Non-western legal pluralism

The rise of postmodernism in the twentieth century, however, has eschewed essentialist definitions and fostered the view that diversity is everywhere. There is now more or less universal agreement that state law is not the only form of law (Tamanaha et al 2012), and there is a growing awareness cultivated by socio-legal scholars that model jurisprudence is challenged by the objectives and methods involved in the study of law (Chiba 1993, 197). Model jurisprudence refers to the most advanced science of law ever accomplished by humanity. Japanese theorist Chiba (1986, 2)²² asserts that model jurisprudence cannot be dismissively cast aside when examining the effects of law on non-western peoples. A leading critic of the top-down bias in most western accounts of reception of law literature, Chiba's (1986, 1993, 1998) approach is to map how Asian cultures have yielded a variety of philosophies and religions connected to indigenous forms of law, whilst also confronting different systems of law received from western countries.

The concept of legal pluralism depicted as a three-level structure of law, where official law(s) are always interacting with unofficial laws and legal postulates, is Chiba's contribution to the field of legal pluralism. The first level of official law refers to "the legal system sanctioned by the legitimate authority of a country" (Chiba 1986, 5). While state law is ordinarily understood as the only official law, it can be one of many components of official law. Religious laws (i.e. Canon law, Hindu law), as well as customary norms (i.e. laws of marriage and family, land and farming) may also be official laws if they are recognised by the state as valid (Chiba 1993).

The second level comprises unofficial law, which refers to a "legal system not officially sanctioned by any legitimate authority, but sanctioned in practice by the general consensus of a certain circle of people, whether within or beyond the bounds of a country" (Chiba 1986, 6). It signifies an internally diverse and diffuse phenomenon that is limited to "those which

²¹ For overviews of legal pluralism, see Griffiths 1986, Merry 1988 and Menski 2006.

²² Recognising that there is a lack of theorising on what is non-western law, Chiba expediently defines this concept as the working whole structure of law in non-western countries, individually or collectively, where, the structure is fundamentally constructed by official law on the one hand, which connotes state law transplanted from western law, but also religious, tribal, local, family, and minority laws and the like which were adopted by the state law. On the other hand, non-western law is also comprised of unofficial law, which originates as a rule in various indigenous sources and works in different functions such as supplementing, opposing, or undermining official law, especially state law (Chiba 1993, 200).

distinctively supplement, oppose, modify, or undermine any of the official laws, including state law" (Chiba 1986, 6; Menski 2006, 124). Though not usually recognised by model jurisprudence, various distinct forms of unofficial law have been studied by social scientists, including customary law (Baxi 1986; Diwan 1978), living law (Ehrlich 1936) and aboriginal law (Borrows 2002; Claxton 2004).

The third level of the tripartite model is legal postulates, which are value principles or value systems that are "specifically connected with a particular official or unofficial law, which acts to found, justify or orient the latter" (Chiba 1986, 6). Legal postulates are not bodies or rules, but rather, refer to norms or values, created neither by the state nor by a social group (Menski 2006, 125). It can include established legal ideas (i.e. natural law, justice, equity in model jurisprudence), sacred truths and precepts from various religious laws (i.e. the *Vedas*, *dharma*), social and cultural postulates rooted in kinship, groups or communities (i.e. *izzat*), and, political ideologies (i.e. capitalism, socialism) (Chiba 1986, 6). In other words, Chiba's legal postulates comprise both the traditional values of natural law and the modern laws of human rights and international relations.

In an attempt to de-centre the western view that state law is observed as law proper and other systems occupy a position along an evolutionary continuum, a key component of Chiba's (1986, 1993, 1998) tripartite model is the interaction between received law and indigenous law. In a broad sense, indigenous law refers to law that originated in the native culture of a people; in a narrow sense, it calls attention to law existing in the culture of a people prior to the reception of western law in modern times (Chiba 1993, 203). Meanwhile, received law is the law that is received by a nation state from one or more foreign nation states, where the reception itself may occur wholly or partially, formally or substantially, rapidly or gradually, voluntarily or involuntarily, in one or more of the three levels (Chiba 1986, 7-8). The difference between a formal adoption at the official law level and the actual process of assimilating foreign legal systems of different cultures with the nation state's indigenous law is a unique process of the reception of law for each nation state.²³

A refrain regarding Chiba (1986, 1998) is that though his tri-partite model is anti-positivist, it deeply relies on positivist assumptions. It presupposes the existence of state law and his model is positioned alongside it. Critical legal pluralists Kleinhans and Macdonald (1997, 37) aptly remark:

Because traditional social-scientific legal pluralism purports to be an empirically verifiable hypothesis of law, it remains a legal mythology that is as much a positivist image as the stigmatized image of legal centralism.

²³ The "reception of law" refers to the cultural conflict that occurs between received law and indigenous law where the reception process, in the truest meaning, has not yet been completed (Chiba 1986, 7).

Reified categories of cultures and communities that are observed through the social scientific approach are thus rejected by critical legal pluralists, who maintain an approach that is sceptical of authoritative interpretation and seeks neither a separation nor a hierarchical reconciliation of multiple legal orders (Kleinhans & Macdonald 1997, 39; Parashar 2013). Rather, the aim is to understand how each hypothesised legal regime is simultaneously a social field within which other regimes are interwoven, and also part of a larger field (Kleinhans & Macdonald 1997, 41). The issue, according to Parashar (2013, 1, 12-13) lies in certain discourses that sanitise the continuing dominance of the state legal system in upholding religious personal laws as examples of (progressive) legal pluralism in the Indian context. Parashar (2013, 12-13) argues this representation of legal pluralism is relevant only with the rise of the centralised authority of the state and gives the impression that some semblance of parity exists among various laws and normative orders when what is urgently needed is a change to the status quo in order to address systemic gender oppression.

The poignant contributions of critical legal pluralism are noted whilst affirming that Chiba's model remains relevant to the present research study in light of the reality that: one, state legal systems *are* hegemonic in the Canadian context and thus not all "laws" are created equally, and two, despite the existence of alternative conceptions, legal centralism persists as the dominant framework of mainstream legal scholarship.²⁴

Contemporary legal pluralism

Returning to the contemporary context, legal pluralism today is conceptualised as the anthropological study of increasingly contested official state law in various legal jurisdictions amongst a diverse range of people, in the west and non-west alike.

In theory, contemporary ("new") legal pluralism no longer conceives of state law as one dominating normative force acting upon a passive society (Merry 1988, 872). The social-scientific study of legal pluralism theory hypothesises a variety of interacting competing normative orders that dynamically and mutually influence the emergence and operation of each other's rules, processes and institutions (Kleinhans & Macdonald 1997, 31; Baxi 1986; von Benda-Beckmann 2002; Chiba 1986, 1989; Griffiths 1986; Hirsch 1998; Holden 2008, 2013; Merry 1988; Menski 2006; Shah 2005; de Sousa Santos 1987). This can include a multitude of official state bodies and institutions, but also religious, cultural or ethnic minorities, immigrant groups, and unofficial forms of ordering, such as indigenous and customary rules, norms and practices, located in social networks and institutions.

²⁴ Examining the content of Canadian legal education, which predominantly focuses on legal doctrine, substantiates this position.

A key aspect to legal pluralism, then, is that theorists do not simply proclaim a normative competition between official state and unofficial, indigenous or customary law, (though proving this baseline empirical fact is apparently still required in spaces dominated by legal centralist ideology); instead, legal pluralists endeavour to signal a pervasive pluralism in law, where unofficial legal orders compete with and amongst each other (Kleinhans & Macdonald 1997, 31).²⁵ These themes will be further explored in the following discussion on the distinctions between “law as norms” and “law as process.”

2.1.2 Norms and process

This doctoral thesis examines both the official and unofficial legal settings of marriage breakdown, and this is theoretically viable as a result of two distinct views of law observable in current legal pluralism literature: “law as norms” and “law as process”. These distinct views are prevalent in western conceptualisations of legal pluralism, which Chiba (1986) alternately theorised as “legal postulates”, where rules and processes were conceived as connected to values. The former view of law observes the marriage breakdown process as largely consisting of norms, whilst the second view concerns law as a process.

“Law as norms”

With respect to the former view of “law as norms”, Griffiths (1986) is a central proponent who sets out to combat legal centralism and its denial of the character of law to normative orders other than that of the state, by emphatically recognising non-state law.

Legal centralist assumptions are implicit and often asserted by western legal theorists (cf. Hart 1961; Austin 1832; Bentham 1782).²⁶ It refers to the position that the state is the fundamental unit of political organisation in upholding the law as superior to all other normative orderings (Griffiths 1986, 3). Legal centralism refers to the insistence that the label “law” should be confined to the law of the state, there is a distinction between law and positive morality, and that there is an ultimate unifying source of norms in a legal system (Allot & Woodman 1985). While western in origin, legal centralism has dominated legal thinking in many parts of the world through the export of legal modernity via colonialism or voluntary adoption in an effort by ruling elites to keep up with global (read: western) norms

²⁵ Menski (2014) captures this interaction and multiplicity with his Indian kite visualisation. Each of the four corners represents a different type of “law”: natural law, custom, state law, and international human rights. Each of the four corners are also pluralities themselves, characterised by a diversity of norms, processes and institutions, with elements from all four corners present in each, in different proportions and positions of power.

²⁶ Early studies of legal pluralism in non-western societies, however, were not accepted by many western legal theorists, so they did not form or become a part of global legal theorising, which remains Eurocentric, state-centric and phallogocentric (Menski 2006; Manji 1999).

that dictate foreign aid requirements, structural adjustment programs, and other bi-lateral and multi-lateral agreements (Twining 2004, 27, 30-33).

Returning back to the discussion about “law as norms,” in order to combat the dominance of the legal centralist position, the concept of law advanced by Griffiths (1986) consisted of the self-regulation of corporate groups (Ehrlich 1936; Pospisil 1971; Smith 1974). Griffiths preferred Moore's (1973) notion that law consists of the self-regulation of “semi-autonomous social fields” (Moore 1973; Griffiths 1986, 37-38).

The semi-autonomous social field has rule-making capacities and the means to induce or coerce compliance; but it is simultaneously set in a larger social matrix which can, and does, affect and invade it, sometimes at the invitation of persons inside it, sometimes at its own instance. The analytic problem of fields of autonomy exists in tribal society, but it is an even more central analytic issue in the social anthropology of complex societies. All the nation-states of the world, new and old, are complex societies in that sense. (Moore 1978, 55)

Moore's concept is well suited to the diverse traditions and customs of Canadian society because it is clearly not interested with things, but with social localities, which can be perceived and defined in an endless variety of ways depending upon the perspective and purposes of the observer.

Therefore, we can define legal pluralism as the omnipresent, normal situation in human society, where law and legal institutions are not all subsumable within one system, but have their own sources in the self-regulatory activities of all the multifarious social fields present, which consist of activities that may support, complement, ignore or frustrate one another, so that “law” is reflective of the enormously complex and usually unpredictable patterns of society (Griffiths 1986, 39). Where two (or more) semi-autonomous social fields overlap, individuals within that shared area are subject to two (or more) different bodies of law, which may not be mutually consistent (Woodman 1998, 31-32).

The perspective of “law as norms” helps to combat legal centralism through its diverse recognition of law as consisting of the self-regulation of corporate groups as semi-autonomous fields that interact and inform each other. This way of conceptualising the present doctoral study contributes to understanding how individual disputants might conceive of the law in a range of ways. In other words, “law as norms” literature contributes to legal pluralism because it understands the theory as a plurality of norms administered by the state. The central limitation, then, is that “law as norms” literature is concerned with the definition of official state law versus non-state laws and legal postulates and it is not able to observe plurality as existing beyond the state (Hooker 1975; A. Griffiths 2002). The objective of this thesis, however, is to better understand the numerous forums of marriage breakdown both within the official law as well as outside of it and how disputants might navigate between the various forums. Therefore, while conceptualising competing

definitions of law is productive for a theoretical study of access to family justice for ethnic minorities, it does not assist with the empirical focus of this doctoral dissertation. This legal ethnography of Punjabi-Sikh disputants' navigation of forums and actors therefore lends a focus on the literature of "law as process."²⁷

"Law as process"

The conception of "law as process" observes it as an exploration of pluralism in dispute processing, which are the various practices that prevail in a given society that are a product of its values, psychological imperatives, history and economic, political and social organisation (Felstiner 1974, 63). Disputes refer to interpersonal conflicts that morph into cases when they enter official forums (i.e. courts or other official bodies that would not be considered courts in the local context) (Galanter 1981, 2-3).

After drawing a blueprint of the gap between "law on the books" and "law in action" in 1974, Galanter (1981) proceeded to argue for the abandonment of the predominant legal centralist paradigm in order to advance policies designed to improve access to justice.

Access to justice is sometimes defined as the "problem as one of matching cases and forums: courts should get the number and kind of cases they can handle, and cases should find appropriate forums in which they can be resolved" (Galanter 1981, 1). A legal centralist view commonly held by legal professionals, would observe this phenomenon of matching cases and forums as presupposing that disputes require "access" to a forum external from the original setting of the dispute, and this location is characterised as having some specialised learning or expertise that would be applied to the dispute itself (Galanter 1981, 1). The prescribed remedies would be provided by "a body of authoritative learning and dispensed by experts who operate under the auspices of the state" (Galanter 1981, 1). But as Macdonald (2003, 7) clearly articulates, though access to justice is frequently discussed as a goal amongst official law actors involving what lawyers, courts, Parliaments and the executive offer to citizens, in reality, access to justice is a process of creating an environment where individual citizens are empowered to claim justice for themselves. Macdonald's incisive articulation of access to justice in the everyday, laymen's sense, is critical to the project of multicultural accommodation. Access to justice is dependent upon how one observes the nature of disputes, what potential forums s/he can fathom to exist within and/or outside of official state law, and whether s/he is empowered to utilise any/all forums available to them (Section 1.2).

²⁷ While Tamanaha (1993, 193, 206, 207) initially rejected legal pluralism because of unsuccessful attempts to define state law, he later revoked this initial criticism (see Tamanaha 2012).

Galanter (1981, 17-21) explores non-state dispute processing through "indigenous law," which he defines as social orderings that are "familiar to and applied by participants in the everyday activity that is being regulated". Though Galanter's use of the term indigenous law is utilised in an empirical sense, it corresponds with Chiba's conception of the same term, which refers to a type of legality that was found to interact with western legal transplants (Section 2.1.1).

Concrete patterns of social ordering can be found in a variety of institutional settings, however, it is the predominant legal centralist portrayal of official state law as all-encompassing, uniform, exclusive and controlling that has obscured our consciousness of "indigenous law" (Galanter 1981, 17-21).²⁸ Galanter (1981, 25) cautions that while the exploration of non-state dispute processing helps us to better conceptualise access to justice, we should not be mistaken that it is necessarily more just:

[I]ndigenous law...is not always the expression of harmonious egalitarianism. [Indigenous law] often reflects narrow and parochial concerns; it is often based on relations of domination; protections that are available in public forums may be absent.

It is imperative to recognise that non-state dispute resolution is explored in this doctoral thesis with a view to understand the dynamic interactions between official law forums and actors (i.e. family courts, lawyers, police), with other unofficial forums and actors rooted in kinship (i.e. extended/joint family, inter-family mediation, Sikh elder) that pervade social life.

Felstiner et al (1980-81, 632) discuss dispute as a social institution that undergoes transformation as it proceeds from the minds of the disputants (naming), then experiences become grievances (blaming), and grievances become disputes (claiming), which take on many different shapes and follow particular dispute processing paths.²⁹ There are a number of variables that critically affect the ways in which disputes are handled and transformed: procedural formality, power and authority of the intervener, coerciveness of the proceedings, range and severity of outcomes, role differentiation, specialisation of third parties and advocates, cost, time, scope of the dispute, language, and the quality of evidence being heard (Engel 1984, 566). The result of these variables and approaches to dispute settlement form a continuum, from the most formal, specialised, functionally differentiated, and costly approaches, to the most informal, accessible, undifferentiated, and inexpensive (Engel 1984, 566) where the manner in which disputants and regulators draw on resources provided by the court and are "powerfully affected by their culture, their capabilities, and

²⁸ Descriptions of official state law as a comprehensive and monolithic "system" are not descriptions of it but rather part of its historic ideology (Galanter 1981, 21).

²⁹ The term transformation is referenced by Felstiner et al (1980) as relating to the work of Aubert (1963), Mather and Yngvesson (1980), and Cain (1979).

the relation with one another" (Galanter 1981, 14). Dispute processing is thus concerned with the conditions under which injuries are perceived or go unnoticed, and how people respond to the experience of injustice and conflict (Felstiner et al 1980, 632).

2.1.3 Unofficial dispute processing

As Galanter (1981, 25) discusses above, the examination of legal pluralism via unofficial dispute processing does not signify an ideological endorsement of non-state law (Sharafi 2008, 140). It does not necessarily result in greater "access" to "justice" since indigenous law can harbour significant barriers for "minorities within minorities" based on sex, gender, age, ability, class and caste (Shachar 2010, 118).

Rather this shift towards contemporary legal pluralism was borne out of a view of legal pluralism as a colonial or post-colonial phenomenon in the non-western world, to one that exists equally in industrialised, largely western contexts (Renteln 2004). This new setting, "in which national and transnational processes are inescapably present, has challenged earlier theories that focused only on local places" (Merry 1992, 360). From the 1970s, studies of dispute processing challenged rule-centred approaches to conflict behaviour to focus instead on tracking the negotiable and internally contradictory repertoires that were applied with discretion (Nader 1978; Moore 1973; Comaroff & Roberts 1981). From the 1990s, dispute processing continued to be a core methodological approach to understanding legal phenomena (Merry 1992, 360). Research from this period focused on disputing as a process of making and transforming meanings in which both the disputants and third parties exercise roles of unequal power (Merry 1992, 360; Comaroff & Roberts 1981; Felstiner et al 1980; Mather & Yngvesson 1980; Sarat & Felstiner 1986, 1988; Silbey & Merry 1986; Yngvesson 1985, 1988).

Recent empirical research has focused on the culturally productive role of law, where legal ideology and legal consciousness are examined in the local context in order to argue that law maintains power relations by defining categories and systems of meaning, which become hegemonic when these categories and systems of meaning shape consciousness (cf. Merry 1990, Ewick & Silbey 1998, 1999; Engel & Munger 2003; also Conley & O'Barr 1998).

2.1.4 Multicultural jurisprudence

The difficulty associated with multicultural jurisprudence is one aspect of "law as process" research this thesis is centrally concerned with (Renteln 2002, 104; Merry 1992, 361; Volpp 1996, 2001). Cultural defence is centrally related to multicultural accommodation and human rights (Renteln 1992, 2002, 2004, 2005, 2010; Lawrence 2001; Fournier 2002; Phillips 2003; see also Minow 2002, Abu-Lughod 2013).

A cultural defense is a defense employed by individuals who claim that their culture is so ingrained that it predisposes them to actions—actions which may

conflict with the laws of their new homeland. Consequently, they maintain that they ought not be held fully responsible for violating the laws. The extent of the reduction in culpability can vary from complete to none whatsoever. In many cases, it may be most appropriate for the cultural defense to function as a partial excuse (Renteln 1993). (Renteln 2002, 196)

Though courts have generally been reluctant to endorse cultural defence, academic deliberation has brought critical attention to the intensification of perceived traditional values in comparison to social views not only in the host society but also in the society of origin. It has also exposed the subculture problem, which questions where special exceptions will lead to local and immigrant subcultures (Shah-Kazemi 2001; Bano 2007; Malik 2012). Accordingly, "[t]he cultural defense debate should be read not just as a centerpiece of the multiculturalism discussion, but also as an integral part of the legal-pluralist literature—despite its rather surprising failure to make this link explicit" (Sharafi 2008, 140). Much of this research has been undertaken by authors who do not identify as legal pluralists, though they have produced excellent research on the subject of unofficial law in multicultural western legal jurisdictions (Cohen et al 1999; Kymlicka 1989, 1995, 1999; Modood 2006; Parekh 2006; Taylor 1994; Raz 1993). The subject of multicultural jurisprudence and the provocative use of a culture defence in family law will be further analysed in Chapter 6.

Since the aim of this thesis is to understand how disputants navigate the various forums located within and outside of official law, the presented theoretical framework has provided the basis to carry out this legal ethnography. In order to contribute to the existing literature, this theoretical framework has situated this doctoral thesis within the field of multicultural jurisprudence in family law. Concerned less with competing definitions of law(s), and more on the processes of dispute resolution, this chapter section has demonstrated that "law as process" allows discussion about disputes, processing, forums and actors, and disputants. Whilst legal pluralism offers significant advantages to examining a range of forums and actors, I recognise that the gendered impacts of dispute resolution require constant scrutiny.

2.2 Navigating the legal/national/cultural contexts

As this thesis demonstrates, dispute processing can be examined in the dynamic interaction between official and unofficial forums and navigating factors. The intended use of legal pluralism lies not in the formulation and/or reform of legal doctrine (Woodman 1998, 22; Griffiths 1986, 2; Macdonald 2003). Rather, the usefulness of legal pluralism lies in empirical description and analysis of marriage breakdown in order to critically evaluate access to justice with an understanding that it entails approaches both within and outside the official law. As stated above, this examination does not place state law and non-state

laws on the same level, and does not intend to. This doctoral dissertation considers how Punjabi-Sikhs navigate official law, and it is also concerned with the unofficial processes Punjabi-Sikhs might employ before, during or after the official law.

A non-western view of legal pluralism, as conceptualised by Chiba, is therefore relevant to the present study because his model emphasises that state law may be one of several laws, both official and unofficial, along with legal postulates, operating in a particular space and time (Section 2.1.1). Gender is an important dimension that has not been accommodated sufficiently so far in the proposed framework. Further conceptualisation with respect to gender is essential since personal and customary laws entail significant negative implications for women (Parashar 1992, 2013), and is simultaneously fundamental to an informed analysis of dispute processing amongst Punjabi-Sikhs.

At the same time, however, I note that an alternative framework that applied legal centralism would not improve the gendered aspects of the theoretical design since legal centralism is phallogentric (Manji 1999).³⁰ Applying legal pluralism with a view that gender justice is often unevenly translated in a transnational context, where international human rights discourse interacts with local idioms in a manner that might be tone-deaf to local understandings (Merry 2006; Basu 2015, 178), I proceed with caution. The seemingly benign concept of law always requires critical scrutiny since it is one item amongst many that a transmigrant carries with her/him as legal baggage (Menski 1988, 2006; Shah 2005). The application of legal pluralism thus highlights the potential risks of accounting for non-state law, but also offers the possibility, in appropriate circumstances, of helping to find sustainable solutions to complex legal problems.

Marriage breakdown is examined from the perspective that Ontario family law is fundamentally different from other unofficial laws and legal postulates because it exercises the coercive power of the state and monopolises the symbolic power associated with state authority (Merry 1988, 879). This dynamic hierarchical interaction between the state and legal postulates continues ideologically, since the state shapes other laws and legal postulates but also provides an inescapable framework for their practice (Merry 1988, 879). Therefore, the official law and various unofficial laws and legal postulates interact and inform each other, though not on equal terms.

³⁰ It is noted by Manji (1999, 439) that legal centralism is phallogentric and thus incapable of fully including the feminist point of view (MacKinnon 1989):

While feminist jurisprudence has reflected upon and sought to undermine many of the assumptions of legal theory, it has nonetheless responded to and fortified the ideology of legal centralism.

In a world where many societies are marked by a juxtaposition of legal and cultural systems with starkly contrasting underlying assumptions, a dynamic perspective of law and society needs to be chosen to be able to trace new developments. The rest of Chapter 2 provides the major philosophical underpinnings of the legal, national and cultural context of marriage breakdown amongst Punjabi-Sikhs in Canada. The subsequent three sections provide the conceptual schematic that organises the fieldwork, which consists of official and unofficial spheres and navigating factors. While I acknowledge that a simplistic binary between the official and unofficial may be overstated, I argue that conceptualising the various forums and processes utilised in marriage breakdown as existing within or between these spheres provides new ways of thinking about access to family justice in multicultural western legal jurisdictions.

2.2.1 Official sphere: Law, culture, religion

The official realm is comprised of various forums that exist within civil society. Examples of forums located in the official sphere include the court, lawyers' offices, police stations, mediation and marriage counselling sessions. Similar to other western legal jurisdictions, the official sphere exists in the public domain of civil society, which is characterised by the agency of the liberal and secular individual (Section 5.1).

In western legal jurisdictions, law commonly refers to official law, or the articulated rules and rights set forth in constitutions, statutes, judicial rulings, and the like (Cotterrell 2004, 1). The contemporary model of jurisprudence is historically rooted in western liberal democracies and characterised as largely secular, sometimes maintaining equal distance from all religions, frequently in order to protect minority rights (Chiba 1986; Shah 2005; Menski 2006; Foblets & Alidadi 2013). This is, however, often coupled with an emphasis on a falsely homogenous legal culture that ignores prevailing diversities. On the other hand, in South Asian contexts and legal jurisdictions, legal, social, and religious authorities are not treated as distinct elements, but rather form different interconnected and culture-specific aspects of the larger whole (Menski 2006, 193; Menski 2015). This implies that official state law is not perceived as distinctly separate or more important than other normative orders that inform daily life and society.

With the rise of the transnational movement of people, the concept of law as primarily comprising official state law has been increasingly contested on a global scale (Shah 2005; Merry 1992; Foblets & Alidadi 2013). The perennial paradox of defining law thus remains elusive. It is taken as read in this thesis that law is a complex and internally plural entity comprised of rules, processes and values, all of which have to be continually managed and negotiated by various stakeholders (Menski 2015). For the purposes of this thesis, daily talk about the law by ordinary people defines what it is and is not. "Law" refers to how and what

people perceive as law; it is a social construction and the law is comprised of shared understandings that affect people's lives and define their relationships (Silbey 2008; Merry 1990; Conley & O'Barr 1998).

Like law, "culture" pertains to a disparate range of phenomena that are interpretively analysed in order to discern the meaning of this concept around which the whole discipline of anthropology emerged (Geertz 1973, 4). Culture is usually taken to indicate collective beliefs, values, traditions, attachments or outlooks, which exist in persistent but not necessarily unchanging combinations, that are characteristic of particular social populations (Cotterrell 2004, 1). But Geertz (1973, 44) notes that culture is about more than identifiable behavior patterns; rather culture is best seen "as a set of control mechanisms", such as plans, recipes, rules and instructions, "for the governing of behavior" (Geertz 1973, 44). In simpler terms, culture is: (a) learned and (b) subject to change.

In spite of its anti-essentialist intent, however, the concept of culture has the tendency to freeze difference (Abu-Lughod 1991, 143-144):

As a professional discourse that elaborates on the meaning of culture in order to account for, explain, and understand cultural difference, anthropology also helps construct, produce, and maintain it.

Culture cannot be separated from orientalism, which, Said (1978, 2) asserts is a scholarly discourse (amongst other things) that is "a style of thought based upon an ontological and epistemological distinction made between 'the Orient' and (most of the time) 'the Occident'" (Said 1978, 2). In mapping geography, race, and culture onto one another, orientalism rigidly fixes differences between people of "the West" and people of "the East." This is a critical aspect to understanding culture since cultural difference has been the basic subject of Orientalist scholarship.

The very notion of culture, as mobilised by liberals, is part of the problem in the contemporary context (Abu-Lughod 2010, 2013; Volpp 2001). For example, in the transnational context of international human rights, Merry (2006) argues that reified conceptions of culture underlie the rejection of claims to culture that activists observe as detrimental to women's human rights. It is this very rejection that impedes transnational activists' ability to work with local situations (Merry 2009).

Recent scholarship and discourse on multiculturalism is another timely example, which positions culture in opposition to citizenship (Okin 1999; see Chapter 5). Volpp (2007, 574) argues, "the battle between a culture-free citizenship and a culturally-encumbered other presumes the existence of a neutral state that must either tolerate or ban particular cultural differences." The "cultural Other" must shed her/his excessive and archaic culture in order to embrace modern and rational citizenship (Volpp 2007, 574). While the concept of culture is necessarily invoked in doing research on *multicultural*

accommodation in Canadian family law, I do so in full recognition of the complexities of transnational migration, settlement, and belonging, that have evolved at the local, national and transnational levels, in the individual and family histories of the Punjabi-Sikhs who inform this doctoral research project (Section 4.3, 5.1.2).

A closely related aspect of culture is religion. Religion is distinguished here because it has come to have increasing significance in the overlapping public and private spheres of law and society in western legal jurisdictions as a result of global migration patterns (Shah 2007, 1). The public/private sphere was developed in 19th century Europe and while it was previously useful in the feminist movement (Rosaldo 1974),³¹ it no longer assists us in understanding the myriad ways that gender shapes social relationships, particularly and most poignantly in the realm of family law (Merry 2009, 8-9). The concept of “religion” is deeply contested in light of prevailing diversity in western legal jurisdictions, since the concept emerged in Europe during the Enlightenment period through the creation of the boundary between “the West” and “the Rest” (Mandair 2009, 6). Anthropologist Geertz (1973, 90) defines religion as:

(1) a system of symbols which acts to (2) establish powerful, pervasive, and long-lasting moods and motivations in men by (3) formulating conceptions of a general order of existence and (4) clothing these conceptions with such an aura of factuality that (5) the moods and motivations seem uniquely realistic.

In his analysis of Geertz’s concept of religion, Asad (1983, 251) argues that an anthropology of religion student should not begin from a notion of culture as an *a priori* totality of meanings, but rather, “only that their possibility and their authoritative status are to be explained as products of historically distinctive disciplines and forces.” Asad (1983, 252) thus rejects universal definitions of religion because they hinder the systematic investigation of the ways in which each society’s social disciplines produce and authorise knowledges, “because and to the extent that they aim at identifying essences when we should be trying to explore concrete sets of historical relations and process.” Religion, ethics and values comprise a category that is usually subsumed under “culture” in the wider body of literature, but it was seen by Chiba (1986) in the form of “legal postulates” as a critically important separate entity, because these postulates impact so significantly on perceptions of identity and, are inexplicably grounded in the local context (Chiba 1989).

Law, culture and religion are still largely conceptualised as distinct realms of action and marginally related to each other. However as this thesis will demonstrate, the real meaning of law, culture and religion are bound up in each other in a complex entanglement (Mezey 2003, 37). A constitutive theory of social relations and cultural practices therefore

³¹ Rosaldo (1974) saw women’s subordination as the result of their embeddedness in the private sphere while power resided in the public sphere.

observes law not so much as operating *to shape* social action but rather, *as* social action (Ewick & Silbey 1998, 33-53). For instance, Canadian legal theorist Berger (2008, 246) poignantly asserts that the meeting of law and religion is not juridical but rather, it is an instance of cross-cultural encounter where, legal multiculturalism and legal tolerance are contributors to growing tensions in the contemporary condition of deep religious diversity within modern secular constitutional democracies (Section 5.2).

This cross-cultural encounter occurs because multiculturalism theories are predicated on symbols/values of liberalism where the Rule of Law is perceived as separate from religion. "Law is not seen as a cultural player making similar claims and, hence, facing similar stakes as the subject of its encounter, religion" (Berger 2008, 246). Also appropriately commenting on the complex manner in which the law constitutes social relations, Merry (1992, 211) asserts legal analysis is related to the nature of interactions between individuals and the legal system, which is a product of culture, both historically formed and locally distinct.

This section has demonstrated a complex exchange of ideas concerning law, culture and religion occurs where, the unequal positions of the three produce a range of outcomes for those seeking "justice" and recourse where, the choice of forum/actor is conditioned by the positionality of the disputant him/herself. Punjabi-Sikhs simultaneously navigate various forums, processes and strategies located within and outside of the official law, which inherently involves a balancing act of laws, cultures and religions, amongst other factors. How Punjabi-Sikhs do this, and what happens if they move around the world will be further examined in Chapters 6, 8 and 9. The subsequent section outlines the concept of the unofficial sphere.

2.2.2 Unofficial sphere: Kinship

The unofficial sphere is the realm where the kinship practices of Punjabi-Sikhs take precedence. Examples of forums that exist within the unofficial sphere include individual realisation (sometimes accompanied by Sikh precepts), inter-family mediation, or seeking the assistance or intervention of a wise elder Sikh or members of the Sikh place of worship (*gurdwara*).

For the purposes of this thesis, kinship is briefly defined through two interconnected dimensions. Firstly, kinship is conceived as the study of the network of social relationships that form the basis of most human societies. Kin are people related through blood or marriage, but it can also include others who are treated as relatives (Ebtehaj 2006, 1-18). Kin relationships are both legally recognised, such as via marriage or parenthood, and also defined outside the boundaries of official law.

Secondly, kinship is conceived as the study of moral systems or ethics, where rules of behaviour are based on ideas about what is morally good or bad. It works in tandem with ethics since it is a “matter of morality” that “does not operate on the basis of fixed rules” but rather operates “on the basis of normative guidelines or principles” (Finch 1989, 241 cited in Ebtehaj 2006, 5). Meanings of kinship are necessarily multiple, contingent and contested and involve an element of social obligation.

Punjabi kinship practices possess both biological and moral dimensions. Biological ties are observed as given, creating strong emotional bonds between people precisely because the behaviour resulting from these relationships is observed as natural, instinctive and unlearned (Das 1993, 202-03). Moral kinship, on the other hand, involves transcending ties of natural kinship rather than succumbing to them in order to enhance honour, *izzat*, one of the most valued ideals amongst Punjabis (Das 1993, 198-199).

Social cooperation and political solidarity within the corporate family are necessarily grounded in values such as “honour, pride and equality, reputation, shame and insult” (Pettigrew 1975, 4; Hershman 1981, 21). Successful navigation of the natural and social aspects of kinship results in enhanced *izzat* whilst breaches of kinship morality can result in a major loss of face. Gendered expectations tied to *izzat* are often framed in the idiom of morality, but these expectations are by no means static (Feldman 2010, 309). The management of both the natural and social aspects of kinship thus informs the basic structure of Punjabi family and social structures, which are distinctly hierarchical and gendered. Two contradictory yet recurring features of agnatic relationships are that they are both a source of solidarity and competition.

Anthropologists have used a combination of the terms corporate/joint family/household to describe the legal and social structure of family units, which are a nucleus of the larger village and Punjabi society. Related to the patrilineal nature of property ownership, Punjab is characterised by many villages that are composed of landowners who descended from a common ancestor (*bhaichara*) (Maskiell 1990, 43). The village thus represents an exogamous unit, where most relationships within it are agnatic (related via paternal kinsmen) (Hershman 1981, 54). This essentially means that villagers are kin of varying degrees of relation. Meanwhile, relationships between villages are usually affinal (related via marriage).

As will be further discussed in Section 4.1.1, a primary factor in Punjabi kinship is caste (*zat*), which organises society as groups of endogamous inter-marrying clans (Hershman 1981, 54). Within each caste, there are sub-castes (*got*), which are local sections in a particular region (Hershman 1981, 54). A clan (*biraderi, khandhan*), can be dispersed throughout the Punjab and families are linked together through complex networks of extra-familial kinship ties (Ballard 1990, 229-30). The clan is perpetuated through the principle

of patrilineal descent and patrivirilocal marriage, which classifies this kinship structure as classically patriarchal (Hershman 1981, 54; Kandiyoti 1988; Ballard 1990, 229).

This brief sketch of the main features of Punjabi kinship demonstrates the interdependency that a corporate family entails, as well as its affinal relationship to families connected through marriage. The unofficial sphere is conceptualised in this thesis as multiple, overlapping, and necessarily tied up in kin relationships near and far, depending upon the origin and character of the disputants themselves. The strategies and forums employed involve kin relationships, and the large network that characterise Punjabi kinship means that there are numerous kin relations who could become mediators in the case of a marriage breakdown. For example, in traditionally arranged marriages, the matchmaker (*bacholan*) often acts as a mediator in cases of marital or family discord (Thandi 2013). Another example of Punjabi kinship in action is the essential role of a woman's brother as her protector. As will be demonstrated in the legal cases, the patriarchal nature of Punjabi families can involve a woman's brother and/or father as an intermediary who is responsible for approaching the husband, talking to him or threatening him with physical violence, in order to resolve the issue (Ballard 2011, 126; 1982, 9).

Also, the fieldwork reveals that within families that align with Sikh values and precepts, a kin relation might also serve as a spiritual guide who can provide an individual or couple with support through reflection and enactment of Gursikh philosophy and ideals. This strategy is rooted in individual self-realisation, but also, the centrality of marriage to the Sikh way of life (*gristijiwan*). These relationships necessarily exist along a continuum that spans the local and the global, since Punjabi kin relations are circulating transnational networks, which necessarily distinguishes the unofficial sphere from the official sphere, which entails forums that are locally based or spread across the GTA in the cases examined here.

2.2.3 Navigating factors

The third and final part of the conceptual model is what I call navigating factors. Some of the phenomena that straddle the boundary of official and unofficial spheres might be called navigating factors. It concerns "law as process" and refers to various norms, values and practices that impact on the dispute resolution strategising employed by disputants. Examples include kinship values like *izzat* and control, violence and mental health.

In his 1994 edited collection on South Asian diaspora communities in the United Kingdom, called *Desh Pardesh*, Roger Ballard wrote about skilled cultural navigation as a conceptual tool first generation South Asians employed in order to "code switch" between two vastly different contexts: the secular, multicultural British society, and the kinship-

oriented and Hindu, Muslim or Sikh religious context to which their families and communities belonged.

Ballard's work was seminal in his approach to anthropological study of multicultural integration in British society, which has a long (and complicated) history with South Asian diaspora communities. Skilled cultural navigation refers to first generation British Asians or South Asians who came to the United Kingdom at a young age, who have "a sophisticated capacity to manoeuvre their way to their own advantage both inside and outside the ethnic colony" (Ballard 1994, 31).

This ability to switch conceptual codes between the two contexts without any supposed "cultural confusion" is highly relevant in the multicultural context where cultures, like languages, are codes "which actors use to express themselves in a given context; and as the context changes, so those with the requisite competence simply switch code" (Ballard 1994, 31; see also Pearl & Menski 1998).

Ballard goes on to clarify that the concept of code-switching is not unique to South Asians, and it can be expected in any context of cultural plurality; however, such navigational skill sets are not uniformly distributed and it is seen most clearly amongst members of excluded or marginalised groups, who have a far greater need to develop and use such skills (Ballard 1994, 31).

The concepts of skilled cultural navigation and code switching are apt for the current study. As the examples in the official and unofficial spheres have alluded to, there is certainly much more going on with respect to dispute resolution than meets the eye, and the strategies Punjabi-Sikhs utilise appear to involve a different set of cultural norms and values that are not accommodated within Ontario family law. In resonance with Ballard (1994), in this section I address some of the phenomena that straddle the boundary of official and unofficial spheres, which I call "navigating factors."

Navigating factors refer to various norms, values and practices that impact on the dispute resolution strategising employed by Punjabi-Sikhs. Navigating factors could entail strategies solely within one sphere, whether official or unofficial, but it also encompasses strategies where parties switch from one sphere to the other. Dispute strategising behaviour is highly dependent on the individual circumstances surrounding the marriage breakdown (Mnookin & Kornhauser 1979), however, the efficacy of the current analysis is to shed light on the compelling factors that inform the multiple framework approach legal parties and interviewees in this study possess. These factors appear to straddle the official and unofficial spheres because certain outcomes or features spill across the boundary that loosely separates the two spheres.

One particular navigating factor is *izzat*. The Urdu word is highly nuanced in the Punjab and diaspora contexts. *Izzat* can directly contribute or detract to a sense of family or

ethnic minority identity and pride. This aspect is perhaps the root cause of why Canadian-born Punjabi-Sikhs think of *izzat* as a predominantly negative aspect to their community practices.

There are also navigating factors that stand apart from distinctly Punjabi or Sikh approaches relating to norms and practices. This study has resolutely found that when certain issues are present in the marriage breakdown, the official law's intervention is assured as it is formally required. A critical analysis of the official law context suggests that disputing parties challenge, navigate and/or strategically employ numerous forums before, in parallel, or after the official law in order to address the marriage breakdown; but within the official family law context, like in the case *Grewal v Kaur*, it was found that legal requirements, such as immigration, compelled the disputing parties to resolve their marital breakdown in the official setting of a family court.

Thus, the aunts of Grewal and Kaur attempted to arrange an "exchange marriage" where each aunt's adoptive son would marry their Indian niece. As Ballard (2004, 8 ff) notes, a *rishta* is more than just the transfer of a bride from one family to another; it also "sets up a network of affinal relationships between two corporate, extended families." Indeed, women have emerged as central players in constructing new transnational social spaces. Thus, the marriages of these two couples would facilitate the subsequent migration (chain migration) of kin relations of both families. With respect to the breakdown of the marriage, Justice Sproat recounts Kaur's reasons for the marriage breakdown:

"Kaur offered a number of explanations for the breakdown of the marriage and her decision to travel to B.C. as soon as she arrived in Canada. Kaur claimed Grewal rejected her, his relatives mistreated her after the marriage and called her names and taunted her that Grewal only married her to secure his sister's immigration to Canada. In her Answer and Amended Answer, she asserted that Grewal and his family committed acts of mental cruelty and contempt that led to the failure of the marriage "in September 2007" (not July 2007 when she had arrived in the country).

Kaur also contended that her brother had gotten cold feet when he discovered that there had been previous attempts to bring Grewal's [sister] to Canada, and that he was backing out of sponsoring [her]. It was this development that had angered Grewal's family and turned Grewal against her. The reason she went to B.C. was to plead with her brother, to sponsor [Grewal's sister], in an effort to save her marriage." (*Grewal v Kaur 2011 OJ 1413* at 34, 35)

To address the breakdown, Kaur travelled directly to see her brother in British Columbia instead of reporting to Grewal when she obtained her visa and landed in Canada. Grewal accused Kaur of committing immigration fraud. It thus appeared to the Ontario family law court that Kaur was solely interested in immigrating to Canada by any means and that she had no sincere intention to live with Grewal.

“I have found on the evidence that, while Grewal was motivated to marry Kaur in part by his desire to bring his sister to Canada, through an exchange marriage involving Kaur's brother, his intention was to live together with Kaur in Canada as a married couple. By contrast, Kaur's sole intention in entering the marriage was to secure her immigration to Canada, and she did not intend to remain in the marriage once her objective was achieved. In this regard, there was misrepresentation and fraud on the part of Kaur in entering the marriage, without which Grewal would not have proceeded with the marriage.” (*Grewal v Kaur 2011 OJ 1413*, at 11)

Her attempts to explain Punjabi-Sikh norms of *izzat* and family obligation within the context of exchange marriage were not substantiated or supported by testimony from her brother or aunt, who resided in British Columbia and were not in attendance at the trial in Ontario. She lacked the legal counsel or strategy needed to prove her story was valid. This confirms that navigating factors is a useful concept, but in lived reality it is by far not always successful.

A related aspect of dispute settlement studies explored by Keebet von Benda-Beckmann (1981) concerns forum shopping, in which disputants choose between different forums and base their choice on what they hope the outcome of the dispute will be, however vague or ill-founded their expectations. This view uncovers another aspect of “law as process”, then, where disputes are observed as having several aspects, consideration of which leads to the establishment of a jurisdiction for its consideration, but also, these various forums and their associated functionaries participate in “shopping forums”, where an attempt is made to acquire and manipulate some disputes from which they expect to gain political advantage, or fend off disputes they fear will threaten their interests (von Benda-Beckmann 1981, 117).

This aspect of dispute processing serves a productive function in the current study, since family law actors acknowledge yet simultaneously distance themselves as legal actors when addressing immigration-related matters intrinsically tied up with family law matters for Punjabi-Sikhs. As stated, Grewal requested an annulment whilst Kaur requested a divorce due to an “exchange” marriage that was not successful. The justice preferred the testimony of Grewal, who asserted that Kaur married him solely to immigrate to Canada. Grewal, who had been married two times (to women based in India) before the present marriage, was deemed to be a credible source and his version of the events was believed to be true. Grewal was also supported by the testimony of his aunt/adoptive mother. Was his testimony acceptable just because the court could “understand” or “interpret” what Grewal was saying, whereas Kaur’s explanations were unsupported? But this could also be because Kaur’s explanations are also incommensurable with the official law’s deficient or patchy understanding of exchange marriage and the importance of kinship. Perhaps this credibility

was partly the result of its coincidence with increased regulation of marriage for the sole purpose of immigration (Wray 2006, 2009, 2011; Charsley & Benson 2012; de Hart 2006).

This section has elaborated the third component of the conceptual framework concerning navigating factors. It was demonstrated that certain phenomena, like *izzat* and immigration, are considered navigating factors because they trigger a switch of forum, whether within a sphere or between the official and unofficial spheres. Immigration is indeed an apt navigating factor, and though I initially set out to complete an analysis of immigration in the navigating factors chapter (Chapter 9), that is no longer the case. Analysing the fieldwork data, which includes legal cases and interviews with Punjabi-Sikhs, it was found that though immigration is relevant, other phenomena appear to be more pertinent. Therefore the navigating factors addressed in Chapter 9 adapted to encompass other navigating factors that span both types of data.

Explanations for the differences in fieldwork data with respect to immigration are two-fold. Firstly, the interview methodology did not make immigration a requirement for participating in the research project. This was in light of significant challenges in obtaining access to interview participants over the course of fieldwork visits (Section 3.4). Secondly, it follows that marriage migrants facing marriage breakdown issues are necessarily less accessible to a researcher due to their vulnerable position within their marriages and kinship networks, but more starkly, their fear of the state as a result of their insecure residence status (Merali 2009; Kang 2006; Alaggia et al 2009; Stewart 2013; Bajpai 2013; Goel 2005; Anitha 2010, 2011). Though immigration-related themes are discussed throughout the fieldwork chapters, I complete a more robust analysis across the fieldwork data in the final chapter of this thesis (Chapter 10).

Conclusion

This chapter outlined the theoretical framework, rooted in legal pluralism theory and dispute processing, and the conceptual schematic of official and unofficial spheres and navigating factors. While it is acknowledged that a simplistic binary between the official and unofficial may be overstated, this chapter argues that conceptualising the various forums and processes utilised in marriage breakdown as existing within or between these spheres provocatively suggests new ways of thinking about access to family justice in multicultural western legal jurisdictions. In a sense, these spheres can be considered to be what Moore (1978, 55) calls “semi-autonomous social fields” which are “set in a larger social matrix which can, and does, affect and invade it, sometimes at the invitation of persons inside it, sometimes at its own instance”. Indeed, the official and unofficial spheres are separate yet also share an area of overlap, which is the central jurisdiction where navigating factors might further explain the forum chosen, utilised or resorted to.

Section 2.1 established that “law as process” is a productive avenue through which legal pluralism can be utilized to examine Punjabi-Sikh disputants’ use of forums within and outside of the official law. Section 2.2 established how this theoretical framework applies to the study of marriage breakdown through the development of a three-part conceptual schematic. It was asserted that the various forums that disputants utilise exist within and between two spheres, the “official” and “unofficial”. Furthermore, disputants are conceptualised as circulating amongst these spheres through “navigating factors”. For the official sphere, liberal individualism and secularism are noted as the reference points that inform the Canadian civil society, which structure the various forums therein. The unofficial sphere is characterised by the kinship structure of Punjabi society and discusses the markedly different laws and perspectives kinship may entail. Finally, navigating factors contribute to disputants’ strategically utilising forums located in the official and unofficial spheres before, in parallel, and after one another, comprised the final component of the conceptual schematic.

Chapter 3

A legal ethnography of marriage breakdown: Methodology

The fieldwork for this thesis is situated in the province of Ontario in the geographical area surrounding the country's most diverse city of Toronto, called the Greater Toronto Area (GTA) (StatsCan 2007). It is home to more than half of Canada's ethnic minorities.

As Ontario's largest "visible minority" group (which I refer to as ethnic minority group throughout this thesis), South Asians are located in many parts of the GTA.³² The City of Brampton is located on the northwest corner of the GTA with a population of over 520,000 (Brampton 2015). Brampton belongs to the regional municipality of Peel, Canada's third largest municipality according to visible minority population. South Asians make up an overwhelming majority of this visible minority population (Brampton 2013), with Sikhs from Punjab, India as the predominant group (Keung 2008).

This project is largely concerned with analysing talk and text of official law actors and Punjabi-Sikhs. The interdisciplinary bent of socio-legal research results in a varied methodological approach that includes: legal casework, coding, critical discourse analysis and semi-structured interviewing. The data gathered through fieldwork includes: 14 Ontario family law cases concerning marriage breakdown, interviews with 28 participants of married, separated and divorced marital statuses, and 7 interviews with social or legal actors. These primary methodologies were employed alongside my fieldwork notes, and other relevant data collected through site visits to courthouses, family law information centres, community organisations, civic events, as well as conferences and press reports. Supplementary data utilised in this thesis includes ethnographic information obtained by other anthropologists and sociologists on the Punjabi-Sikh diaspora community in Canada and the United Kingdom, as well as relevant studies from Punjab and India. I also utilise studies and reports on access to justice with respect to civil law in general and family law in particular, with a focus on ethnic minorities and women.

This chapter presents the methodology employed for this legal ethnography. Organised into four sections, Chapter 3 gives an overview of the primarily fieldwork data utilised in this doctoral thesis, outlines the legal case work completed, the documentary-based methodologies, as well as the participant-based methodologies and challenges. The

³² In this study and the larger thesis, the demographic category of "visible minority" is called "ethnic minority" in order to align this work with British research on South Asians. I also believe the term ethnic minority is more appropriate because the former term denotes a perceived degree of visibility on the part of the abstract subject whereas ethnic minority acknowledges all people are ethnic yet others are the minority within a given social context (Bannerji 2000, 30).

purpose of this chapter is to outline the multi-method approach adopted to completing nuanced, rich legal ethnographic work on an under-studied ethnic minority community.

3.1 Overview of fieldwork data

This section provides an overview of the primary fieldwork data collected for this doctoral thesis.

With respect to the legal cases, the parties represented in the cases were of varying marital statuses reflecting different points on the spectrum of marriage breakdown. Table 1 demonstrates that 11 cases involve parties who are separated, 2 cases involve void/voidable marriages, and one case concerns parties who are already divorced.

Table 1: Marital status, Petition and Counter-Petition details

| Case | Marital status | Motions |
|-----------------------------------------------------------------------|----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Bath v Bath and another. [2010] OJ 1668 | Separated | Sole custody; Child support; Contribution to extraordinary expenses; Spousal support; Set aside transfer of matrimonial home and for exclusive possession; |
| Bhandal v Bhandal [1999] OJ 1475; Bhandal v Bhandal [1999] OJ 2220 | Separated | Divorce; Motion – place of hearing. |
| Brar v Brar [2010] OJ 5146 | Separated | Child support; Equalisation of the family property; |
| Brar v Dhinsa [2008] OJ 1282 | Separated | Motion – Contempt. |
| Burmi v Dhiman [2001] OJ 2010; Burmi v Dhiman [2001] OJ 2387 | Separated | Divorce; Motion – amend Answer and Counter-Petition; Pleadings, amendments – costs; Corollary relief, interim maintenance; |
| Cheema v Lail [2009] OJ 1774 | Divorced | Child support; Motion – variation or termination of obligation; |
| Garcha v Garcha [2010] OJ 1231 | Separated | Custody and access; Temporary order for sole custody; |
| Gill v Jhajj [2003] OJ 1496 | Separated | Divorce; Matrimonial home; Occupation rent. |
| Grewal v Kaur [2011] OJ 1413 | Separated | Annulment; Divorce. |
| Kaur v Brar [2003] OJ 745 | Separated | Divorce. |
| Lalli v Lalli [2002] OJ 1957 | Separated | Divorce; Corollary relief, maintenance and awards; Corollary relief, maintenance, support guidelines; Special or extraordinary expenses. |
| Rahul v Rahul [2003] OJ 1480 | Void | Invalid marriage. |
| Sidhu v Chahal [2010] OJ 11 | Voidable | Annulment. |
| Takhar v Takhar [2009] OJ 3882; Takhar v Takhar [2009] OJ 5598 | Separated | Interim child support; Special or extraordinary expenses; Interim spousal support; |

With respect to the Punjabi-Sikh interview participants, Table 2 below outlines the details.

Table 2: Interview participants, overview

| Name | Gender | Age range | Religious practice | Caste | Marital Status | Children |
|------------|--------|-----------|---------------------|---------------|------------------------|----------|
| Amrita | Female | 60-69 | Amrit-dhari | Papa | Married | Yes |
| Arvinder | Male | 40-44 | Amrit-dhari | n/a | Married | Yes |
| Birpal | Female | 35-39 | Amrit-dhari | n/a | Married | Yes |
| Deepa | Female | 45-49 | Practicing Sikh | Ramgarhia | Divorced and Remarried | Yes |
| Gurbans | Female | 30-34 | Gursikh | n/a | Married | Yes |
| Gurjeet | Male | 50-59 | Practicing Sikh | Jat | Married | Yes |
| Harinder | Female | 40-44 | Gursikh | Jat | Married | Yes |
| Inderpal | Male | 40-44 | Practicing Sikh | Ramgarhia | Married | Yes |
| Isha | Female | 30-34 | Non-practicing Sikh | Jat | Separated | No |
| Jasmeen | Female | 35-39 | Non-practicing Sikh | Aluwalia | Divorced | No |
| Jaspreet | Female | 20-29 | Amrit-dhari | Jat | Married | No |
| Jatinder | Male | 35-39 | Gursikh | Aluwalia | Married | Yes |
| Jyoti | Female | 45-49 | Non-practicing Sikh | Ramgarhia | Divorced | Yes |
| Kamaljit | Male | 30-34 | Non-practicing Sikh | Chhimba | Divorced | No |
| Naindeep | Male | 35-39 | Amrit-dhari | Saini | Married | Yes |
| Neelam | Female | 30-34 | Amrit-dhari | Papa | Divorced | No |
| Nirmal | Male | 60-69 | Amrit-dhari | Papa | Married | Yes |
| Prem | Female | 50-59 | Amrit-dhari | Jat | Married | Yes |
| Ravneet | Male | 30-34 | Amrit-dhari | N/a | Separated | Yes |
| Rita | Female | 35-39 | Non-practicing Sikh | Jat | Divorced and Remarried | No |
| Sangeeta | Female | 30-34 | Hindu-Punjabi | Hindu-Punjabi | Divorced | No |
| Simran | Female | 30-34 | Gursikh | Aluwalia | Married | Yes |
| Sonni | Female | 30-34 | Non-practicing Sikh | Jat | Divorced and Remarried | No |
| Sukhwinder | Male | 30-34 | Amrit-dhari | Papa | Married | No |
| Sunpreet | Female | 40-44 | Practicing Sikh | Ramgarhia | Married | Yes |
| Tina | Female | 35-39 | Practicing Sikh | Ramgarhia | Married | Yes |
| Zorawar | Male | 30-34 | Amrit-dhari | n/a | Divorced | No |

A total of 17 women and 9 men participated in the interviews. There was a total of 10 amrit-dhari participants and amongst the remaining 17 a range of Punjabi castes were represented in the sample. With respect to marital status, 17 participants were married. I interviewed a total of 7 couples. There were 2 separated and 8 divorced participants. Amongst the divorced participants, 3 participants remarried. Finally, 17 of the 27 participants had children.

3.2 Legal ethnography

This doctoral research project is a legal ethnography situated in the GTA focussing on the topics of dispute resolution, marriage breakdown, access to family justice and multicultural accommodation. I understand the term ethnography in a liberal sense, referring to a set of methods that facilitate the ethnographer's participation, both overtly and covertly, in the daily lives of people for an extended period of time (Hammersley & Atkinson 1995, 1). Much of my early fieldwork in 2011 was spent visiting the Brampton courthouse, as well as many other courthouses located across Southern Ontario in order to observe the court, and retrieve legal case proceedings. Numerous other venues located across the GTA form the backdrop of my fieldwork, such as community town halls, Sikh or Punjabi-focused events, Sikh places of worship, and even the homes of friends and family. Over the years, I was also present in the GTA virtually, since many interviews were conducted on Skype. My continued presence was a major aspect of how I gained trust and obtained interviews over three fieldwork trips (Spring/Summer 2011, June 2012, November 2015).

The section details my approach to legal ethnography as a study of the "local level operation of the law" (Kotiswaran 2008, 580), in order to provide a grounded critique of access to family justice. Like other forms of social research, ethnography cannot be value neutral or objective, and its role inevitably involves political intervention (Hammersley & Atkinson 1995, 14-15). It follows, then, that I ought to take responsibility for my value commitments and for the effects of my work. As a legal ethnographer, my objective lies in "analyzing legal practice, envisioning social justice" (Trubek 2014). As a socio-legal researcher striving to "understand and communicate the perspectives of those who are habitually ignored by legal scholars and policy makers" (Engel 1999, 5), I characterise this doctoral project at the nexus point between the "researcher/subject" (Gray 2002, 141). Studying the official law actors and the disputants, an effort has been made to examine everyday experiences which legal and political systems often overlook, which, from a socio-legal perspective reveals the most about what the law is and how it works (Engel 1999, 5).

With respect to epistemology, one pertinent question raised to me at SOAS in 2011 before I began my fieldwork, was the problem with studying one's own community, which

“is alleged to be the problem of gaining enough distance” (Abu-Lughod 1991, 141). Concerns about distance suggest that legal anthropologists continue to be “defined as a being who must stand apart from the Other” (Abu-Lughod 1991, 141).³³ However, “What we call the outside is a position *within* a larger political-historical complex” (Abu-Lughod 1991, 141). An important aspect throughout the fieldwork process, then, was to attend to the positionality of the anthropological self as well as its representation of others on a continual basis (Abu-Lughod 1991, 141-142). Amongst the GTA Punjabi-Sikh community, I consider my positionality as simultaneously an insider and outsider. My widely known research interest in marriage breakdown amongst my GTA peers and acquaintances led to a gradual increase in the number of interview participants who have come forward (and continue to come forward). Coincidentally or not, access to participants appears to have increased as my own marital status changed from single to engaged and finally, married.

The following section addresses the legal casework completed, which is followed by coding, and then critical discourse analysis. Section 3.4 provides an overview of the fieldwork trips and access to research participants, which is followed by semi-structured interviewing and fieldwork ethics.

3.3 Legal casework

The 14 family law cases utilised in this doctoral thesis involve Punjabi-Sikhs and various issues related to marriage breakdown. I utilised a range of formal and/or official as well as informal or unofficial documentation. The documentary sources comprise official case judgments, which demonstrate the official law’s interpretation of the facts and issues before the court. I also obtained submissions from the parties, which demonstrate the “bias” of her/his interests, perspectives and presuppositions – an essential source that can be carefully employed in order to understand the legal consciousness of the litigants (Hammersley & Atkinson 1995, 157). Where possible, I also refer to news reports of the cases. I obtained the official documents from various courthouses across Ontario, particularly from the GTA (see Figures 1 and 2).

³³ The fundamental assumption of cultural anthropology is the distinction between the self and other that is critical to the study of “culture”. Abu-Lughod (1991, 137-138) argues that culture is a discourse in anthropology utilised to enforce separations that inevitably carry a sense of hierarchy.

Figure 1: Ontario family courthouse locations



Figure 2: Ontario family courthouse locations, GTA



Table 3 outlines the grounds for petition and/or counter-petition in each case. The husband was petitioner in eight cases (57%), and the wife was petitioner in six cases (43%). Twelve men (out of 14, 86%), including one lawyer, versus 11 women (out of 14, 79%) were represented by counsel. This relatively high level of counsel representation stands in sharp contrast to access to justice reports that indicate that the majority of Canadians who approach civil courts are not represented (DeGreeve et al 2010, 116). In many cases, the grounds for petition or counter-petition overlap (i.e. a petitioner motions for child support and spousal support).

Table 3: Punjabi-Sikh family law cases, overview

| Case | Petitioner | Grounds for petition/Counter-petition |
|--------------------------------|------------|--------------------------------------------------------------------|
| Bath v Bath [2010] | Husband | Spousal support; child support; custody; access; matrimonial home. |
| Bhandal v Bhandal [1999] | Husband | Separation; place of hearing; custody; child support. |
| Brar v Brar [2010] | Wife | Separation; maintenance and support; child support; equalization. |
| Brar v Dhinsa [2008] | Husband | Separation; division of assets |
| Burmi v Dhiman, Another [2001] | Husband | Separation; spousal support; damages; restraining order. |
| Cheema v Lail [2009] | Husband | Maintenance; spousal support; child support. |
| Garcha v Garcha [2010] | Husband | Child custody; equalization. |
| Gill v Jhajj [2003] | Wife | Separation; matrimonial home; occupation rent. |
| Grewal v Kaur [2009] | Husband | Annulment; divorce. |
| Kaur v Brar [2003] | Wife | Separation. |
| Lalli v Lalli [2002] | Wife | Spousal support; child support; restraining order. |
| Takhar v Takhar [2009] | Wife | Marriage contract; spousal support; child support. |
| Rahul v Rahul [2003] | Husband | Invalid marriage; void ab initio. |
| Sidhu v Chahal [2010] | Wife | Annulment. |

Table 4 (below) demonstrates that of the 28 parties represented in the fourteen cases, the majority (19 of 28, 68%) of the parties were born in India. Three of the parties (11%) were born in England, and the relevant details of the remaining six parties (21%) are unknown.

Table 4: Country of birth

| | Wife | Husband | N | % |
|---------|------|---------|-----------|------------|
| England | 1 | 2 | 3 | 11 |
| India | 10 | 9 | 19 | 68 |
| Unknown | 3 | 3 | 6 | 21 |
| | | | 28 | 100 |

Given these figures concerning country of birth, it can be deduced that 22 out of 28 parties (79%) are immigrants to Canada, who came to Ontario, Canada after the 1970s. The immigration status of the remaining six parties is unknown. The characteristics of the legal cases are quite striking in comparison to the interviews completed, where most of the parties were either born or educated from a young age in Canada.

3.3.1 Case selection

In order to arrive at the present study of marriage breakdown amongst Punjabi-Sikhs, I conducted a search for family law cases through two legal databases: CanLii, a publicly accessible database of recent legal decisions in Canada, and QuickLaw, a Canada-specific legal database provided by LexisNexis. I limited my search in both databases to Ontario family law courts only, with a twenty-year time span from 1990 to 2010. Though Punjabi-Sikhs are a sizeable population in British Columbia and Ontario, I focused on the province of Ontario, which was a practical option, given the geographical distance and budget of this fieldwork research. I initially intended to focus on two particular GTA courthouses but my assessment of the total cases available resulted in a revised strategy to search for reported family law cases in all Ontario courthouses.

Since legal cases are not distinguished by the party's religious affiliation, I had to devise a range of root keywords in order to locate cases. The keywords included: marriage, separation, divorce, spousal support, family/matrimonial property, child custody and access, child protection, child support, sexual assault, rape, and domestic violence, which were cross-referenced with specific identifier words, such as: South Asian, Indian, Punjab/Panjab, Hindu Marriage Act, Sikh, Kaur, Singh. The yielded legal cases involved litigants where at least one of the parties was Punjabi-Sikh. From CanLii, the initial results totalled 13 cases, whilst QuickLaw yielded 17 cases. I read through the compiled list in order to ensure the case actually involved parties with ties to Punjab, India and the Sikh tradition. The final case list totalled 14 cases.

3.3.2 Access to legal case documentation

Instead of relying solely on the case judgments available through the legal databases, I took inspiration from Fournier's (2010) analysis of family law cases involving *mahr* (dower) and attempted to obtain the case documentation submitted to the court by each party. The geographic location, and number of cases at each courthouse determined whether I would be able to retrieve relevant documentation (see Figures 1 & 2). Though I was not able to observe family law cases during fieldwork because the sessions were held "in camera", I did have full access to 12 of the 14 cases from the courthouse counter services.

Access was dependent upon me having the full case citation as well as the correct courthouse location, which was not always apparent from the published case judgment. These key items were like passwords that effectively provided me access to the court files located onsite via each court's counter service clerks. The establishment of a good relationship with these clerks was essential for obtaining access.³⁴

Older cases were not typically kept at the courthouse and were ordered for retrieval. Each case required filing a form that noted the citation details. The courts are busy and I had to be flexible. After 10 business days, I would return to the courthouse and request the newly arrived files. Standing at the counter, I would review the case files in the presence of the counter service clerks; no facilities were provided aside from a photocopy machine. A few times, errors made on the part of the clerk or myself would result in non-retrieval, causing significant delay and frustration.

The administrative cost of duplicating the documentation imposed a limitation on the acquisition.³⁵ In instances when there was a boxful of documentation, I had to strategically choose which documents were most relevant. The Petition and Answer were deemed the most important, and in some instances, additional documentation was photocopied because it demonstrated a key aspect of the disconnection between the litigant's expectations or assumptions and the legal permissibility maintained by the court.³⁶ I was restricted to solely utilising the court decision in two cases. The documentation for these cases was irretrievable due to time constraints and geographic considerations. For example, one case took place in Thunder Bay, a city in north-western Ontario that is over 15 hours away by car or bus.

³⁴ Oftentimes, the clerks informed me there was an administrative fee for retrieval, but after explaining my dissertation project, the clerks were kind enough to waive the fee.

³⁵ I purchased a portable scanner for the purposes of efficiently storing data however I was stopped from using this device at the Toronto Courthouse.

³⁶ On my last visit to the courthouse in November 2015, I was armed with my smartphone and took pictures of the documents for three cases.

The process of visiting courthouses and reviewing documentation was necessarily time consuming. Many cases had to be retrieved from remote archives and consequently required at least two visits to the courthouse. Learning by trial and error characterised the legal casework component of my fieldwork.

3.4 Documentary evidence

This chapter section provides an overview of the documentary evidence gathered for this doctoral thesis, which includes coding, critical discourse analysis, as well as considering the methodological limitations of this type of data.

3.4.1 Coding

For the purposes of conducting systematic data analysis, I utilised Nvivo, a computer assisted qualitative data analysis software (CAQDAS). In Nvivo, I was able to build my analysis piece by piece, as I learned more about the tools this software offers and coded my data accordingly. It was possible to constantly interrogate the data, moving from lower order to higher order themes. As a result, this software enhanced the transparency of the research process in conducting and interpreting the qualitative data I compiled over the three rounds of fieldwork completed from 2011 – 2015. The use of Nvivo assisted me to tease out themes from the data and constantly reflect on the interview participant transcripts and legal cases in order to re-examine and confirm certain aspects (Bryman & Burgess 1994; Veal 2005).

3.4.2 Critical discourse analysis

In many organisational settings the use and production of documents are an integral part of everyday life (Levi & Valverde 2008). In formal and informal, legal and non-legal, interactions, "[c]ritical discourse analysts pay attention to the types of discourses that are employed, privileged, and excluded in a given context to illuminate hidden power relationships" (Dunn & Kaplan 2009, 347). Critical discourse analysis examines how the enactment, expression or legitimation of dominance in the production of the various structures of talk and text are distinguished from the functions, consequences or results of such structures for the social minds of recipients (van Dijk 1992, 259; Ferguson 1996). In simpler terms, critical discourse analysis attempts to uncover power relations and examine the dialogue between actors when some form of interaction occurs (Fairclough 2005, 68). This methodology therefore coincides with the theoretical underpinnings of this research on the perspectives of an under-studied ethnic minority community (Section 1.1.2).

Critical discourse analysis aims to discover dominance, variously demonstrated in political, cultural, class, ethnic, racial and gender relations (van Dijk 1993, 249-50). I found

this methodology useful in the examination of court documents, such as judgments, submissions from parties, as well as court transcripts. Umphrey (1999, 395) argues that trials are a materialisation of a general process of legal meaning making. This is an essential element to the analysis this thesis will present: to examine the dialogic between official law actors and Punjabi-Sikhs who go before the courts in order to demonstrate that law is not only constitutive of social relations, but it is also constituted by them (Silbey 1992, Engel 1993).

Reading, re-reading and critically engaging with the content of the discussion, I attempted to decipher how judges adjudicated cases when they did not comprehend the arguments or evidence (*Burmi v Dhiman*) as well as cases where the judges astutely saw through the legal strategising (*Kaur v Brar*), and finally in cases where the judge was confused/frustrated by the counsel's ill preparation (*Brar v Dhinsa*).

In the legal cases this dissertation examines, parties often use narrative in order to present their “side of the story” to the official law actors. However, the law regulates the narration of these stories through the operation of various rules. Said differently, the law attempts to discipline both the form and substance of narrative in order to produce particular kinds of stories (Umphrey 1999, 40). Critical discourse analysis is thus a key methodology in order to assess how official law actors accept or undercut narratives concerning religious and culture-specific norms and practices.

3.4.3 Methodological limitations of documentary evidence

Like any other class of data, the use of formal documentation has limitations. A critique of utilising formal documentation is that sociologists tend to treat data from official sources at face value effectively dismissing its character as a social product. The process of reviewing hundreds of pages of official documentation during fieldwork made me appreciate how essential English literacy is to the process. While the Ministry of the Attorney General has introduced reforms to the civil law system in order to enhance access to justice, this thesis will explore the limits of such access to justice reforms in the legal cases examined (Section 9.3). For example, at the Milton courthouse, step-by-step booklets on the family law court process were displayed prominently on a wall for people to collect. Simpler English was used in the booklet, but it still required a person to be able to comprehend complex legal processes in English. These booklets would thus be of little use to many of the parties from the legal cases examined and perhaps partly explains why 82 per cent of parties (23 out of 28) had counsel representation.

Another concern when reviewing official documentation is that the data derived from such sources may be inadequate in some way. The primary limitation of official data sources is that they are only able to encompass so much: disputants could discuss the

relevance of kinship only so far as it was applicable to the particular issue(s) before the court. The documents may be subject to bias or distortion, or the particular bureaucracy examined may not record the information that sociologists are most interested in obtaining (Hammersley & Atkinson 1995, 168).

As an ethnographer utilising formal as well as informal sources, I am cognisant that all classes of data have their problems, all are produced socially, and none can be treated as neutral or transparent representations of reality. Conversely, "there is no logical reason to regard documents or similar information as especially problematic or totally vitiated" (Hammersley & Atkinson 1995, 169). Instead, this thesis utilises a wide selection of documentary evidence in addition to other sources of data, such as interviews. The following section addresses the history of fieldwork conducted in this dissertation as well as the challenges of accessing research participants.

3.5 Adapting to the field: access to Punjabi-Sikhs

I began fieldwork in Spring/Summer 2011 and my initial task was to collect a statistically significant amount of legal cases, arrange interviews with various legal and social service actors, and collect police reports on domestic violence. The simple act of collecting relevant legal cases, however, drastically changed the fieldwork plan. As I explain in Section 3.2, Canadian family legal cases are not categorised by religion, race or ethnicity, and in fact such characteristics have to be uncovered in each individual case. This caused significant delay thus completely altering the fieldwork plan for this thesis.

Whilst every Punjabi-Sikh I spoke with had a near or distant relative who was undergoing marriage breakdown, the subject of marriage breakdown itself was largely taboo. As a result of my "insider" positionality, on my 2012 fieldwork trip I prepared a list of potential Punjabi-Sikh interview participants I knew had experience with marriage breakdown related issues, however, none of the potential interviewees were willing to participate.

When I returned to SOAS, I reflected on what could explain this lack of participation. In the process of conducting research, the element of community control is often underestimated. Community control refers to the participation of community members to define and substantiate their social realities and decide who and what is researched. This type of participation increases a group's autonomy through the process of praxis (Marshall & Batten 2003, 144). It respects cultural values and belief systems, which are related to informed consent. However, the inevitable presence of dissent or problems within a community, pose difficulties and the situation becomes more complex. I considered if perhaps it was because I was a feminist, unmarried, or that I was not sensitive enough to the

subject. The fieldwork that informs this thesis was thus a reflexive process that required me to continually adapt my approach.

The countless methodological questions that I contemplated led me to consult my supervisor. Reorienting the thesis research as concerned with marriage and its breakdown appeared to be less threatening to potential research participants since employing "[c]ulturally appropriate research affords a method that allows socially legitimate collective knowledge to be used as part of the methodological framework of the research" (Brant-Castellano 1986 cited in Marshall & Batten 2003, 145). To date, I have not conducted research with anyone I did not know, or who was not introduced through my network of Punjabi and Sikh friends in Toronto.

The non-traditional gatekeepers who facilitated access were influential women and men, who operated in a less public way – they were pious, business, academic, or working women and men connected to the community through friendships, volunteering, and common interests. Slowly, research participants began to contact me or consent to participate in the research. It appeared that some research participants needed to establish informal contact with me through Facebook or Twitter in order to decipher my aims, interest and approach to marriage breakdown. For example, one divorced woman whom I had known for decades consented to participate in the research more than a year after I had first approached her. She explained that she wanted to determine whether my interest in her divorce was professional or gossip-related.

This process of reflexively adapting to the challenges presented was fruitful though laboured. It significantly impacted on the total number of participants I was able to obtain. By the final write-up phase, I obtained interviews with 9 married people, 3 divorced people, and 3 social actors. The amount of interviews did not satisfy the minimum number of interviews needed. Since there were vast differences in social characteristics of the interviewees in comparison to the parties in the family law cases, the interview data was set aside and the first version of the dissertation focused exclusively on the family law cases.

In consultation with other socio-legal scholars, I realised that the interviews with Punjabi-Sikhs were an intrinsic element to my main argument and also provided a counter-balance to the data obtained from the official law context.³⁷ The thesis project was adjusted to accommodate this decision and in consultation with my supervisor, I revised my research project to include legal cases and interviews, along with other relevant data collected during fieldwork. This fresh take on methodological design instilled a new vigour to obtain interviewees. In November 2015, I was able to obtain interviews with an additional 8

³⁷ I am grateful for the advice I received from Sally Engle Merry, Anne Bunting, and Lesley Jacobs on the theoretical and methodological frameworks of this thesis.

married, 2 separated, and 6 divorced people in addition to 2 more interviews with social and legal actors. As of the date of submission, divorced Punjabi-Sikhs continue to come forward thus indicating a real interest and need for this research.

3.5.1 Semi-structured interviewing

The phenomenon of marriage breakdown in its natural setting, whether in a person's home, over a meal served in the community kitchen of a *gurdwara*, in a café, or the public spaces outside a courtroom, provided insight into the "thickness" of everyday life (Geertz 1973).

Over the course of three fieldwork site visits (Spring/Summer 2011, June 2012, November 2015), access to participants slowly increased. Though my physical location was not situated in the GTA over the entirety of this project's development, as a person who grew up, was educated and employed in, and continues to have deep personal and professional connections to the GTA, I was able to stay engaged on the topic of this thesis through professional contacts, social media, online news reports, conferences and local friendships. It was this continued presence – in person and otherwise - over an extended period of time that facilitated increasing numbers of people coming forward.

The use of semi-structured interviewing allows for an investigation of social elements by asking people to talk, and subsequently gather or construct knowledge by listening and interpreting what they say and how they say it (Mason 2002, 224). From the outset, the research project did not claim to be a representative study of Punjabi-Sikhs. Respondents were recruited to explore marriage, conflict resolution in marital and family relationships, as well as marriage breakdown. The participant criteria was flexible: self-identified Punjabi-Sikh women and men who are married, divorced, in the process of separation or divorce, or widowed and were born or have citizenship in Canada. There were no selection criteria regarding age, social status, ethnic or cultural background, or country of origin. The only limitation was that "candidates should be able to understand and speak English" though Punjabi-speakers could be accommodated as well.

Through the identification of non-traditional gatekeepers, I obtained research participants, however this access had gendered implications. The project set out to interview ten women and men respectively, across all marital statuses, and in the end, a total of 27 Punjabi-Sikhs participated in the study, of which 17 were women and 10 were men. Interviews were conducted across age groups, from 26 to 64 years old, with a median age of 35 years old, and an average age of 38.8 years old.

A substantial number of interview participants were married, a total of 10 women and 7 men. This is a reflection of the larger community norms, but I have realised that "married" does not negate the presence of marital or family conflict. In January 2016, I co-presented with my spouse a workshop on Sikh marriage at the Toronto Sikh Retreat. After the

workshop, an amrit-dhari woman approached me and she explained that she faces significant challenges within her own marriage because she resides in a joint household. She "just wanted the fighting to stop" since leaving the joint family was not an option.

The research inadvertently reflected the gender norms of the Punjabi-Sikh community: though I approached both women and men, women were much more accessible. The most effective strategy utilised to obtain participants was the snowball method. As this thesis discusses, the kinship orientation of Punjabi-Sikhs, especially religiously observant men, meant that their participation occurred through an informal gatekeeper. Married men participated in the project more easily than separated or divorced men. It is noteworthy, however, that aside from one married man, the rest of the interviews were conducted jointly with their spouses present. Over three site visits, my access to male participants increased. Perhaps it was because of my persistence, or perhaps like Holden (2003, 48-49), this gradual increase in access is correlated to the change in my marital status, from single unattached woman to engaged and then married woman.

Research conducted on sensitive subjects can result in exposing their vulnerabilities. I had to be cognisant that the interview would evoke painful memories and past history the participant would rather forget. Fully preparing for interviews was thus important and entailed pre-testing the interview questions, emailing the questions to participants in advance, asking the participants if they were comfortable and informing them the questions were voluntary and being mindful of how I presented myself to research participants. I conducted interviews in a location chosen by the research participant, and each participant was provided with an explanation of the research project, the consent form, and the interview questions, before the interview.

The approach I adopted in conducting interviews was as if each session was a "conversation with a purpose" (Burgess 1984, 102 cited in Mason 2002, 224). As the interviewer, I explored my research questions through active engagement with the interviewees around relevant issues, topics and experiences during the interview itself in a conversational, flexible and fluid manner, allowing the research participant space to discuss her/his life story. The interviews tended to take a biographical story format, since the participant would recount her/his marriage, family relations, and other detail surrounding the marriage breakdown. Razack (1993) explains the importance of storytelling in interviewing methodology. She asserts that

the stories are being told to make a particular point and they are being heard in a particular way. It will not be possible to squeeze all the realities of daily life into this framework; some realities are distorted to the point of being unrecognisable. (Razack 1993, 104)

The treatment of interviews as a site of knowledge construction, where both the interviewer and research participant are co-participants in the process is an appropriate way in which to conceptualise the social interaction, where *both* the interviewee and the research participant are co-creators.

3.5.2 Fieldwork ethics

Fieldwork is demanding and involves multiple negotiations regarding the research project while continually dealing with ethical dilemmas. Research ethics involve the protection of the subjects of study in order to safeguard against risks that can be trivial or profound, physical or psychological, individual or social. Acute moral and ethical dilemmas can and do occur, which often need to be resolved situationally, spontaneously, and often without the luxury of consultation with a more experienced colleague (Punch 1994: 84).

It is relevant that shame refers to "a painful emotion caused by a strong sense of guilt, embarrassment, unworthiness, or disgrace" (Dictionary 2014). It is a form of vulnerability, which poses an emotional risk to the person because they are exposed. As a result, shame is an important emotion for qualitative research on sensitive subjects because, one, the topic itself can be shameful, and two, the actual act of talking about the topic of inquiry can be shameful. In conducting this research, then, a recurrent question I reflected on was: How do I ethically design and carry out research on an ethnic minority community concerning a shameful and taboo subject? And, how do I account for the impact such an experience may have on a participant?

The navigation between my research ethics and the research objective involved reflexively questioning my approach and assessing how I communicated my research interest. "The more 'deviant' and secretive the activity, the more likely it is that subjects will fear consequences, and 'the single most likely source of harm in social science inquiry is that the disclosure of private knowledge can be damaging'" (Reiss 1979, 73 cited in Punch 1994, 93). Since Punjabi-Sikhs were initially reluctant to discuss marriage breakdown, I had to ethically modify the research framework in order to incorporate the practices relevant to Punjabi-Sikhs.

Informed consent involves the "subjects of research having the right to be informed that they are being researched and also about the nature of the research" (Punch 1994, 90). However, when you are examining legal documents that are publically accessible, no explicit consent is involved. Indeed, traversing the public/private dichotomy in the fieldwork component for this thesis was necessary. It complicated dominant narratives of the place of gender, culture and religion, and challenged me to think reflexively about existing research approaches utilised to study ethnic minority communities and their socio-legal practices.

It is pertinent to note that none of the interviews conducted for this research overlap with the parties represented in the legal cases. This option was deliberated in Fall 2012 after I had conducted my first round of fieldwork. The methodology of analysing the legal case as well as conducting interviews with the parties themselves was a methodology employed by Merry (1993) in her seminal study of legal consciousness amongst working class Americans in Boston. She conducted these interviews at the courthouse, with the cooperation of official law actors, directly after the case was heard. In this research project, however, I obtained the legal cases remotely from a database oftentimes many years after the case took place. I had to seriously consider the ethics and implications of inadvertently shaming the parties in the legal cases because their names would be disclosed. In the spirit of conducting empathetic, non-exploitative research on a topic relevant and sensitive to this particular community, it was imperative to proceed with caution.

A related dimension concerned the question of how to discuss the legal cases effectively yet sensitively. The simple act of discussing the details surrounding marriage breakdown can re-victimise and shame the parties by airing their dirty laundry yet again outside the context of the family law courts. The departmental ethics committee recommended anonymisation and proceeding with the utmost care and concern for the parties involved. As a result, no further attempt was made to contact the parties in the legal cases analysed. In efforts to navigate the slippery slope of *izzat* and shame, I proceeded to declare the legal cases by surname only, avoid referring to the parties' full names, and anonymising the names of their children. Furthermore, I present the details of the marriage breakdown by focusing on the most pertinent details for the analysis instead of recording the entire timeline of the marriage breakdown. In this way, I believe I keep the integrity of the parties and also achieve the goals of this thesis.

Conclusion

The cultural work of interpretation in official and unofficial sphere analyses lies in the relation between legal and non-legal narratives, where better critical tools are needed for revealing the hidden and neglected connections of one with the other (Ferguson 1996, 84). The fieldwork methodology that informs this thesis was a dynamic process that required me as the researcher to be flexible in my approach and outlook on my legal interest in marriage breakdown. This chapter on methodology outlined the methodological design and the evolution of the project, issues of access and ethical considerations. Through a reflexive process of adjustment, the methodologies utilised in this dissertation include coding, legal case methodology, critical discourse analyses, and semi-structured interviews.

Chapter 4

Marriage (breakdown) in Punjab and the Diaspora

Punjab is the “land of the five rivers”, a region located in the north of the Indian subcontinent. Current-day Punjab is restricted to the much-truncated Indian state of Punjab (East Punjab), divided along linguistic and religious lines in 1966; and since 1947, situated across from the more populous Punjab in Pakistan (West Punjab). Looking beyond contested borders, Punjab is more adequately imagined as bounded by the Khyber Pass and the Ganga basin, beyond the constricted passage between the Delhi Ridge and the Himalayan foothills (P. Singh 2008, 3). Lauded as the agricultural powerhouse of India, current-day Punjab’s economic success was facilitated in the post-independence era through the Green Revolution strategy of the 1960s and 1970s.

Figure 3: West and East Punjab today



Attention to the Punjab context, characterised by its distinct traditional relationship between the personal law system and customary laws, a specialised area of law which is largely out-dated and gravely under-theorised (Diwan 1984, Chaudhary 1999; also Sethi 2009). This scenario perhaps exists because there are no family courts in Punjab (Rajput 2004, 102). The way people settle disputes is informed by their social structure and value system (Cohn 1959; Kokal 2014). Family law matters remain largely at the local level where

parties can approach the Lok Adalat for informal arbitration (Kokal 2013),³⁸ or a case can be referred to the Punjab and Haryana High Court (Krishnan et al 2014).³⁹ While this may be a reflection of the nation-state's overarching goal of modernising and streamlining Indian family law, by slowly reforming aspects of customary law (i.e. property rights), few legal authors specifically address the Punjab context, the impact on Sikhs, and furthermore, the impact on women (but see Rajput 2004).

The goal of this chapter cannot be to fill this lacuna as it is out of the scope of this thesis. However, this thesis chapter will draw attention to the structures of Punjabi society, Hindu personal law and Punjabi customary law in order to provide some background understanding of the distinctive social and legal baggage that Sikhs from Punjab might carry with them as transmigrants. The purpose of this chapter is to substantiate the central claim of this thesis that Punjabi-Sikhs employ a multiple framework approach to marriage breakdown, where they challenge, navigate and/or strategically employ numerous forums before, in parallel and/or after the official law. By examining the Punjab context, tracing key concepts in Punjabi and Indian law and society, this chapter provides an appreciation of the importance of kinship orientation for most Punjabi-Sikhs. It was clear in the fieldwork for this doctoral thesis that kinship and custom travel with transmigrants to diaspora communities, such as Canada.

There are three major components to this chapter. The first chapter section will discuss key concepts from Punjab; the second section addresses Hindu personal law with respect to marriage and divorce laws, as well as customary law. The final section discusses marriage migration and marriage breakdown within the context of the global Punjabi-Sikh diaspora.

4.1 Key concepts from Punjab

This chapter section provides the reader with concepts that are important for understanding the specificity of Punjab, its customary laws, and Hindu personal law, including, caste, kinship and the joint household. Also, I will briefly discuss Sikhi, which, as a minority religion in India subsumed by the category of Hindu personal law, occupies an ambivalent place amongst personal and customary laws, but is embedded in the Punjab and diaspora contexts.

³⁸ The Lok Adalat is an ADR tribunal designed to settle disputes in the pre-litigation phase (PULSA 2016). The primary focus of Lok Adalats concerns public utility services but matters pertaining to marriage and family disputes can also be adjudicated.

³⁹ Mahila Lok Adalat is another option, but there are only two locations (Chandigarh and Patiala) (Rajput 2004, 102; PULSA 2016). Also see Vatuk 2013, Shariff 2013 and Basu 2015 on women's courts in other parts of India.

4.1.1 Caste

The concepts of the caste and caste system refer to a person's community, which is defined by the Hindu concepts of *zati* (*jat/zat* in Punjabi) and *varna*. The former term refers to birth group, the latter term refers to the *varnashrama dharma* system of social stratification (*varna*, herein) propounded by a variety of widely revered Hindu sacred scriptures that is divisible into four units, commonly understood as hierarchically ranked: priests (*brahmins*), soldiers (*kshatriyas*), traders (*vaishyas*), and servants (*shudras*) (Roy 2014, 24). People identified as "scheduled caste" (untouchables, *dalit*) or hill and forest dwelling populations ("scheduled tribes") occupy an ambivalent position below/outside/parallel to the *varna* scheme (Bayly 2001, 8).

The primary function of caste within the Punjab context is said to organise society into groups of endogamous inter-marrying clans (Hershman 1981, 54).⁴⁰ Within each exogamous caste group, which is usually occupational, are sub-castes (*got*), which are local sections in a particular region (Hershman 1981, 54). A clan (*biraderi, khandan*) can be dispersed throughout Punjab and families are linked together through complex networks of extra-familial kinship ties (Ballard 1990, 229-230).

Caste has often been observed in orientalist ethnologies as a unified reconstructed and repeated system that applies across India, more or less the same everywhere (Jodhka 2002, 1822; Said 1978, 122; Inden 1990; Cohn & Guha 1987). Colonial administrator Ibbetson (1883, 172) observed caste ideologies as manifested in highly varied ways in the Punjab context, and he insisted upon the fluid and dynamic nature of caste, recognising the material and political factors that gave shape to *zat* and *varna* (Bayly 2001, 139). Sociologist Juergensmeyer (2009) notes that there are both sociological and religious reasons that explain this fact. The sociological explanation is that over half of Punjab's population is comprised of Jats, "a nomadic group that entered the Punjab some centuries ago" (Juergensmeyer 2009, 5). In consequence, the "relatively 'flat' social structure" of Punjab modified the traditional *varna* system (Ballantyne 2006, 35; Ibbetson 1883). The religious reason for social liberalism in Punjab is because a large proportion of Punjabis are

⁴⁰ Ethnologies from the late nineteenth century increasingly observed local varieties of caste systematically, however, the very recognition of local institutions as "tradition" tended to freeze what had been evolving and often-flexible social forms into timeless "custom" (Sharma 1999, 8). In 1900, for example, the *Land Alienation Act* consolidated land holdings according to agricultural caste identity and particularly favoured the *Jat* caste. This policy reflected how "the fluid pre-colonial boundaries of caste and community were fixed in certain ways as the orientalist body of 'facts' about the 'different' Indian society grew under colonialism, and as the indigenous elites themselves engaged dynamically with this knowledge" (cf. Appadurai 1991, 314-339, 250-278; cited in Malhotra 2002, 2).

not Hindus.⁴¹ The Muslim and Sikh communities theoretically do not have castes and this had a considerable influence on the social organisation. Though caste status divisions remain entrenched, “the concepts of ritual pollution and karmic retribution are not so strong in the cultures of these religious traditions” (Juergensmeyer 2009, 5-6).

The historical trajectory, patterns of politico-economic changes, and ethnic composition of Punjab thus have significant impact on caste relations. An example of caste dynamics is reflected in the policies of the Green Revolution during the 1960s and 1970s, which significantly contributed to Punjab’s economic development and greatly facilitated the dismantling of the old *jajmani* system (Sanket 2004, 18).⁴² I mention this as the Green Revolution also resulted in unemployment and underemployment of the service and artisan castes as they adjusted to contractual methods of business (Sanket 2004, 18). With the emergence of the middle and rich peasant cultivators, another important social change occurred which sharpened class polarities (Sanket 2004, 18-21; Grewal 1998). These socio-economic developments led to a significant out-migration from the Punjab region and thus establish the link to the fieldwork site of this thesis in Canada.

The commodification of social life in Punjab as a consequence of increasing capitalist modernisation facilitated several fissures to the social practices and cultural norms of rural society. With respect to gender issues, the successes of the Green Revolution resulted in women being pushed back into the private domain of the home as family incomes increased and higher social statuses were obtained (Sanket 2004, 112). While national gender ratios rose from 927 to 933 between 1991 and 2001, Punjab’s gender ratio *fell* from 882 to 874 (Sanket 2004, 118).

Dalit communities comprise 28% of the total population Punjab, the highest proportion in India (Rajput 2004, 143). Several socio-political and religious movements were driven by the discrimination and subjugation experienced by dalits, and while these developments have impacted on the relative progress of dalits, as a group they remain amongst the poorest in the region and suffer from low levels of literacy, formal sector employment and access to healthcare, and lack participation in political and social processes (Sanket 2004, 143-153).

⁴¹ In the pre-independence period, the region was characterised by its “distinctly mixed population” with a majority population of Muslims, followed by 30-40 per cent Hindus, and most of the remainder were Sikh (Ballantyne 2006, 35; Juergensmeyer 2009, 5-6). Independence brought the partitioning of Punjab. The Indian state was both Hindu and Sikh until 1968 when Punjab was communally restructured to give it a Sikh majority.

⁴² The *jajmani* system refers to reciprocal social and economic arrangements between families of different castes within a village community in India (Maskiell 1990, 43).

This brief overview on caste demonstrated that caste remains a significant component of socio-legal analysis in the Punjab context, where social stratification is correlated with caste, but also education, literacy, gender and property ownership. While caste applies across religious communities, it does so in a somewhat regionally distinct manner. It will be illustrated in the fieldwork data harvested for this doctoral research project that caste-related dimensions are often part of the marriage breakdown issues experienced by the parties.

4.1.2 Kinship

Kinship is a basic unit of analysis that organises relationships, sexuality and property, which involves differing conceptions based upon one's positionality (Minault 1981). From the official law perspective, kinship is fundamental to the recognition of legitimate family forms and the ascription of legal status. Outside of the official law, Punjabi-Sikh kinship practices are both moral and biological (Section 2.2.2), but also rooted in caste affiliation, gender, as well as to the local village and transnational contexts.

The localised unit of the Punjabi kinship structure is observable at the village level. Punjab is characterised by many villages that are composed of landowners who descended from a common ancestor (*bhaichara*) (Maskiell 1990, 43). The village thus represents an exogamous unit, where most relationships are agnatic (related by paternal kinsmen) (Hershman 1981, 54). Meanwhile, relationships between villages are usually affinal (related via marriage, as women have to come from another village) (Ballard 1990, 230-231).

The clan is perpetuated through the principle of patrilineal descent and patrilocal marriage, which classifies Punjabi kinship as classically patriarchal (Hershman 1981, 54; Kandiyoti 1988; Ballard 1990, 229). Patrilineal descent, otherwise called agnatic kinship, refers to family membership that is passed on through the father to the male members of the family, who inherit the ancestral land and family property (Ballard 1990, 229; Chaudhary 1999). The second characteristic of classic patriarchy is patrilocal marriage, which refers to a powerful cultural ideal where women cohabit in their husband's household and village following marriage (Ballard 1990, 229).

Women do not normally have any claim on their father's patrimony and instead, though this is formally illegal, are given dowries, which usually do not contain productive property such as land (Kandiyoti 1988, 279; Agarwal 1994). Land ownership is a critical aspect of the Punjab context, since it defines social status and political power within the village and also structures relationships within and outside of the household (Agarwal 1994, 2). Agarwal (1994, 2) poignantly remarks that whilst in legal terms, women have arduously secured extensive rights to inherit and control land in much of South Asia, for most women, effective rights in land remain elusive. This reality continues to significantly impact gender

relations and women's autonomy within marriage, the joint household, as well as the village and larger economy. Indeed, Rao (2007, 299) asserts that in many instances, women occupy a disadvantaged position in terms of property rights within the traditional social structures. The absence of customary land rights for women in Punjab is a signal of this disadvantage, but the struggle for inheritance and land rights must be contextualised by the wider political-economic Punjab landscape where levels of inequality and competing rights exist amongst women and men, but also between different groups of men (Rao 2007, 299).

On the subject of the joint/corporate household, anthropologists have used a combination of the terms corporate, joint, family and household to describe the legal and social structure of family units, which are a nucleus of the larger village and Punjabi society.

In an important study, Hershman (1981, 59) asserts that unclear theorising has been the result of a conflation between the legal and sociological notions of the joint/corporate family. The legal notion of a corporate family refers to a body of coparceners who hold rights to a common property, but who do not necessarily reside in the same household or area (Hershman 1981, 59). Though the males are the coparceners and their female dependents are not, the two together constitute the corporate family. Meanwhile, the sociological conception of a corporate or joint family refers to a group of kinsmen who live in a single household, and act as a single economic and social unit (Hershman 1981, 59). Thus, the legal definition is specialised and distinct from the sociological definition of the corporate family, and furthermore, the nuclear family. It follows that a legal corporate family can exist within sociological nuclear families (D'Cruz & Bharat 2001, 173).

The Punjabi term *ghar* translates to "house", but it is also used generally to signify the domestic unit, the joint household. The expression that one belongs to a singular *ghar* expresses an internal sense of family solidarity and indicates that outsiders regard members of the household as constituting a single unit (Hershman 1981, 57). This arrangement is highly valued and many Punjabis observe the joint family household as the ideal, both within Punjab and the diaspora (Ballard 1982, 181; Minault 1981). Though it is less prevalent today due to agri-business and industrialisation, Punjab's agrarian economy promotes the establishment and preference for the joint household structure since all family members tend to practise the same occupation, use common factors of production, and earn a common income (D'Cruz & Bharat 2001, 170). In the absence of a social security system, the corporate household continues to be an evolving and intrinsic necessity for survival because it ensures the wellbeing of the ill, aged, widowed, orphaned and unemployed members (D'Cruz & Bharat 2001, 172; Ballard 1982). We shall see in the subsequent fieldwork chapters how such idealised notions of living as a joint family cause difficulties in interpersonal relationships among Punjabi-Sikhs in Canada, as the traditional socio-economic patterns and expectations, especially among women, have transformed.

The reality, however, is that “hostility between agnates has always been endemic in the Punjabi kinship system” (Hershman 1981, 66; Chaudhary 1999, 41-64). Especially in relation to inheritance and succession, rivalry, competition, and jealousy are common characteristics (D’Cruz & Bharat 2001). Amongst the numerically and politically dominant *Jat* caste, Pettigrew (1972, 1975) documented distinctive features of the social structure.⁴³ Though class distinctions exist within a caste, Pettigrew found there was a lack of class structure within a *Jat* joint family, since inherited land was primarily divided equally amongst brothers (Sanket 2004; Pettigrew 1972, 356-357). However, property and inheritance are also the primary reasons for ruptures within a corporate family and hence, micro-politics between family members often alter the real outcome (Hershman 1981, 63; Chaudhary 1999, 41).

The instability of the corporate household occurs primarily in its collateral arrangement, and it is often characterised as taking place in an atmosphere of utmost bitterness (Ballard 1990, 235). In collateral households, where two married couples of the same generation cohabit, household disputes precipitate as a result of the competition between brothers and their families over land and property (Hershman 1981, 63). The differing political manoeuvring skills amongst corporate family members create another level of competition amongst them (Ballard 1982, 183; Pettigrew 1972, 354; Chaudhary 1999). It follows then, that class differences do exist between joint/corporate families within the same kinship group.

The reality of Punjabi agnatic relationships is that two contradictory and opposing forces shape them: solidarity of agnates and competition between them (Chaudhary 1999). Nonetheless, even after the corporate household is partitioned, there remains a moral injunction on close agnates to shield the family’s reputation (*izzat*) and demonstrate solidarity to the outside world (Hershman 1981, 66).

4.1.4 Sikhi

The concept of a unitary and fixed social entity – the notion of a “Sikh” diaspora – is complicated by the dynamic interaction of shifting caste, religious, region of origin, and language identities of Sikhs (Werbner 1993, 417). This chapter is written on the premise that the history of colonialism and diaspora, are histories that are heavily entwined (Ballantyne 2006, 37). The development of the Sikh tradition (*Sikhi*) has, from the

⁴³ Hershman (1981, 23) notes that Pettigrew’s (1975) portrayal as “misleading that *Jats* are the only people in Punjab.” He states:

Perhaps correctly she associates the history of Sikhism with the rise and maintenance of *Jat* power but nevertheless, although it is most certainly true that the *Jats* consider themselves to be the only true Sikhs and the only people of standing and importance in Punjab, there is most certainly a large portion of the population which is neither Sikh nor *Jat*. (Hershman 1981, 23)

beginning, been intrinsically intertwined with the history and politics of Punjab and neighbouring regions. The choice to refer to the Sikh tradition as “Sikhi” as opposed to the more commonly used English term “Sikhism” is an act to subvert this later construction imposed by colonialist and orientalist observers (Singh 2016, 1).⁴⁴

Founded in the early sixteenth century when the Mughal dynasty began with the invasion of Emperor Babur (1483-1530), Sikhi is informed by a unique inner revelation of its founder, Guru Nanak (1469-1539)⁴⁵ who declared his independence from other traditions and thought forms prevalent in the religiously and customarily diverse Punjab (P. Singh 2004a, 79). Among his disciples (*Sikhs*, learners), Guru Nanak laid the foundation for a community based on socially responsible living. He taught there is One Creator, the same for all, and that a person should live a truthful living. Guru Nanak was succeeded by nine gurus, who oversaw the initial development of the fledgling community under Mughal rule in India.

Central to the Guru period, “the unity of Guruship” was advanced in which there was no difference between the founder and successors (P. Singh 2004a, 80). A radical reshaping of the religious community occurred following the execution of the fifth Guru Arjan (1563-1606). In response to this political act, the sixth Guru Hargobind (1595-1644) directed the Sikh *Panth* to take up arms to protect itself from Mughal hostility.⁴⁶ The public execution of ninth Guru Tegh Badhudur (1621-1675) occurred after he declined Emperor Aurangzeb’s (1618-1707) demand to embrace Islam. This second event fundamentally impacted the growing Sikh *Panth* (Cole 2004, 38). In response, the tenth and last living Guru Gobind Singh (1675-1708) established the *Khalsa* (the pure), a martial order of loyal Sikhs bound by a common identity and discipline (P. Singh 2004a, 89).⁴⁷ The ten Sikh gurus, asserts Brah (2005, 160), can be considered early modern Punjabi reformers who introduced radical changes, which are not always recognised in the “mainstream” literature on reform movements.

The *Adi Granth*, a compilation of Sikh scriptures, was installed as the eternal Guru for the Sikhs. The authority of the Guru was thus dually enshrined in the scripture, where the

⁴⁴ The translation of concepts from the Sikh tradition to western Judeo-Christian modern concepts, like religion, sect or denomination result in a reconstruction where much is lost in the process. The outcome oftentimes portrays the Sikh tradition as positivistic where doctrine supersedes all other aspects of the tradition (Ballantyne 2006, 24). Therefore, while other western scholars typically refer to the tradition as “Sikhism”, I prefer “Sikhi” because it is not accompanied by the same problematic assumptions, but rather signifies its history, practices, sources and stakeholders. The term will not be italicized since it will be presumed to be a common term.

⁴⁵ Guru, meaning spiritual preceptor (McLeod 2007, 32)

⁴⁶ The twin principles of *miri* and *piri* were introduced by Guru Hargobind to signify the spiritual and temporal sovereignty of Sikhs that has since influenced Sikh thought, social structure, political behaviour, communal organisation, leadership and politics.

⁴⁷ From herein, *Khalsa* will not be italicised as it will be presumed to be a common term.

Adi Granth was now the Guru Granth, and the corporate community, referred to as Guru Panth (P. Singh 2004, 89).⁴⁸ The dual establishment of the Guru Granth as eternal Guru, and the authority invested in the Guru Panth represented the fundamental principle of egalitarianism amongst Gursikhs, the pious followers of the ten gurus and the Guru Granth Sahib. These aspects distinguished the Sikh Panth from all other competing sects and religious movements prevalent at the time. The Guru period of the Sikh religious tradition is thus conceptualised as rooted in a particular religious experience, piety, and culture indigenous to the region of Punjab, which underwent significant political and organisational development in the face of increasingly tense relations between the Sikhs and Mughal and Afghan rulers.

Though the subjects of this study are identified by religion, which is indeed a product of the modern discourse on South Asian diaspora, a conscious effort is made here to draw out the broader structures, institutions and practices in an attempt to keep my analysis of Sikhs grounded in its regional specificity and its diaspora.

This chapter section provided an overview of important concepts from the Punjabi context, which include caste, kinship, the joint household and Sikhi. The intention was to provide context to the regional specificity of Punjab. These concepts are further developed in the following section concerning Indian family law and its governance of marriage and marriage breakdown. Furthermore, these concepts are a key component to understanding the disconnection between Punjabi-Sikh disputants and Canadian family law actors, as will be explored in subsequent chapters.

4.2 Marriage breakdown in India

Independence in 1947 brought about moderate modernist reforms to the multicultural character of Indian family law (Subramanian 2014, 6). The *Constitution* (1950) became the most significant touchstone for determining the scope of women's rights in the post-colonial period (Agnes 1999, 77). It provided for adult franchise, non-discrimination on the basis of sex, positive discrimination (or affirmative action) in favour of women and children, as well, it established equality and non-discrimination as fundamental and enforceable legal rights.

⁴⁸ The term Panth means “path” or “way”. Punjab’s many panths do not constitute separate “religions” but are better conceived as offering alternative routes to the same ineffable goal of overcoming one’s self-produced veil of ignorance and insensitivity, in order to realise the ultimate congruence between the individual and the Transcendent (Ballard 199, 15). With a small initial then, the term is applied to any movement from Punjab; but the capitalised version, Panth, is used for the Sikh community exclusively (McLeod 2007, 32).

It is against this backdrop that major law reform in the post-colonial period should be observed.

The majority of Indian nationalists who became politically dominant after the First World War agreed on culturally grounded reforms in social practice and personal law that would promote post-Enlightenment ideals such as social equality and individual liberty in certain ways, but they also did not propose to systematically vet personal law with reference to these ends (Subramanian 2014, 14). The restructured family law system became the existing personal laws of British India, with Hindu law as the majority personal law applying to Buddhists, Hindus, Jains, and Sikhs, and separate personal laws for Muslim, Christian, Parsi, and Jewish religious communities, as well as largely optional secular marriages, under the *Special Marriages Act* (1954) (herein, *SMA*).

The purpose of this chapter section is to establish the key aspects of Indian family law as they pertain to marriage and marriage breakdown amongst Punjabi-Sikhs. This section contributes a necessary background on the relationship between Hindu personal law and Punjab customary law, which is a form of legal pluralism. This diversified background will assist the reader in understanding the disconnect evident in Canadian family law courts when particular private international law issues, or even disputant expectations of the Ontario family law court, occur. This section outlines the major reforms in post-independence Indian family law, focusing on Hindu personal laws on marriage and divorce laws, as well as customary law, which continue to co-exist, to a large extent, as different forms of official law (Section 2.1.1).

4.2.1 Indian family law: Hindu personal law

Contemporary Indian family law is primarily constituted through the system of personal laws as conceived and subsequently evolved over the colonial and post-colonial periods. Provisions for divorce, adoption, maintenance, custody, guardianship and inheritance vary, depending on which personal law a person is subject to (Diwan 1983, 1982). Family law is an area of law that has direct relevance for most women, since family life continues to be an important aspect of their existence for which there is no alternative due to a lack of adequate education and vocational training facilities, and scarcity of wage employment, to name only a few systemic factors. Hindu personal law is the authoritative personal law that applies also to the minority religious communities of Buddhists, Jains and Sikhs.⁴⁹

⁴⁹ This critical feature of Hindu personal law goads the question of who exactly is “Hindu”. In the contemporary context the term denotes a vast body of people who adhere to certain practices that are deemed to exist within the constructed religious identity of “Hinduism”, however, this was not always the case. The term Hindu is not located in the *smritis* – it is derived from “Indoi” a term used by the Greeks to denote people from the Indus valley (Agnes 1999, 22).

It was envisioned and enshrined within the *Constitution* (1950) that the personal law system of Indian family law would be "secularised" and gradually replaced by a uniform civil code (Article 44). Various groups challenged several discriminatory aspects of the personal laws under the constitutional mandate of equality and non-discrimination, however the courts, in most cases, stopped short of declaring the discriminatory aspects as unconstitutional (Agnes 1999, 77; Galanter & Krishnan 2001, 273; also Parashar 2013, 8). Due to the rise in majoritarian politics, especially from the 1980s onwards, the adoption of a uniform civil code became a political project usurped by Hindu nationalists thus pressurising women's organisations, rights organisations, and others, to shift their attention away from uniformity to the reform of existing personal laws (Subramanian 2014, 139; Agnes 2001).

Hindu law reform occurred over a period of fifteen years, from 1941 to 1956, at the end of which, four separate bills were debated and eventually passed after lengthy debates.⁵⁰ Hindu law was significantly shaped by colonial and post-colonial legislation in the general realm of Indian family law where anxieties around family, property and authority abounded, religious identities continued to stand at the core of marriage entitlements, expanded grounds of divorce were accompanied by murky economic resolution, and, easier divorce was perceived as a key marker of modernity alongside regret at its ease (Basu 2015, 40).⁵¹ Parashar (1992, 21) argues that the real motive for Hindu law reform was unification of the newly created nation state through uniformity in law. To promote nation-building and ostensibly for the sake of reducing diversities within the Hindu personal law, Hindus, Buddhists, Jains and Sikhs were to be governed by one uniform Hindu law. A diverse range of groups rose vociferously against the proposed changes, including Sikhs (Som 1994, 172-73 cited in Basu 2015, 42).

Though a key aspect of the nationalist plan was to modernise family law, any perceived threat to the political goal of national integration resulted in cutting back on state efforts to incorporate sex-equality in personal laws. Issues that were severely contended include the inheritance rights of daughters, the right of divorce for women, and the imposition of monogamy upon Hindu males (Basu 2015, 41-48). The unifying objective resulted in the sacrifice of several liberal customary rights for women, particularly from lower castes and the southern regions (Agnes 2001, 79-80).

⁵⁰ The four separate bills were passed in 1955-56 and include: the *Hindu Marriage Act*, *Hindu Succession Act*, *Hindu Minority and Guardianship Act*, *Hindu Adoptions and Maintenance Act*.

⁵¹ I want to clarify that these reforms were a product of the colonial exchange of ideas where Hindu personal law is an innovation of English translation and reinterpretation of sacred texts in a manner partly removed from the "living law" aspect of pre-colonial Hindu law.

Contrarily, it was often argued that the religious nature of personal laws prevented any intervention by the state. As a result, the status and power structure of the joint family remained entrenched. Over the process of Hindu law reform, Parashar (1992, 99-100) notes that the state unambiguously asserted its right to decide to what extent existing rules would be modified, leaving no trace of the non-intervention rule that previously restrained British colonial administrators from making substantial changes to personal laws. The Acts that were finally passed were "neither Hindu in character nor based on modern principles of equality but reflected the worst tendencies of both" (Agnes 2001, 81).

4.2.2 Marriage law

The Act of particular concern to this thesis is the *Hindu Marriage Act* (1955) (herein, *HMA*). The *HMA* is based on a formal concept of equality, where the spouses are deemed equal in their rights and obligations towards each other, and are granted equal rights to matrimonial remedies and ancillary relief. This western notion of formal equality was instituted despite the fact that basic inequality between men and women persisted under related family law legislation, particularly within the scheme of inheritance rights (Agnes 2001, 83).⁵² In addition to bringing the legal position of women and men in the matter of marriage almost on par (i.e. the recognition of inter-caste and intra-lineage marriages, which aided conjugal autonomy), a broad set of reforms for Hindus were enacted, including mandated monogamy (and a legal ban on bigamy), specifying alimony, and allowing the marriage to be dissolved in certain circumstances (Subramanian 2010, 788).

Parashar (2013, 9) argues that the reforms modified the nature of marriage as a sacrament; however, there is disagreement on this feature.⁵³ Agnes (2001, 84-85) demonstrates that for some decades, the courts held that Hindu marriage is a sacrament. Utilising the ancient notion of the "Lord and Master", the courts held that it is the sacred duty of the wife to follow her husband and reside with him wherever he chooses to reside, and that husbands were justified in restraining wives from gainful employment. It was only around 1975 that the courts began to recognise a woman's right to hold a job away from her husband's residence.

⁵²The implementation of formal equality was foreign to the Indian context since the concept did not exist under existing Hindu law (either scriptural or customary usages), Muslim personal law, or the *Special Marriages Act* (Agnes 2001, 83).

⁵³In the debates to have a single code for all "Hindus", it was asserted by some groups that divorce was proscribed for upper castes and marriage was an indissoluble sacrament (Subramanian 2010, 790). Despite the presence and participation of female legislators, the sacrosanct status of marriage was never displaced. Legislative focus primarily fell on expanding access to justice and attending to maintenance and violence despite the power structures of marriage remaining intact (Basu 2015, 57).

In order to achieve a unifying piece of legislation for the disparate groups under the category of "Hindu", Desai (1998, 68) claims that the requirements of a ceremonial Hindu marriage were considerably simplified and any two Hindus, an expression that does not merely include Hindus by religion but Buddhists, Jains and Sikhs as well, can solemnise the required ceremonial marriage. The relevant law concerning ceremonies of marriage is found in Section 7 of the *HMA*:

S. 7 - Ceremonies for a Hindu Marriage

(1) A Hindu marriage may be solemnised in accordance with the customary rites and ceremonies of either party thereto.

(2) Where such rites and ceremonies include the *saptapadi* (that is, the taking of seven steps by the bridegroom and the bride jointly before the sacred fire), the marriage becomes complete and binding when the seventh step is taken.

Diwan (1978, 60) echoes the concerns raised by various conservative groups in the Hindu law reform debates, where "[t]he *dharmic* institution of marriage, in which marriage was meant to be an indissoluble religious union of man and woman is sought to be transformed into a union of convenience." While the claim was advanced that Hinduism is not a religion but a conglomeration of culture, the *HMA* transformed the Hindu marriage from a status to a dissolvable contract, where the form of solemnising the contract under subsection (2) remained Brahmanical and scriptural with *saptapadi* and the *vivaha home* (the sacred fire) as its essential features (Agnes 2001, 86). Within a pluralistic context, however, the *HMA* also had to validate diverse customary practices. Subsection (1) entirely preserves the customary position under pre-existing Hindu law, whereby solemnisation of marriage is a matter for the respective families concerned as well as the local and/or caste communities they belong to (Menski 2003, 297). Custom thus needs to be interpreted flexibly and is further addressed in this chapter under Section 4.2.4.

The combination of Brahmanical rituals on one hand, with customary practices on the other, was incorporated along with English principles, in order to determine the validity of Hindu marriages. In the Indian context, the validity of Hindu marriages has resulted in absurd and ridiculous rulings where women have been the worst sufferers (see Agnes 2001, 86). Menski (2003, 297) accordingly points out that "[e]ven today the legal criterion for validity of a Hindu marriage in India is not whether it was registered in some form by the state but whether it was performed in accordance with the traditional rituals and ceremonies." Careful scrutiny is thus required when examining the state's attempts to reform Hindu marriage law, which may appear at first glance to simply underwrite Hindu tradition. As will be demonstrated in subsequent chapters of this thesis, this formula for valid marriages also baffles Canadian judges who may have to adjudicate on Punjabi-Sikh marriages and marriage breakdown.

4.2.3 Divorce law

Fault-based divorce was introduced in the *HMA* under Section 13.⁵⁴ Divorce was permitted if one's spouse was guilty of the following matrimonial faults: (a) "living in adultery"; (b) non-resumption of cohabitation for at least two years since a decree of judicial separation or restitution of conjugal rights; (c) having another living spouse, rape, sodomy, and bestiality (a fault reserved only for women); (d) conversion to another religion; (e) affliction with a venereal disease, leprosy or mental illness for at least three years; (f) renunciation of the world and joining a religious order; or (g) not being known to have been alive for at least seven years (Subramanian 2014, 143). The fault-based provisions were made available to spouses after three years of judicial separation in order to encourage the reconciliation of estranged spouses and to reduce the chance of divorce rates rising quickly (Subramanian 2010, 774).

Other issues pertaining to marriage breakdown, such as desertion without cause, adultery and cruelty were made grounds for judicial separation, but not for divorce, unless the party petitioning for divorce had obtained judicial separation on these grounds at least two years earlier, and her spouse had not resumed cohabitation (Subramanian 2014, 143). Since the state was more concerned with taking every precaution possible to safeguard marriages, it is doubtful that the dominant consideration for enacting divorce legislation was to advance the equal rights of women or to institute the conditions to enable them to exercise those rights (Parashar 1992, 118).

The centrality of marriage meant that while feminist organisations had recommended "conciliation" in the 1974 Report of the Committee on the Status of Women in India, this was changed to "reconciliation", which was required as the first step in divorce by family courts (Basu 2015, 47). The divorce legislation introduced in the first decade of Independence thus left a number of key issues largely unaddressed, including the question of financial support for divorcing women, grounds for divorce, mechanisms for maintenance payments, and distribution of marital resources upon divorce (Basu 2015, 40). The economic parameters that undergirded traditional marriages were completely ignored in Hindu law reform debates. Marriage was largely represented as a fundamental, stable value that kept community and nation together.

Menski (2003, 463) points out that, given that the modern state accepted the variety of ways in which marriages were solemnised in Indian society in section 7(1) of the *HMA*, it was also willing to recognise divorce customs of a variety of castes and lineages under

⁵⁴ Agnes (2001, 83) pointedly remarks that while society was deemed too conservative for mutual consent divorce (already introduced under the *SMA*), women were paradoxically deemed to be sufficiently progressive, liberated and economically advanced in order to provide maintenance to their husbands.

section 29(2) of the *HMA*. This semi-hidden approach to customary marriages and divorces can be observed as a continuation of the colonial approach, where Indian courts based their acceptance of specific divorce customs based on the claim that, although Hindu law did not recognise divorce, divorce under certain conditions was not repugnant to its principles (Subramanian 2014, 161; Grover 2011).

Since the first decade of Independence, as Subramanian (2010, 793) asserts, some social, political and ideational changes were conducive to the introduction of further reforms. Divorce rights based on mutual consent or a wider range of spousal faults were thus introduced through the *Hindu Marriage (Amendment) Act* (1964) and the *Marriage Laws (Amendment) Act* (1976) (Menski 2003, 429). On the grounds of cruelty, desertion, and adultery, the period of judicial separation was reduced in 1964 and then eliminated in 1976. Judges also set lower standards of proof of cruelty and adultery (Subramanian 2010, 793). Mutual consent divorces were made possible in 1976, and Indian criminal law required permanent alimony for indigent divorcées in 1973.

The Law Commission considered divorce liberalisation on the grounds of irretrievable breakdown in 2009. However, concerns about the economic implications for women and children, on the one hand, as well as the reluctance of conservative legislators to enhance the entitlements of divorced women's share in the husband's inherited or inheritable property, on the other, stripped the proposed bill currently under review (Subramanian 2014, 148). Divorce rights were generally broadened as the weight policy makers gave to conjugal autonomy increased compared to the importance they accorded to the nuclear family's continuity.

Notwithstanding the rhetoric of social justice, feminist scholars note that there has been a steady consolidation of hegemonic high-caste Hindu male power through sustained compromises in Hindu law reform (Parashar 1992, Agnes 1999), which have been supported through placatory gestures to powerful interests in minority communities in order to supersede the rights of women and children (Basu 2015, 25). Post-colonial divorce law has consequently become a mixture of increased state intervention in the processes of divorce, as demonstrated through legislative amendments until the mid-1970s, as well as an abundance of case law on divorce, alongside a benign attitude towards customary divorces. Since the overall picture is so complex and confusing even for Indian lawyers and specialists, it will be unsurprising to examine how Canadian judges struggle with minutiae when relevant cases come up before them.

4.2.4 Punjab customary law

Amongst the four types of customs prevalent in India, which include caste and tribal custom, local custom, family custom, and the custom of merchants and traders, in Punjab, the first three types of custom exist in a very broad sense, practically as both local and tribal customs, but they vary from tribe to tribe and from district to district (Diwan 1978, 22-23).

Hence, it is not surprising that there was greater similarity between customs and usages (as well as language and traditions) of people from a region irrespective of their religious faiths and affiliations, rather than between followers of a religion living in far flung regions. (Agnes 2001, 23)

Punjab customary law, then, is not simply a general law that applies to all Punjabis, but rather, it is deeply plural and determined by the three categories of caste/tribal custom, local custom, and family custom. Diwan (1978) asserts that it remains very important in practice.

Within the Indian context generally, custom is "an important source of law" upheld by: (i) its validity under *smriti* law; and (ii) its relevancy to castes and tribes not governed by *smriti* law (Agnes 2001, 19).⁵⁵

There are significant implications, then, with respect to gender, since property rights continued along entrenched patrilineal descent, where women were not legally considered to be coparceners (this changed in 2005 under the *Hindu Successional Act*) and thus were not permitted to inherit ancestral property. Women were cursorily provided with dowry upon marriage, and though this is a form of inheritance, it was usually the case that women were not given immovable assets (i.e. property, land) – especially ancestral property – and instead, women were given gifts (i.e. gold, jewellery, clothing, housewares) that would contribute towards the joint household of her husband's family.⁵⁶ A range of local customs thus continue to prevail with respect to property devolution.

Overall, then, in contemporary Punjab, a mix of Hindu personal law and Punjab customary law applies. Hindu personal law provisions already allow vast room for custom, which is defined under Section 3 of the *HMA*:

⁵⁵ "Local customs were held in high esteem and were acknowledged as an important source of law under the *smritis*. The widely used *smriti* terms, *achara*, *sadachara*, *shishtachara*, *loksangraha* etc. denote custom" (Agnes 2001, 19).

⁵⁶ A woman's property is called *stridhan*. Though the *smritis* demonstrate over time that attempts were made to strengthen women's ownership of property, patriarchal collusions within the family seem to have subverted it (Agnes 2001, 18). Considered *stridhan*, a dowry is provided to the bride. In a sense, the dowry oscillates between the individual property of the bride, and the joint property of her in-laws. Also see Section 4.1.2 for further discussion on property and land rights.

S.3 – Definitions.

In this Act, unless the context otherwise requires -

(a) the expressions "custom" and "usage" signify any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law among Hindus in any local area, tribe, community, group or family; Provided that the rule is certain and not unreasonable or opposed to public policy; and Provided further that in the case of a rule applicable only to a family it has not been discontinued by the family;

The *HMA* states that customary law supersedes Hindu personal law with respect to marriage law (Section 4.2.2). The various religious communities of Punjab can thus adhere to practices that have been historically used for their tribe/caste in their specific village. However, in the modern state, custom is considered different than law, where it is "considered to be a question of fact and has to be established like any question of fact before a court of law will enforce it" (Diwan 1978, 12-13). In order for a custom to be valid in India, it must be proven to be existent "for a long time", invariable or continuous, and certain. It should not be unreasonable, immoral, or contrary to justice, equity, good conscience, public policy or law (Diwan, 1978, 14).

From the 1980s onwards, courts continued to expect customs to be of a long duration but construed this expectation flexibly, especially if the recognition of a custom would provide a litigant support the courts felt inclined to offer (Subramanian 2014, 162). But the application of this position is uneven, since customary divorces amongst Sikh Jats in the Malerkotla and Jullundar regions have been recognised, whereas the courts have concluded that such customs did not exist among Arora Khatri (Subramanian 2014, 162).

Holden (2008) has examined customary divorce in detail and highlighted that courts were reluctant to recognise women-initiated customary divorces until the 1980s. She also found that courts became more willing to recognise subsequent marriages of the spouses and infer the validity of these practices from the earlier husband's consent, his acceptance of compensation payments from the subsequent husband, or the recognition of the later marriages in the relevant communities (Holden 2008, 164-66, 168-170).

In modern discussions about "religion", Punjab customary law could indeed be interpreted as a secular matter since it is based upon the local practices of people according to their caste (*jati*) affiliation and locality rather than religion (Diwan 1978, 4). However, Menski (2003, 121) cautions that an understanding of the various degrees of Hindu interlinkedness does not exclude the realm of custom and thus, it may be more appropriate to conceptualise custom as containing secular elements, but "its operation in the social context also clothes it with religious elements."⁵⁷ Punjab customary law is consequently

⁵⁷ Given the room for individual agency here, Menski (2010, 69) notes: "The balance between individualism and traditional forms of interlinkedness, in particular, demands much more scholarly attention than most scholars are prepared to acknowledge".

more adequately conceptualised as organised by tribe/caste and district affiliation and is a matter of social custom, not restricted to the narrow categories of either "secular" or "religious".

This chapter section on Indian family law has concentrated on Hindu personal law as it pertains to marriage, divorce and customary law. It has demonstrated that legal reforms to institute more economic rights for women in cases of marriage breakdown have been resisted and highly politicised, as is the burgeoning application of Hindu personal law to Hindus, Buddhists, Jains and Sikhs, itself. Since the 1970s, a number of changes to Hindu law as well as criminal laws concerning maintenance and domestic violence have made nuclear family membership more consequential, promoted bilateral inheritance, and enhanced conjugal autonomy and women's economic entitlements (Subramanian 2014, 196). Even so, prior traditions of law and kinship remain important considerations that significantly impact on reform and social change efforts. This chapter section helps to explain why a uniform adoption of official law has not transpired in the Punjab context, which is characterised by a complex interaction between Hindu personal law and Punjabi customary law, in addition to Sikhi religious norms and precepts, which could be seen as another form of customary law (Malhotra 2010).

4.3 Diaspora, Transnational Migration and Marriage Breakdown

This final section demonstrates that Sikhs have a long-standing pattern of transmigration, which has resulted in a global web of diaspora communities (Ballantyne 2006, 68). This section establishes that the entwined concepts of kinship and custom are transported by transmigrants, specifically female marriage migrants, who carry these aspects of Punjabi law and society with them to the diaspora context. This key argument contributes to the overall thesis because it helps develop the reader's understanding of the linkages between Canada and Punjab, through the continued importance of marriage migrants.

I begin with an overview of the Punjabi-Sikh diaspora, which is followed by a discussion of marriage migration. Finally, I examine transnational marriage breakdown.

4.3.1 Diaspora and (trans)migration

It is estimated there are over 25 million Sikhs worldwide of which roughly one-third live outside Punjab (Dusenbury 1997, 740; PewResearch 2012). Historically, Punjabi-Sikhs were known for their distinctive (male) appearance, international service in the British army, and valour in WWI and WWII. In the contemporary context, Sikhs have proven themselves to be a resilient diaspora and have generally been very successful in setting up their own local and transnational networks (Ballard 1982, 1994; Werbner 1993, 417).

The concept of a unitary and fixed social entity – the notion of a “Sikh” diaspora – is complicated by the dynamic interaction of shifting caste, religious, region of origin, and language identities of Sikhs, which are embedded in a history of Punjab, British colonialism, South Asia, and specific castes (Werbner 1993, 417; Ballantyne 2006; Brah 1996, 2005). The notion that “place” is necessarily linked to the idea of culture and tradition is, accordingly, no longer tenable since the transnational nature of cultural entities demonstrate how the work of developing and sustaining globe-spanning transnational communities goes on despite attempts by nation states to strengthen their border control and to manage their populations (Appadurai 1996; Clifford 1997).

Fostered by the legal structures of colonial empires, the twentieth century saw migration expand to become a global phenomenon with migrants moving across the globe in greater numbers and between more countries (Dauvergne 2008, 2). The histories of Sikhs in Punjab and Sikhs outside Punjab are usually framed as separate narratives, however as Ballantyne (2006, 69) argues the movement of large numbers of Sikhs from Punjab was a product of new labour and economic networks created through the colonial project of empire, which resulted in diaspora communities in Australasia (Bhatti & Dusenbury 2001; McLeod 1986), East Africa (Herzig 2010; Bhachu 1985), North America (Leonard 1996; Mongia 2003), Southeast Asia (Sandhu 1970), and the United Kingdom (Ballard 1982; Bhachu 1991; Singh & Tatla 2006).

The motivations that informed Sikhs to migrate were the result of the economic climate of Punjab during colonial rule at the turn of the twentieth century (Section 4.1.1; fn. 40). The bulk of early emigration from Punjab to places like Southeast Asia and North America is documented between 1880-1920 (Dusenbury 1997, 740). The Punjabi regiments of the Indian army, who were initially based in the British Crown Colony of Hong Kong and other colonial outposts, travelled through Canada – from Victoria to Halifax – in order to reach London for Queen Victoria’s diamond jubilee in 1897 and the coronation of Edward VII in 1902 (Buchignani et al 1985, 5-6; Ralston 1999, 33). This journey across Canada later spurred Sikhs from the East Asian British colonies to travel to British North America. These so-called “oriental” migrants worked in the labour-intensive primary industries and were kept at a social and geographical distance from their families as well as Canadian civil and political society (Buchignani 1989, 71-72). They were deemed to be morally and politically undesirable, too distinct in culture, religion and physical appearance (Dua 2000, 112). The origins and formation of South Asian communities in Canada, then, are inseparable from Canada’s elevated position in the British Empire as a white-European-settler colony, where South Asians were subalterns economically (as labouring classes), politically (being disenfranchised), and culturally (by representing “lower races”) (Chilvers and Walton-Roberts 2014, 121-2).

The twenty-first century was characterised by the recognition that migration and population movement lie at the core of economic and political, national and international relations (Castles & Miller 2009). Dauvergne (2008, 2) states that the processes of migration have significantly altered in a neo-colonial world, where migration has become characterised by increasing regulation of migrants, their restricted access to citizenship rights, and an increasing moral panic and domestic political issue in all prosperous western states, as a result of undocumented migration. The growth and intensification of global interconnections with respect to economic processes, people, and ideas has thus been accompanied by resurgence in the politics of difference (Taylor 1994).

Alongside the continually evolving contestation over migrants in western countries has been a shift in the conception of the immigrant to the transmigrant. The long-held conceptualisation of immigrants as “persons who uproot themselves, leave behind home and country, and face the painful process of incorporation into a different society and culture” has been replaced with “transmigrants” who are “immigrants whose daily lives depend on multiple and constant interconnections across international borders and whose public identities are configured in relationship to more than one nation state” (Glick-Schiller 1995, 48). To what extent the “transmigrant” is a new phenomenon with respect to Punjabi-Sikhs is circumspect.

In the footsteps of the first Punjabi-Sikh migrants, a significant proportion of recent newcomers originate from various parts of Asia. Citizenship and Immigration Canada (CIC) report that some one million Canadians can trace their ancestry to India (CIC 2010a). Since the 1970s, a substantial portion of Indian immigrants are from Punjab (Wood 1978; Paynter 1995). While anecdotally obvious to the Indo-Canadian community and immigration officials, CIC first began to document this concentrated geography in 1998 in response to sustained demands for a full-service high commission in Chandigarh, the capital of Punjab and Haryana (Walton-Roberts 2003, 238-9). The number of Punjabi-Sikhs therefore has immense political ramifications in India, as demonstrated by the consulate opened in Chandigarh, and in Canada, in recognition of the evolving techniques employed by political parties to secure votes and more recently, the number of Punjabi-Sikh Members of Parliament.

4.3.2 Marriage migration

Marriage migration is an integral aspect to the establishment of the Punjabi-Sikh diaspora communities that is not captured by existing texts on Sikh diaspora (Singh & Tatla 2006; Ballantyne 2006; Dusenbury 1997; Barrier & Dusenbery 1989; Hawley 2013; Nayar 2004; Tatla 2005; but see Mahmood & Brady 2000, Handa 2003, Jakobsh 2010). Yet, statistically speaking, marriage migration constitutes a large proportion of total migration and the

overwhelming bulk of female migration amongst Punjabi-Sikhs (Palriwala & Uberoi 2008, 28-9). The purpose of this section is to demonstrate migrants carry practices and understandings rooted in kinship and custom that impact on their attempts to access family justice in the Canadian context. I primarily rely on British scholarship on South Asian marriage migration to make this contention. Jhutti (1998, 2013) has completed a comprehensive study of Punjabi-Sikh arranged marriages, whilst Mand (2002, 2008) contributed much-needed research on transnational Punjabi-Sikh transmigrant women and widowhood, separation and divorce (see also Guru 2009). Ballard (1982, 1990, 1994, 1999, 2008) is an important source for the study of Punjabi kinship. Finally, Anitha (2011), Charsley (2005, 2006, 2013), Shaw and Charsley (2006), Qureshi (2015), Qureshi et al (2014) and Gardner (2006) are key authors who discuss South Asian/Punjabi marriage migration.

The phenomenon of marriage migration can be considered a study of “transnationalism from below” (Gardner & Grillo 2002; Levitt & Glick Schiller 2004; Pries 2005; Smith 2005; Basch et al 1994). Marriage migration refers to the migration within or as a result of marriage, and is often the most efficient socially acceptable means available to disadvantaged women for achieving some measure of social and economic mobility (Palriwala & Uberoi 2008, 23-4; Calavita 2006; Pedraza 1991). Marriage migration involves a number of intra- and transnational contexts, since marriages across borders create cross-national connections and contribute towards the establishment of international links necessary for transnational networks and structures (Levitt & Jaworsky 2007, 137; Ballard 2001; Gardner 2006). Marriage migration occurs because there are structural opportunities for individuals to migrate to join intimate partners, but also, migrants have the capacity to act with agency, that is, a sense of self-determination that is shaped and limited by an individual’s personal circumstances, attributes, environments as well as structures and legislative apparatuses (Williams 2010, 1-2). Marriage migration is thus better understood, at least in part, as a result of a contractual relationship between individuals with differing national or residency statuses, which in turn create differences in the relational power of each spouse (Ballard 2001).

A predominant aspect to existing British literature is on the transformations that accompany the migration process in the “traditional” ideals of marriage, and on the way rules alter in relation to migration history, caste identity and class position (Mand 2008, 287; Ballard 1982, 1994, 1999, 2008; Charsley & Shaw 2006; Grillo 2008; Menski 1993, 1998, 1999; Shah 2010a, 2010b). For instance, Bhachu’s (1985) study on “twice-migrant” Sikh women’s engagement in the labour market examines changes in conjugal relations and women’s active role in the production of dowries (Bhachu 1985, 1988, 1991a, 1991b). In

the Canadian context, on matters pertaining to marriage migration I reference the work of Merali (2009), Sheel (2008) and Walton-Roberts (2003).⁵⁸

The authors presently discussed note the relationship between marriage migration and kinship but the link between kinship and custom is not considered in this literature. Humanising the patriarchal nature of Punjabi-Sikh kinship in relation to women's life course, Mand (2008, 287) writes:

Other women, too, often describe marriage as involving the putting aside of one's *cha* (desires), whether in reference to natal kin or lifestyle choices, to ensure the welfare of the husband and his family. While there seems nothing amiss with caring for children and the family, Sikh women's narratives need to be understood in the light of the ideological expectations of the married state, as this is transformed over the woman's life course.

This internalisation of patriarchal norms is reflected in law, as the construction of customary law was characterised by reinterpretation in the colonial period, in order to establish patrilineal kinship as normative. Basu (2015, 121) argues this entrenchment effectively erased alternative practices on the basis of caste/tribe, local or family customary practices, and thus transformed sexuality and entitlement (Gilmartin 1981).

In the colonial Punjab context, Malhotra (2002) demonstrates this key point about patrilineal kinship as normative by showing that new forms of regulation, between the colonial administration and social reform movements, accompanied class mobility whilst rearticulating caste divisions. The Singh Sabha reformed marriage practices for Sikhs, for example, but they did so without altering the subordinate status of women. Their aim was intended to develop distinctive marriage practices rooted in the Sikh tradition in order to differentiate Sikhs from other Punjabis (Oberoi 1994, 254). Women were thus not the subjects of a "tradition" but of a changing idea of modernity produced by reformers and their patriarchal ideas (Grewal 2003, 1434; Brah 2005). This historical example reflects the colonial government's preoccupation with the codification of customary law (Section 2.1.2). In conducting an analysis of Punjabi kinship and its link to custom as well as gender, then, I continually note the significance of refracted colonial interventions in the construction of Punjab customary law and its dynamic relationship to kinship. Kinship is inherently entwined with custom, and both concepts are conditioned by systems of patriarchy.

⁵⁸ The Canadian scholarship on immigration and South Asian women pertain to the structural forces of globalisation, immigration, and multiculturalism (Agnew 1993, 2003; Dua 2000; Mawani 2007, 2012; Razack 1995, 2000, 2005, 2007a, 2007b; Thobani 2000, 2007), and as it pertains to settlement, labour or domestic violence (Das Gupta 1994; Jamal 1998; Naidoo & Davis 1988; Naidoo 2003; Ng 1990a, 1990b; Ralston 1999; Srivastava & Ames 1993; Walton-Roberts 2013). This literature is not directly pertinent to this chapter, it will be utilised in the following Chapter 5.

Literature on marriage migration has conventionally portrayed it to be primarily family-related, where female marriage migrants are passive dependent movers from one spatial location, whether regional, national or international, to another (Chant & Radcliffe 1992). This view of the individual migrant is a reflection of the dominant economic focus in migration studies, which obscures family-related migration and maintains the dichotomy of male producer/female reproducer (Kofman 2004). This view also does not take account of the ways in which men and women migrants appear in different concentrations in different migratory flows, argues Piper (2006, 139), and that men and women migrate through different channels taking advantage of gender-specific labour markets (Williams 2010, 20). Instead, women's migration is seen as dependent on the actions of men who they travel with, to or from (Palriwala & Uberoi 2008, vii).

This section has established that the treatment of marriage migration in Sikh studies and diaspora literature is largely missing, but incredibly important for understanding not only the imbricated migration histories of Punjabi-Sikh women, but also the transport of social and legal baggage to global diaspora communities. The roles of kinship and household in maintaining transnational movements, argues Gardner (2006, 374), have not been carried out in existing literature on transnational connections (though notable exceptions include Gardner & Grillo 2002, 179; Mand 2004; Shaw & Charsley 2006). While the traditional migration model appears to coincide with Punjabi-Sikh transmigration to Canada, this portrayal is far from complete as it obscures the history of legal and socio-economic structures in colonial Punjab as well as Canada that prevented women from immigrating in the first place (Section 4.1, 5.1). Immigration laws are often highly gendered and reflect the gender biases and normative assumptions of the respective country (Wray 2006, 2009, 2011, 2014; Calvita 2006). Applications for spousal immigration to Canada amount to approximately one-quarter of all Canadian immigration from India, and over 60 per cent of applicants are female (Walton-Roberts 2003, 246). We shall see how strong the links in the fieldwork data are when it comes to migration.

4.3.3 Marriage breakdown

In the diaspora context, the concepts of kinship and custom continue to have relevance through marriage breakdown. In his incisive study of transnational Punjabi-Sikh marriage breakdown, Thandi (2013) focuses on the complex conditions and motivations that lead Punjab-based parents of brides to arrange overseas marriages. Arranged marriage is a predominant form of marriage in the Punjab context, where "the marital connection itself may be a more strategic entrepreneurial activity, but one that may later facilitate the reconstitution of family in a reconfigured form abroad" (Charsley & Shaw 2006, 339). In addition to the historically contagious "migration fever" afflicting most Punjabis, other

common factors that perpetuate transnational arranged marriage include: growing economic hardship due to decreasing land holdings and increased indebtedness, limited employment opportunities, and heightened economic and materialist aspirations. This last motive precipitates the perception of daughters as “mere commodities” that contribute to the family’s prestige (*izzat*) within the kinship network and village community and also serve a strategic function for further chain migration “by increasing prospects for siblings and other family members to go abroad in the long run” (Thandi 2013, 247). Women’s marriage migration is accordingly represented as a process solely concerning kinship and custom, and largely dissociated with political economy and market forces (Palriwala & Uberoi 2008, 25). However, as the *Grewal v Kaur 2011* case demonstrates (Chapter 1), there are a number of complex processes that mediate the breakdown of transnational arranged marriages. The status of marriage migrant connotes a dependent relationship to migrant men and consequently denigrates their economic roles and endorses their assumed passivity as secondary migrants (Palriwala & Uberoi 2008, 25-26). Though Kaur in the above case was not passive but rather active in her alleged attempt to mediate the marriage breakdown, she was ultimately deemed by the court to be insincere and solely interested in migration rather than the marriage to Grewal.

In the UK context, Ballard (1982, 9) notes that divorce is perceived in a similar manner to the Punjab context: “as a last resort, to be adopted only when other remedies fail”. Strategies to address marriage breakdown employed in the Punjab context are less likely to be effective in the UK context, since household structures are different and might mean that a woman has no other women to turn to for assistance, and her natal family may be too far away to intervene on her behalf. Accordingly, Mand (2008, 299) notes that:

A key to understanding women’s experiences of marriage, divorce and separation is the geographic location of their kin networks. For migrant women accessing kin support is mediated not only by cultural norms (as is the case for non-migrant women), but also, importantly, by immigration policies and laws.

“Consequently, South Asian women in Britain tend to be more exposed in situations of marital conflict than in the subcontinent” (Ballard 1982, 9). This is especially pertinent when a family is subject to external pressures, related to migration, sponsorship, financial remittances, or otherwise. Usually, the family members with the least effective bargaining power often bear the burnt of these difficulties, and oftentimes though not inevitably, it is the woman (Ballard 1982, 10).

In her ethnographic study of transnational Sikh women in East Africa, Mand (2008, 286) found that the question of “where would I go?” was highly pertinent. Female marriage migrants who confront difficulties in their marriages can be profoundly influenced by their immigration status as a spouse or dependent. Guru (2009, 287) found that:

Divorced women, often endure much hardship and exclusion if they are seen to deviate from the conventional family and have little male protection from their natal families.

This scenario is not universally applicable, since caste, class, region, and age, as well as education, language, and work experience contour gender relations. Sikhs in Britain divorce on grounds of adultery, educational differences, as well as differences in expectations with respect to gender roles (Jhutti 1998), however, Mand (2008, 288) notes the rarity of divorce in her case studies. Mand (2008, 288) further remarks that separation is also a “relatively unexplored area” but quite relevant because it

[...] draws attention to the centrality of marriage for a woman’s identity, as well as to the complex negotiations women must undertake to overcome the continuing stigma associated with living outside the ‘norm’ of marital life”

Thus, the centrality of Punjabi notions of kinship is highlighted here, and its inherent relationship to custom underwrites the powerful structures that appear to dictate women’s roles and (il)legitimacy outside of kinship norms in the diaspora context.

Institutions like marriage, caste and kinship regulate women in multiple ways (i.e. property, fertility, labour), where women’s rights are either upheld or undermined (Chen 2000, 175-176 cited in Mand 2008, 287). With that said, a woman’s access to cultural and familial norms and networks, social support and employment, can play a crucial role in enlarging options and strategies available to divorcing women (Mand 2008, 300).

Guru (2009, 286) also comments on the lack of research generally on ethnic minorities and divorce. Divorce rates for ethnic minority communities are difficult to find and there is little information or research available on variations in divorce patterns for ethnic minorities (Guru 2009, 286). Similar to Guru (2009), the same lack of public discourse about divorce is found in the Canadian context; locating legal cases and willing interview participants was a real challenge that contoured this doctoral thesis (Chapter 3).

This subsection on marriage migration and marriage breakdown in the transnational diaspora context has demonstrated that female marriage migrants face significant barriers that will influence their choices of dispute forums and actors when things go awry. These barriers exist fundamentally at the level of their immigration status, but also exist within Punjabi kinship, which appears to continue to have relevance in the diaspora context since the distinct family structures of India appear to be reproduced in the imaginations and lived realities of Indian transmigrants (Uberoi 1998). What is clear today, notes Gardner (2006, 373), is that processes of settlement in the Canadian context, do not mean that the “homeland” has been left behind. Whether political, economic, familial, or even imagined, multiple connections remain (Gardner 2006, 373). Kinship and custom are inextricably linked and understandings of these fundamental structures of Punjabi law and society are

carried with female marriage migrants through the continued cultural and religious practices that sustain diaspora communities. Women are lauded as carriers of culture and identity, and therefore are regulated at multiple levels: by their husbands and families, the Punjabi and/or Sikh communities they belong to, in addition to the nation state.

Conclusion

The legal pluralist analysis presented in this chapter permitted a discussion of various social structures and their interaction with religion, customs, customary laws, and official laws. Disputes are social constructs and given the lack of locally accessible official law forums that address family law issues (Chaudhary 1999; Moore 1986), it appears that a uniform adoption of official law has not transpired and rather people continue to utilise and navigate multiple frameworks, including Hindu personal law, Punjabi customary law, customs, Sikhi-centred norms and precepts, but may also resort to the police, when they are presented with a justiciable family law issue. It is critical to recognise that specialised Family Courts do not exist in Punjab, and as a result, matters pertaining to marriage and marriage breakdown are appearing in decentralised contexts. Marriage remains a predominant concept that structures a Punjabi woman's identity and aside from kinship networks, marriage breakdown is largely addressed through local forums, like panchayats, the police, Lok Adalats, or the two Mahila Lok Adalats. Chapter 4 primed the reader with an understanding of Punjabi and Indian norms, practices and concepts which, as we shall see, have continued relevance in the diaspora context, specifically the Canadian diaspora context. The purpose of the chapter was to prepare the reader for the fieldwork analysis, laying the groundwork for understanding why a disconnect may exist between transmigrant Punjabi-Sikhs and the relief they seek in Ontario family law courts, versus official law actors who may struggle to adequately comprehend and/or resolve the issues brought forward by transmigrant Punjabi-Sikhs.

Chapter 5

Political and legal contours of kinship and marriage breakdown in Canada

Religious arbitration entered Canadian public consciousness in October 2003 when the Canadian Society of Muslims announced that it would offer arbitration for family and private business disputes.⁵⁹ Following this announcement, The Islamic Institute of Civil Justice was founded in 2004 with the purpose of establishing Muslim arbitration boards to provide binding and enforceable decisions for family and private business disputes (Baines 2009, 7).⁶⁰ The arbitration services described by the president, Syed Mumtaz Ali, were already permitted under the *Arbitration Act* (1991) (*Arbitration Act*, herein) but the announcement signalled to the public that something had changed in law that made it easier to apply Islamic legal principles (Razack 2007, 6).⁶¹

Sensational media reports that *sharia* law would be officially recognised in Canada stirred public panic that conservative Muslim interpretations of women's rights would prevail. The announcement backfired, and an intense public debate was sparked, which raged on until early 2006, and ceased when the Ontario Premier announced that religious arbitration would be "banned." The debate was fuelled by general public panic but also the appeals of various feminist organisations.⁶² Central to the debate was the figure of the imperiled Muslim woman, most vulnerable in the context of family and community (Razack

⁵⁹ Arbitration is type of alternative dispute resolution that is triggered by parties who wish to use a particular law to resolve a dispute privately. The parties agree to abide by the process and decision of the chosen arbitrator, even if they do not agree with the decision itself (Goundry 1998, 20).

⁶⁰ In the mid-1980s, the Ontario government sought to address the issue of state control over alternative dispute resolution (ADR) processes (Baines 2009, 84-85). Arbitration was initially regulated in Ontario by legislation copied from the UK *Arbitration Act*, 1889. With the enactment of the *Arbitration Act*, 1991 the broad discretionary powers of civil courts were narrowed down to an itemised list of grounds for setting awards (Baines 2009, 84-85). This development was followed by another policy change in 1998 that made mediation (but not arbitration) mandatory in civil courts, and specifically for family law in specific locations. There was thus a growing space created in Canadian family law regulation for this kind of mediation, presumably with the aims of reducing costs and making the processes as people-centric as possible.

⁶¹ Similar public debate about Islamic family arbitration occurred in the UK. See Bano 2012; Bowen 2012; Carroll 1997; Douglas 2012; Douglas et al 2011; Malik 2012; Shah 2009, 2010b, 2012, 2013; Shah-Kazemi 2001. Also see Nichols 2011; Foblets & Renteln 2009; Hoque & Shah 2012.

⁶² Critics asserted the *Arbitration Act* threatened to hinder developments made in family law, that women would not be making informed choices, and that arbitral awards may be less satisfactory than what parties would be entitled to in family court. See Bakht 2005, 2006; Bunting 2004, 2007; Fournier 2006, 2010a, 2010b; Razack 2007, 2008a, 2008b.

2007, 9). The best kind of protection for Muslim women, it was argued, would be achieved through the absolute separation of religion and law (Bakht 2006, 67). The media-induced impression that sharia law would become part of official Canadian law rather than remain an unofficial informal practice suggests that “Otherness” is tolerated in Canada only so long as it remains within the private unofficial sphere. When the supposed boundary line between the unofficial and official spheres, the informal and the formal, is crossed, it flags up the limits of multicultural accommodation in Canadian law and society. One could also portray this as a desire to ban religion from the field of law, an impact that would be felt by other ethnic minority communities, including Punjabi-Sikhs.

The provincial government initiated an official inquiry of the *Arbitration Act*. The honourable Marion Boyd led the review and concluded that religious arbitration was lawful and the use of Islamic legal principles was permissible (Boyd 2004). Boyd presented a range of recommendations to enhance institutional oversight of arbitral decisions and education programmes on the principles of religious arbitration and Canadian family law. She responded to criticism by asserting that a more complex assessment of women’s lives is “an important rejoinder to cultural stereotypes that Muslim women are uniquely or exceptionally vulnerable” (Boyd 2004, 100). Nonetheless, the Premier responded to the public outcry by stating there would be “no *sharia* law in Ontario. There will be no religious arbitration in Ontario” (Yelaja & Benzie 2005, A1).

The *Family Statute Law Amendment Act* (2006) (*Amendment Act*, herein), the legislation that “banned” religious arbitration, in fact, made no reference to a ban at all. The Act upheld what was already in place, that faith-based family arbitration awards found to be inconsistent with Ontario and Canadian laws would not be enforced in civil courts (Baines 2009, 5). Prior to the “sharia law debates,” Jewish, Christian, Shi’a Ismaili and Sunni Muslim groups used the *Arbitration Act* to set up boards that ruled in accordance with their religious principles for private matters (Boyd 2004, 55-61).⁶³ Aside from concerns over provincial elections, the motive behind the *Amendment Act*, then, appears to be a resounding concern about the presence of minority (non-western) religious laws in Canadian official law (Kutty 2011, 2).

The *sharia* law debates reflect a tension in family law concerning the gendered regulation of the public and private aspects of life that have become increasingly important in a post-secular society (Baines 2009, 1; Brown 2009; Shachar 2010). The debates expose how western ideology, grounded in liberal individualism and secularism, may be at odds with ethnic minority conceptualisations rooted in an understanding of the individual as part of a corporate group, such as kinship networks or the wider diaspora/ethnic minority

⁶³ See footnote 60 on the *Arbitration Act*.

community.⁶⁴ In accordance with this public/private disjunction in family law, this chapter situates the experiences of Punjabi-Sikhs in the Canadian context as it relates to marriage breakdown and its official regulation.

I establish in the first section that Punjabi-Sikh kinship has relevance in the Canadian context, as demonstrated by Canada's nation-building project through the distinctively gendered nature of migration. The first section also explores two fundamental principles, liberal individualism and secularism, that inform Canadian political and legal frameworks. Second, I consider two tenets of the *Charter*, the protection of religious freedom, and the value of multiculturalism. This section is requisite to this thesis because it substantiates the claim that a disjunction exists between transnational Punjabi-Sikh disputants and official law actors. Third, I provide a background to Canadian family law before specifically addressing marriage breakdown. This section contributes to the doctoral thesis because it establishes the presence and enactment of constitutional provisions in Ontario family law provisions. Finally, this chapter concludes with a discussion about multicultural accommodation in cases of marriage breakdown. In this section, I assemble the component parts of this chapter in order to argue that Ontario family law is constrained by its individual, secular, and liberal postulation of family and marriage and that this overarching concept is compromised by the realities of accommodating ethnic minorities. This chapter contributes to the core thesis argument that the Canadian family legal system struggles to address the needs of ethnic minority family litigants. I rely on a range of sources, including political and legal literature (Asad 2009; Baines 2009; Berger 2007, 2008; M.Boyd 2004, 2007; S.Boyd 1994, 2000; Chunn et al 2007; Kymlicka 1991, 1995, 2000; Minow & Shanley 1996; Mossman 1992, 1994, 2003; Payne & Payne 2011; Razack 2007, 2008a, 2008b; Shachar 1998, 2000; Shah 2005, 2009, 2010b, 2012, 2013; Taylor 1994; Thobani 2000, 2007; Walton-Roberts 2003).

⁶⁴ It also reflects the intended division of individuals and groups as the third stage in the development of modern western attempts to escape from identity (Sacks 2015, 190-1).

5.1 Welcome to Canada

Figure 4: Map of Canada



A land of vast distances and natural resources, Canada is marketed as a destination for immigrants worldwide since becoming a self-governing dominion of the British crown in 1867.⁶⁵ The first settlers hailed from the United Kingdom and France, followed by migrants from Western and Eastern Europe. The legal framework is rooted in British common law, institutionalised in all provinces and territories, save for the French-speaking province of Quebec. The bi-jurisdictional setup of Canada's legal system ensures that public and private law are separated and exercised by Parliament and the provinces respectively (*Constitution Act, 1982*).

At the turn of the twentieth century, 5,000 South Asian migrants, predominantly male Sikhs from Punjab, arrived on the shores of western Canada (Agnew 2003, 3). Today, the largest ethnic minority population hails from South Asia (StatsCan 2008); and while 7 out of

⁶⁵ In spite of its First Nations origin, Canada was founded as a bi-national and bi-cultural nation state that bridged the English and French colonial settlers (*British North America Act, 1867*).

10 Canadians identify themselves as either Roman Catholic or Protestant, the number of Canadians who identify as Muslim, Hindu, Sikh or Buddhist has increased substantially (StatsCan 2008, 5). The official languages are English and French, but according to the 2011 Census, Asian languages comprise 56 per cent of the more than 200 immigrant-languages reported and Punjabi is the top reported language (Houle 2012, 1-2). Diversity is thus reflected in ethnic origin, religious belonging, and reported languages in Canada.

5.1.2 Race, nation-building and citizenship

In advanced capitalist nation-states like Canada, citizenship entails the conferring of membership to a national community of individuals who enjoy equal status in their treatment by the nation state and each other (Benhabib 2002, 1-2). Citizenship is intrinsically bound with nation building in the Canadian context, and both projects are underpinned by the colonisation of First Nations people and the racial and gender regulation of immigration and settlement, where all other Canadians have historically become citizens through the processes of migration and settlement (Thobani 2007, 282). A completely uniform group of citizens consequently does not exist since variations in historical conditions have meant different rights were permitted particular populations and their descendants (Thobani 2007, 69).⁶⁶

As a white settler colony, all non-First Nations populations have historically become nationals or “others” through migration (Thobani 2007). Racial classifications were legislated to restrict immigration of non-preferred Asiatic races, such as the *Chinese Immigration Act* (1885) and the *Exclusion Act* (1923). The infamous *Continuous Passage Act* (1909) stipulated admission into Canada was contingent upon the migrant travelling directly to Canada from their country of origin without stopping. The Act remained in effect until 1947 and was designed to keep Indian immigrants out. In 1914, however, Indian entrepreneur Gurdit Singh tested this law by chartering the Komagata Maru ship to travel from the port of Calcutta to Vancouver. Upon arrival, most of the 376 passengers were refused entry. The public health threat of contagious disease was used as grounds to issue deportation orders. The ship sat in the port for 60 days, prohibited from taking food on

⁶⁶ Citizenship is enshrined in master narratives of nationhood:

Such privilege, manifested as belonging and conforming to regulatory norms and forms, has been restricted through criteria that are both constructed through and anchored in the social relations of the civil society. Being working class, being “raced”, and being of a certain gender, all restrict access to citizenship in the here and now by modifying the conditions of freedom, property, and literacy. (Bannerji 2000, 67)

board until it was forced to sail back. Upon reaching the shores of India, most surviving passengers were arrested (Handa 2003, 48).⁶⁷

Family and kinship, both perceived or real, were at the root of public panic of a “Hindoo invasion”, and were deployed by white settlers to exert their domination and curtail the permanent settlement of non-preferred races (Ng 1993, 231; Dua 2000, 111). Immigration policies constructed immigrant Asian women as a threat to white dominance since they were the reproducers of unwanted racial and cultural difference (Thobani 2000, 282; Bannerji 2000, 67). Early migration of Punjabi-Sikhs was, consequently, primarily a male preserve.⁶⁸ Many anti-Asian laws were challenged or restrained, however, the racist motivation that informed legislative action reveals that race, nation-building and citizenship are interconnected.

Immigration restrictions were eased in 1919, but it was not until 1947 that emigration of Punjabis from India increased. The bulk migration occurred after the mid-1960s when immigration policies were liberalised (Dusenbury 1997, 740; Chilvers & Walton-Roberts 2014, 121-2). The *Immigration Act* (1953) granted clear preferential support to white immigrants, and it was replaced with the *Points System* (1967), designed to classify immigrants based on various qualifications. At a time when post-war European economic growth was decreasing European emigration, Canada was motivated by a booming economy and demands for skilled, technical and professional labour to consider a radically new approach (Arat-Koc 1999, 208). The *Immigration Act* (1976-77) (*Immigration Act*, herein) reconstituted Canadian national identity in correspondence with a policy of multiculturalism after more than 100 years of racist and sexist immigration policies.⁶⁹

These two policies, one managing immigration, the other managing citizenship, worked in tandem to reformulate national identity in a manner that remained racist and sexist but systematically so and couched in a language of “class” preference. The *Immigration Act* and *Points System* instituted three distinct categories: independent, family and refugee. These categories were based on different considerations and criteria used for entry of immigrants. Prospective immigrants were assessed on the basis of their education, profession, occupation, language, skills level, and family ties to Canada. Given the structure of the *Immigration Act*, however, when ethnic minority women were finally granted entry to join their husbands in Canada, they predominantly entered as dependents. Even though

⁶⁷ In 2016, Prime Minister Trudeau issued a formal apology for the Komagata Maru incident (Husser 2016). See: <http://www.cic.gc.ca/english/multiculturalism/asian/100years.asp>

⁶⁸ Ralston (1999, 33) reports that in 1903-04, there were 40 men and merely 4 women in Victoria and Vancouver, and in 1907-08, a total of 5,179 South Asian settlers, primarily Punjabi-Sikh, lived in British Columbia, of which merely 15 settlers were women.

⁶⁹ This reform was in line with international trends, such as the national liberation movements in previously colonised countries that made the overt use of race untenable, the falsity of the “scientific” theories of race in a post-WWII era and the civil rights movement in the US.

South Asians were no longer blatantly discriminated on the basis of national origin, race, ethnicity, or religion, gender discrimination persisted because patriarchal ideologies continuously constructed immigrant women as wives of immigrant husbands, ignoring any qualifications or work experience from the source country (Ralston 2000, 205).

The racial hostility and vicissitudes of immigration policy curtailed Punjabi-Sikhs from establishing families until after World War II (Ames & Ingles 1973, 17). Since the 1970s, the majority of Indian immigrants have been from Punjab though migrants from other regions have been rising steadily (Buchignani 1989; Buchignani et al 1985; Walton-Roberts 2003, 242). Immigration policies reinforced gendered patriarchal norms by granting men the power to initiate the movement of women to Canada through marriage and family formation (Walton-Roberts 2003, 240; Das Gupta 1994). Half of the sponsored family members entering Canada come from the Asia/Pacific region, with India and Pakistan among the top source countries (Merali 2007). India has been a top source country for spouses and partners since 2008 (CIC 2012, 4). Family class migration encompasses a broad range of kin relations, who are either permitted to travel with the primary migrant or may be sponsored at a later date, and include: spouse or common-law partner, dependent or adopted children, parents and grandparents, as well as other relatives (CIC 2007).

5.1.2 Liberalism and individual rights

Liberalism is the political ideology that informs Canada's democratic society. It implies that the Canadian nation state is ruled by the people (i.e. universal adult suffrage and eligibility to run for electoral office), and limited by the Rule of Law, and ultimately, the rights of the individual (Taylor 1994, 56-57; Plattner 1998). Individual rights as the cornerstone of liberalism secure the protection of the private sphere as well as the plural and diverse ways in which an individual leads her/his private life (Kymlicka 1995, 34).⁷⁰

Liberalism claims to provide its proponents with a common language that is both political and moral, and this language is employed to identify problems and dispute them (Asad 2009, 25). Various contested aspects of liberalism, such as individual autonomy, freedom of (economic, political, social) exchange, limitation of state power, Rule of Law, national self-determination, and religious toleration, belong to this language (Asad 2009, 25; Goldberg 2003, 5). Similar to proponents of legal centralism, liberal theorists seek to present this ideology as consistent and unified despite prevailing contradictions and ambiguities in the language of liberalism. As this thesis aims to demonstrate, the increasingly multicultural character of Canadian society as well as the return of religion to the public sphere brings these contradictions to light (Mandair 2009, 2).

⁷⁰ Individual rights in Canada are secured across the common and civil law traditions through an established system of bi-juralism (Ministry of Justice 2015a).

5.1.3 Secularism

Complex and varied across western democracies, secularism has many avatars (Foblets & Alidadi 2013, 5). Commonly referred to as the formal separation of Church and State, secularism refers to post-Reformation institutions and practices in the west that formally separate private religious belief (and non-belief) from public life (Brown 2009, 9). Often conceptualised as a single, monolithic phenomenon, the term subsumes a plurality of formations since it can refer to a condition of being unreligious or anti-religious, but also religiously tolerant, humanist, Christian, modern, or simply Western (Asad 2009, 22).

Canada's colonial heritage is rooted in Christianity and reflected in the *Charter* preamble (Section 5.2.1). But on an official discourse level, a particular religion is not recognised. Perhaps tentatively, Canada can be conceptualised as maintaining a theoretical separation between religion and the state. The origin of secularism stems from the belief that severing the state and its institutions from religion would ultimately make society in democratic states more inclusive. Thought to provide a unitary legal and political framework in which both religious and non-religious people could co-exist, secularism was embedded in western liberal democracies (Brown 2009, 11). Brown (2009, 11) also clarifies that religion was substituted with secularism as a result of a turn from faith/opinion with truth, subjectivism with science, and, the conviction that critique can displace religious and other unfounded authority and prejudice with reason, even as it may leave religion itself standing (Brown 2009, 11). Secular and religious are thus interdependent fluctuating conceptions that constitute a crucial domain of modern power and governance.

In contrast, secularism in modern India is primarily defined as constitutionally prescribing legal non-discrimination against non-Hindu minorities (Menski 2006, 259). Secularism refers to the principle of equidistance, meaning that the state should not favour any particular religion. Instead of a strict separation between state and religion, as found in section 2(a) of the Canadian *Charter*, the Indian state is obligated to deal with all religions, and it should specifically reform the majoritarian "Hindu" religious traditions while leaving the reform of "minority" religious traditions alone (Baxi 2004, 326). Since Sikhs are subsumed by the category "Hindu" it is unclear what the implications for this minority community are. The events of Operation Blue Star in 1984 and the ensuing state-sponsored violence against Sikhs compromise this conception of secularism.

The perceived separation of law and religion is the dominant paradigm in Canada, however, the framework of Indian secularism and Hindu personal law provisions, not to mention other significant developments in the post-Independence era (i.e. communal violence in Punjab and Gujarat), indicate that the supposed separation between law and religion is not institutionalised amongst Punjabi-Sikhs and other Indians (Section 4.2).

Rather, the connections of law, religion and identity (i.e. kinship, caste, class, ethnicity, language) are strong among Sikhs and other South Asians. Given the Indian framework of Hindu personal law and customary law provisions (Section 4.2.4), it is possible that transnational Punjabi-Sikhs may have an expectation that their value systems will be accounted for if matters go to court in Canada.

5.2 Key Charter values

The *Charter* provides a basis for judicial review on two basic scores: 1) it defines a set of individual rights, and 2) it guarantees equal treatment of citizens against discriminatory treatment on a number of grounds, such as race or sex (Taylor 1994, 53-54, 57). The individualised identity is at the core of Canada's liberal democratic framework, where the residual legal position reverts to a deliberate official blindness to difference on the basis of gender, race, ethnicity or religion, which are part of an individual's inherited or assumed identity (Cotterrell 2005, ix). The rights-based paradigm of liberalism generates a politics of equal respect that is somewhat inhospitable to difference, asserts Asad (2009, 24), since the equal, individual and substitutable citizen is central to this mode of liberal politics and economics.

Particular to the nation-building project, the *Charter* includes various provisions that speak to various groups that shape its colonial heritage and development as a nation state. The following two sections concern the fundamental rights to freedom of conscience and religion (s. 2(a)), and the protection of multicultural identity and heritage (s. 27).

5.2.1 Freedom of religion

The *Charter* preamble states: "Canada is founded upon principles that recognize the supremacy of God and the rule of law". The Rule of Law concerns the idea of a stable legal balance of equality and difference closely linked to liberal individualism, as aforementioned. Of particular interest in this section is the official recognition of a particular Christian deity, i.e. God, which stands in contrast to freedom of conscience and religion (s. 2(a)).⁷¹

⁷¹ Asad (2009, 22) asserts that many Euro-Americans trace the origins of "democracy" and "political equality" to the Christian doctrine of "the universal dignity of man" in order to make the claim that western civilisation is unique. While the Medieval Latin concept of "dignitas" referred to the privilege and distinction of high office and not equality of all human beings, Christianity does have a notion of universal spiritual worth (as does Islam, Sikhism, etc) (Sacks 2015). Another source for the concept and practice of modern democracy has also been traced to classical Greece. Though pre-Christian Athens had a concept of citizenship and democracy, it had no notion of the "universal dignity of man" (Asad 2009, 22). Thus, "In European Christendom it was only gradually, through continuous conflict, that many inequalities were eliminated and that secular authority replaced one that was ecclesiastical" (Asad 2009, 22).

The Supreme Court articulated its nascent understanding of freedom of religion in *R. v. Big M. Drug Mart*⁷² and further clarified it in *Syndicat Northcrest v. Amselem* as existing alongside the *Charter's* commitment to religious equality (s. 15).⁷³ The concept of religious equality was developed alongside freedom of belief to include the right to engage in religious practices without interference. This concept, however, is distinctly individual, since religious tolerance extends only so far as law's liberal individualist conception of religious expression allows (Berger 2007; 2008, 258). The protection of religious freedom and practice exists alongside the preservation and enhancement of Canada's multicultural heritage (s. 27). While this definition explores and defines the role of religion in the public sphere, religion also manifests as a private matter through an individual's affiliation to a family.

Since *Big M*, religious liberties have been discussed in a language "thick with conceptions of equality" which may suggest a more robust role for groups with respect to freedom of religion (Berger 2007, 285). However, the relationship between equality and the group is attenuated in Canadian equality law with respect to the social context and dynamics of group identity. In *Amselem*, the court stated, "religion is about freely and deeply held *personal convictions or beliefs*", thus rejecting the notion that for purposes of law, religious freedom depended in any way on collective conceptions of religious precept. A Canadian *Charter* conception of freedom of religion, then, intrinsically depends on the liberal individual, who is free to practise her/his religious or non-religious beliefs, in a secular civil society. The following section considers Canadian multiculturalism.

5.2.2 Multiculturalism

Multiculturalism can be considered a form of official cultural pluralism, a state of affairs where a number of cultures coexist within a nation state. Kymlicka's (1989, 1991, 1995, 2000) theory of multiculturalism is based on balancing "national minorities" with the claims advanced by newer immigrants. The theory is founded in liberal values of both internal and external aspects of autonomy and freedom. Intrinsic to Kymlicka's theory of multiculturalism, culture is defined as a key component of a historical community, which is

⁷² With the *Charter*, it has become the right of every Canadian to work out for himself or herself what his or her religious obligations, if any, should be and it is not for the state to dictate otherwise. (*R. v. Big M. Drug Mart Ltd* [1985] 1 SCR 295 at 351) (*Big M*, herein)

⁷³ The basic principles underlying freedom of religion consist of:

...the freedom to harbour beliefs and undertake practices, having a nexus with religion, in which an individual demonstrates he or she sincerely believes or is sincerely undertaking in order to connect with the divine or as a function of his or her spiritual faith, irrespective of whether a particular practice or belief is required by official religious dogma or in conformity with the position of religious officials. (*Syndicat Northcrest v Amselem* [2004] SCC 47 at 46) (*Amselem*, herein).

more or less institutionally complete, occupies a territory or homeland, and shares a distinct language and history (Kymlicka 1991, 239) (Section 2.2.1).⁷⁴ Cultural membership is valuable because members of minority groups are disadvantaged from limited access to their own cultures (in contrast to members of the majority culture). Since the inequality stemming from an individual's membership in a minority culture is not chosen, members of minority groups can reasonably demand the members of the majority culture share in the costs of accommodation (Kymlicka 1991, 256; 1995, 30).⁷⁵

Seen as a social good that should be cultivated, Canada's *Multiculturalism Policy* was tabled in 1971.⁷⁶ The *Canadian Multiculturalism Act* was passed in 1985. The adoption of multiculturalism enabled Canada to present itself on the global stage as cosmopolitan and at the cutting edge of promoting racial and ethnic *tolerance* among western nations.⁷⁷ Redefining Canada as multicultural represented more than simply a mode of managing cultural diversity. The core of the nation was affirmed to be bilingually and bi-culturally English and French, whereas multiculturalism constituted ethnic minorities as politically identifiable by their religious and cultural backgrounds, thus reconfiguring a social understanding of "race" as "culture" (Thobani 2000, 280). Berger (2008, 250) notes that Canadian policies on multiculturalism fail to take notice

[...] about the equality or nature of the interaction between and among the multiple cultures embraced by its meaning. It says nothing, furthermore, about the experience of this interaction for those living within it, nor about the possibilities and room for commensurability within this encounter.

Given Canada's evolution as a capitalist state derived from a white settler colony, Bannerji (2000, 6) argues the discourse of nationhood constructs multiculturalism as an ideology that mediates fissures and ruptures more deep and profound than those of the usual capitalist nation state. The undesirable others—ethnic minorities—were discursively inserted in the middle of a dialogue on hegemonic rivalry between the French and English. Multiculturalism was thus less of a gift to those historically injured by exclusionary immigration and citizenship policies, and more so a central pillar of the state apparatus (Bannerji 2000, 6). Issues continue as the foundational claims of the British and French are

⁷⁴ Culture is said to be instrumentally valuable to individuals because of two reasons. One, it enables individual autonomy and, a condition of autonomy is having an adequate range of options from which to choose, and gives the individual a sense of meaningfulness. And two, culture is intrinsically valuable for individual self-respect (Kymlicka 2000, 5).

⁷⁵ For a critique of Kymlicka (1995) see Bhamra (2007).

⁷⁶ This bill was tabled following recommendations from the *Royal Commission on Bilingualism and Biculturalism*, which reconfirmed the special status of the British and French settlers, and inadequately represented First Nations people (Das Gupta 1999, 191-2).

⁷⁷ Group differences must extend further than mere "toleration" and should encompass recognition and positive accommodation.

balanced with the demands for inclusion of the multitudes of other cultural groups that make up the Canadian population.

Multiculturalism allows for cultural pluralism to be officially recognised by the state and makes certain provisions for various minority groups in order to include them in the larger Canadian polity. Group rights are recognised, but only for “national” minorities who have a differentiated role in the founding of Canada by the English, French and prior claims of the First Nations people. Proponents of multiculturalism take for granted that it is “culture” and “cultural groups” that are to be recognised and accommodated. Yet claims advanced in the name of multiculturalism concern a wide range of issues involving religion, language, ethnicity, nationality and race. A notoriously overbroad concept, culture has in fact subsumed or been equated with all of these categories (Song 2014). Though Kymlicka provides a concept of culture, his definition does not address its ideological, symbolic, or belief-based components (Berger 2008, 249). Furthermore, the law is not factored in as a component of culture. If the concept of culture is interpreted as various aesthetic and religious practices, including food, drink, celebration and observing religious holidays and festivities, it cannot theoretically accommodate much else. Alternative non-western conceptions of law and legality, amongst other things, remain outside the purview of multicultural accommodation. The deficiencies in multicultural theory regarding the relationship between “law” and “culture” thus allow western conceptions of official law to prevail (Okin 1999) (Section 2.2.1).

Though it encompasses both “national minorities” and newer Canadians as part of a conception of national identity, multiculturalism has, so far, left the concerns of “minorities within minority communities” largely unaddressed (Shachar 2000). The policy of multiculturalism fails to seriously reconcile injurious in-group practices with external multicultural protections that promote justice between groups; it therefore upholds the very cultural traditions that sanction the routine in-group maltreatment of certain categories of historically vulnerable members, such as women (Berger 2008, 270; Shachar 1998). The governance of multicultural societies involves not only the acknowledgement of the diverse values attached to, or associated with, different minority groups, but also requires decisions about what kind of difference, and how much, to recognise, both officially and unofficially in the public and private spheres (Grillo 2008b, 107).

5.3 Canadian family law and marriage breakdown

This section shifts markedly away from a focus on legal and political structures to narrow the focus to Canadian family law as it pertains to marriage breakdown in the province of Ontario. The purpose of this section is to consider the organising principles that inform marriage breakdown, specifically the Ontario *Family Law Act (FLA, herein)*⁷⁸ and the federal *Divorce Act*.⁷⁹ An understanding of the underlying values of Canadian divorce law is useful to this doctoral thesis because it facilitates the consideration of the extent to which *Charter* values inform Ontario family law provisions. This chapter section is relevant to the doctoral thesis because it provides the parameters for the official sphere, which will assist in the analysis provided in the fieldwork chapters.

5.3.1 Public v private family law

As a result of its shared jurisdiction and reforms made by the legislature and judiciary, family law in Canada has a distinctive character. A discussion of Canadian family law concerns the pertinent classification of family law as private or public. The personal was made political through the vast efforts of the women's movement in Canada, and consequently achieved "progressive" social change and legal and policy reform in a number of areas of the law (Chunn et al 2007, 1). Since the 1970s and 1980s, the liberal ideology of equality began to be applied in family law, as traditionally defined, which was precipitated by the advent of the *Charter* (Boyd 1994, 42). The Charter applies to situations where an element of governmental action is implicated in the litigation (i.e. public law), thus it is valuable to question to what extent the Charter has a legitimate role in family law (i.e. private law).

The doctrine of formal equality embedded in the Charter has pervasive implications for family law arguments, judicial decisions, statutory reform as well as familial ideology. The *Charter* does not specifically address the right to family or the right to privacy, but it does contain provisions on equality and freedom from discrimination (s. 15), freedom of religion and expression (s. 2), and the right to life, liberty and security of the person (s. 7), all of which have been invoked in the family law context (Boyd 2000, 297). Since the *Charter's* inception in 1982, "the scope for expansive interpretation in Canadian courts has greatly increased" so that "constitutionally-entrenched guarantees of equality" have extended the equality rights of spouses to same-sex couples (Mossman 2003, 172).⁸⁰ As

⁷⁸ *Family Law Act*, RSO 1990, c F.3, <<http://canlii.ca/t/52phn>> retrieved on 2016-08-04

⁷⁹ *Divorce Act*, RSC 1985, c 3 (2nd Supp), <<http://canlii.ca/t/52f27>> retrieved on 2016-08-04

⁸⁰ *M. v H.* [1999] 2 SCR 3, 1999 CanLII 686 (SCC); See "Beyond Conjugalities" Report by Law Commission of Canada (2001).

Supreme Court decisions have been passed, legislatures have tended to play “catch up” in order to meet expanded legal definitions of “families” in recent years (Mossman 2003, 181).

But as Boyd (2000, 297-298) clarifies, the rights paradigm, based on the autonomous individual and an application of formal equality and due process, does not easily apply in the family law context since individual family members are encumbered with complex interdependencies, needs, and relations of care (Boyd 2000, 297-298). An alternative view of the *Charter’s* position in private law asserts that it should play a limited role. Amongst some family law practitioners, there is a deeply held view that something intrinsic to family law and familial relations makes the application of public values contained in the Charter problematic. However, the “politicisation of the family” has meant that the private setting of the family is increasingly contested in multicultural societies of the west (Grillo 2008a, 9). The following Section 5.3.2 introduces Ontario family law as it pertains to marriage breakdown. It will be evident that the right-based framework of the Charter is embedded in the structure of legislation and legal reforms.

5.3.2 Defining Ontario family law

Lawyers understand family law as laws related to divorce and separation, often emphasising spousal rights, but also including support law, matrimonial property law, and child custody law. The common law paradigm, originating in ecclesiastical law, observed marriage as “the voluntary union of life of one man and one woman to the exclusion of all others,” which “forbade divorce and dealt mercilessly with sexual misconduct” (Abella 1981, 2). The patriarchal family regarded the family as a natural, pre-political, hierarchical, indissoluble, and private association made up of a heterosexual couple and their biological children. Since the mid-19th century, this particular understanding continues to be dismantled in western liberal democracies and understandings of the family has undergone tremendous sociological change. Marriage breakdown was introduced under the *Divorce Act* (1968), and though divorce could be obtained under other grounds, it was the marriage breakdown principle that resulted in a phenomenal increase in the divorce rate, along with the need to redefine post-marriage relationships in light of changes in expectations of men and women, that ultimately led to dramatic reforms to family law (Payne & Payne 2011). Alongside the liberalisation of divorce, other contemporary sociological changes include the feminisation of poverty (Wiegers 2011; Mossman 2003, 185),⁸¹ fathers’ rights (Boyd & Young 2007), and the disjoining of the legal status of marriage from family form (Butler 2002, 14; Young & Boyd 2007). In the contemporary Canadian context, Payne and Payne (2011, 1) clarify:

⁸¹ *Moge v Moge* [1992] 3 SCR 813, 1992 CanLII 25 (SCC), <<http://canlii.ca/t/1fs7v>>, retrieved on 2016-08-04

Canadian family law might more properly be called the Law of Persons insofar as it concentrates on the rights of individuals whose family relationships have become dysfunctional. In short, Canadian family law deals primarily with the pathology of family breakdown and its legal consequences.

This succinct definition makes clear, one, that Canadian family law involves individual persons (and their roles/genders are intentionally unspecified) within collective family relationships (also undefined), and two, that dysfunction is central to the legal processing of marriage/family breakdown (in all its forms). As Fineman (2013, 267) points out, “family law has tended to be concerned with the relationships in middle- and upper-class families” and the problems members of these groups face.

Family law in Ontario is also comprised of a diverse range of pre-trial processes, such as mediation (Section 1.2.1) and arbitration (faith-based or otherwise), in order to help reduce or eliminate contentious issues and also make family justice more accessible (Payne & Payne 2011, 10). Furthermore, there are three different courts that deal with family law. In some communities, there is the Family Court of the Superior Court of Justice, which deals with all family law matters. In other places, family law matters are dealt with in two separate courts: the Superior Court of Justice and the Ontario Court of Justice. The former addresses divorce, custody, access, support, or matters related to family property, while the latter addresses support, or issues related to custody or access to children, adoption and child protection matters.

As an area of shared jurisdiction, the divisions of family law powers are outlined in sections 91 and 92 of the *Constitution Act* (1867). The federal and provincial laws related to marriage and divorce overlap occasionally. Child custody, for example, is considered to be within the province’s jurisdiction (s. 92(13), 92(16)), but child custody is also contained in the federal *Divorce Act* (1985).⁸² Provincial family law varies across the country, particularly in the area of division of property (Boyd 2004, 19). In Ontario, the *FLA* applies to both married and common law couples and covers family property, the matrimonial home, support obligations, domestic contracts and dependant claims for damages.

The *Divorce Act* applies not only to married people who want a divorce, but also to the custody, access, child and spousal support claims they make as part of the divorce. Meanwhile, the *FLA* sets the public policy parameters for resolution of family disputes through agreements. Therefore when adults separate, the family law that applies to them and their children is determined by their marital status. Married people have the option of using the *Divorce Act* to apply for a divorce, and they can also use this same statute to establish their custody, access and support rights. Only married couples have a right to

⁸² Fournier (2010, 38) points out most cases are solved through principles of federal paramountcy or inter-jurisdictional immunity.

division of property under the *FLA*. Common law couples and married couples who choose not to divorce, must alternatively turn to the provincial *Children's Law Reform Act* (1990) to determine custody and access, and the *FLA* for child and spousal support. Common law couples can make a claim against their partner's property, but this claim is not authorised by provincial statute but rather, it is a constructive trust, permitted by common law (Boyd 2004, 20).⁸³

5.3.2 Organising principles of divorce law

When the current *FLA* and *Divorce Act* were being enacted, Court of Appeal Justice Bertha Wilson clarified the *FLA* preamble with respect to pre-existing understandings of economic dependency:

A different concept of the relationship between husband and wife has matured in the community and is expressed in the preamble. The Legislature has stated that economic dependency must give way to equality and economic partnership if the role of the family in society is to be encouraged and strengthened (*McLaren v McLaren* [1979] 24 O.R. (2d) 481 at 488).⁸⁴

In this decision and subsequent rulings, Justice Wilson accepted a formal equality approach as well as an image of independent and autonomous spouses (Mossman 1992, 170). The formal equality approach has been criticised and since this early period, there have been efforts to revise to a substantive equality approach at the Supreme Court level, however, this approach is highly dependent upon the presiding justices (S.Boyd 2000, 318). At the provincial family law level, Payne and Payne (2011, 16) note:

Courts presided over by provincially appointed judges are more accessible, simpler, cheaper, and less formal than those presided over by federally appointed judges, but their case loads are extremely high and offer little opportunity to make use of community-based agencies to assist family members cope with stress and the economic or parenting realities of family breakdown.

To what extent the issues and challenges families of diverse forms and practices can obtain substantive equality claims in this highly variable and inconsistent context is therefore pertinent.

The institution of equal partnership as per the *FLA* and *Divorce Act* has provided a contemporary account about the nature of family relationships and the family's relationship to the state. The *FLA* and *Divorce Act* uphold marriage as a voluntary (and perhaps temporary) union of equals, and, it is this shift in societal understandings of marriage that is reflected in the adoption of no-fault divorce, and the equal partnership principle governing

⁸³*Rathwell v. Rathwell* [1978] 2 SCR 436, 1978 CanLII 3 (SCC), <<http://canlii.ca/t/1mkb9>>, retrieved on 2016-08-04

⁸⁴*McLaren v. McLaren* [1979] CanLII 1819 (ON CA), <<http://canlii.ca/t/g1c37>>, retrieved on 2016-08-04

allocation of economic benefits and burdens (Fineman 2013, 266). The state's primary concern is "equity" and "justice" between spouses in the division of net family property (Fineman 2013, 266).⁸⁵ Further clarifying the partnership concept, the *FLA* stipulates that each spouse must support him/herself, and, the other spouse based on need and a concomitant ability to contribute towards that need (Abella 1981, 8).

Complications arise upon closer examination of this apparent expansion of legal rights upon marriage breakdown. First of all, by upholding the family as comprising autonomous individuals, "scant opportunity" remains "for considering the impact of familial relationships on individual choices" (Mossman 1992, 170). Second, while the *FLA* is characterised as gender neutral, treating male and female spouses as having reciprocal rights and obligations with respect to support, custody and matrimonial property division,

[...] this does not mean that familial ideologies or state policies on "the family" were irrelevant or were no longer reinforced overall by state policies. Indeed the individualistic notion of self-sufficiency is part and parcel of state trends towards privatization of financial responsibility. (Boyd 1994, 42; also see Mossman & MacLean 1986)

Mossman (2003, 173) concurs; she argues that the state has taken advantage of the equality of recognition given to spouses in marriage and common law relationships in order to rid itself of social support obligations to women in poverty.⁸⁶

Third, Boyd (1994, 43) points out that in the economic areas of property, support and custody, family law reforms have been ineffective for many women, particularly women who do not belong to the middle or upper classes.⁸⁷ Fourth, in addition to class, Chunn et al (2007, 1) contend that the impact of family law reforms has varied according to a woman's race, (dis)ability, or age, in addition to broader political and economic forces such as neo-conservatism and neo-liberalism.

A final challenge to contemporary family law is that neither political and legal theorists nor legislators and judges have agreed on a consistent grounding for family law

⁸⁵ Madam Justice Abella (1981, 12) notes that the reforms demonstrated a dramatic shift in attitudes, where marriage was redefined as a social and economic partnership of equals where none of the several functions generated by being within a family is considered inherently more valuable than any other function.

⁸⁶ This retreat in the state's obligations to families has occurred not only with respect to social security programs but it has also been characterised in normative terms (Mossman 2003, 184; Eichler 1983).

⁸⁷ Susan Boyd (1994, 43) states:

In fact, matrimonial property reform was ineffective in large part for many women, due to the many categories of women excluded from its ambit, such as First Nations women living on reserve land, women married to men with little property, and women who are persuaded to 'contract out' of the property division mandated by statute. Furthermore, the gap between the advantaged and disadvantaged has widened with the dismantling of Keynesian states and the growing hegemony of neo-liberalism (Chunn et al 2007, 2; also see Bakker 1996; S. Boyd 1997; Kingfisher 2002; Brodie 2002; Cossman & Fudge 2002).

that entirely replaces the common law understanding of the family, as noted above (Minow & Shanley 1996, 5). This has an important impact in the realm of family law especially, because many areas of family law involve the exercise of judicial discretion when interpreting concepts that originate in common law (Boyd 2000, 295). Both political theory and family law alike regard people simultaneously as autonomous individuals and as persons deeply involved in relationships of interdependency and mutual responsibility, and families are regarded as both private associations and as entities shaped by social policy and state action (Minow & Shanley 1996, 6). Chunn, et al (2007, 2) concur that the relationship between Canadian legal reform and social change in liberal states is tangled:

Many law reforms that were inspired by feminism proceeded during a period that witnessed the rise of neo-liberalism and privatization, accompanied by a renewed emphasis on the rational liberal individual, choice, contract, and individual responsibility.

Thus in conceptualising Canadian family law and the underlying principles that guide divorce law, the neo-liberal individual who ostensibly has no gender, stands at the epicentre.

Section 5.3 has provided relevant background on Canadian family law, specifically the *FLA* and *Divorce Act*, as the legislation pertains to marriage breakdown. It has been demonstrated that while legal reform has taken place in the realm of family law, there are “real and unresolvable differences that emerge” which compromise the belief that a unitary system of law can be developed and applied to clearly defined problems (Fineman 2013, 266). Canadian family law predominantly takes a formal equality approach based on *Charter* values, where the autonomous individual takes precedence over the collective family, the relevance of which is contested in the private legal realm. Whilst significant developments have been made with respect to the economic consequences of divorce, the normative and official law treatment of families within a more traditional view of gender roles may continue to persist, and is dependent upon which justice presides over a case. While efforts have been made to make family justice more accessible for low and middle-income Ontarians (Sossin 2010), it is important to recognise that the legal treatment of marriage breakdown distinguishes this phenomenon as a largely middle- to upper-class issue. How the impacts on ethnic minorities and immigrants are critical areas for development in the Canadian context, and fundamental questions still remain about the role of the state in adjudicating family and marriage breakdown (Fineman 2013). The final section of this chapter provides a theoretical analysis of multicultural accommodation in the realm of family law, and corresponds to Sections 1.2 and 2.1.4.

5.4 Multicultural accommodation and family law

The purpose of this final section is to draw upon the analysis provided in this chapter in order to engage with the subject of multicultural accommodation in the realm of family law in cases of marriage breakdown. The previous section established that increasingly so, public law as enshrined in the *Charter* informs private law, in this case Ontario family law. The values and precepts thus enacted in family law reflect a particular vision of the individual and family, which therefore has an important impact on the accommodation of alternative non-western family forms and kinship norms. The approach taken in this chapter section corresponds with Sections 1.2 and 2.1.4 in order to assess existing literature (Baines 2009; Ballard 2008; Boyd 2007; Grillo 2008a, 2008b; Shachar 2000).

Similar to other western democracies, Canada eminently faces a multicultural quagmire: How does a western legal jurisdiction reconcile the accommodation of cultural and religious minorities with entrenched liberal principles of equality and non-discrimination, when minorities persist in their claim that their cultures and traditions require acknowledgement in order to protect fundamental rights? This complex reality highlights a fundamental cleavage that has deepened as ethnic minorities have sought accommodation through collective rights within the framework of human rights regimes primarily concerned with the individual.

In the *sharia* law debates, we saw that there is a lack of consideration of how multiculturalism has legally evolved to address a rapidly changing provincial (and national) context. Marion Boyd (2007, 469-470) poignantly notes:

Ontario laws are framed by the combined influence of the Judeo-Christian tradition and the Enlightenment focus on the individual as opposed to the community and are grounded in English common law. As a result, the laws of the province and their application are more easily embraced by some cultures than others, making their impact disproportionate on those who do not belong to the dominant culture. (Boyd 2007, 469-470)

Boyd's statement is significant in the context of the present doctoral thesis concerning one particular non-western diaspora community. It also highlights how interconnected race, nation-building and citizenship are with the realities of accommodation (or lack thereof) in the realm of family law (Section 5.1.1).

In accordance with the enshrined value of multiculturalism, ethnic minority groups might legitimately demand respect for their customs regarding marriage and family as an essential aspect to their group's identity and cultural existence (Shachar 2000, 200). But it is these very customs and practices of newer immigrant communities, as well as issues pertaining to gender rights, that have now become central to public debate about the politics of difference and its limits (Taylor 1994). The crucial role of creating and

preserving collective identity has traditionally been expressed in the cultural or religious minority group's family or customary law traditions, which often subordinate women (Kandiyoti 1988). The above-mentioned quagmire draws attention to the increasingly politicised nature of the family unit (Grillo 2008a, 9). Serious public policy concerns arise with respect to the appropriate level of commitment to accommodation versus assimilation in the realm of family law, especially when certain practices amongst ethnic minorities appear to flout Canadian *Charter* values. On the other hand, the proposal that ethnic minorities lose the ability to arbitrate family matters according to religious law is equally contentious given *Charter* enshrined religious and multicultural rights (Section 5.2) (Boyd 2007, 469).

While the so-called "ban" on faith-based arbitration might have allayed contested fears that women would be vulnerable and disadvantaged, the ban also effectively curtailed any public discussion about meaningful and gender-sensitive multicultural accommodation of cultural and religious difference in family law. Boyd (2007, 465) pithily remarks:

Family law is often a litmus test for how a jurisdiction interprets multiculturalism, as it serves to determine who belongs in a community and who does not according to the community's own norms.

The "ban" imposed by the Ontario government speaks volumes about how the state observes its multitude of ethnic minority communities and their respective practices.

Shachar (2000) critically remarks that too little consideration has been given to multicultural accommodation in the complex realm of family law. Multicultural accommodation policies aim to respect the norms and practices of different cultural and religious groups and level the playing field between minority groups and the larger society. At the same time, a balance must be struck so that policies do not impose disproportional injury upon a specific category of group insider, specifically women, due to patriarchal and hierarchical elements of a culture (Shachar 2000, 201-202). Multicultural accommodation must also be able to recognise and protect an individual's ability to contest practices within their particular group. For example, during the sharia law debates, there was a divide between secular feminists, who rejected the political campaign by asserting Muslim women's right to sex equality, and intersectional feminists, who provided remedial options and refused to choose between their race, religion and/or sexuality and their feminism (Baines 2009, 2; Razack 2007). Such debates and disagreements are signals that democratic processes are enacted and working. But the Ontario government curtailed this discussion and imposed a ban. As Williams (2010, 23) notes:

Minority status, and the experience of racism and social exclusion that so often goes along with it, can promote a defensiveness that leads to the re-assertion of community boundaries and to the imposition of social controls that are often gendered.

The “ban” has delimited public space and discussion about meaningful accommodation and participation of ethnic minority groups in spite of faith communities continuing to utilise the *Arbitration Act* for their family law needs. Indeed, gender inequalities exist within and beyond the boundaries of group identity, and the government’s response has meant that the role of the wider community in influencing and shaping faith-based arbitration practices has been curtailed (Boyd 2007, 470; Williams 2010, 23).

The acrimonious debate about (often imagined) abhorrent cultural practices is frequently the object of public policy discussion, as demonstrated by the federal government’s approval of the “Zero Tolerance for Barbaric Cultural Practices Act” (Bill S-7). The Bill concerns forced marriage, honour killings and polygamy, which are all private matters concerning non-western families and individuals that are intrinsically tied to immigration control and restriction, thus taking on a different meaning in the public law context (Mattoo 2014). The passing of Bill S-7 could perhaps be considered a continuation of nation-building fears of immigrant women, who are reproducers of unwanted ethnic/cultural/religious difference.

The sharia law debates as well as the recent passing of Bill S-7 reflect the concerns of the dominant groups in Canadian society, which resonate with intense debates in similar multicultural western legal jurisdictions. Commenting on the presence of South Asian transnational networks in the UK and European contexts, Ballard (2008, 37) asserts:

Critiques of the settlers’ practices largely ignore the manifold benefits which the maintenance of extended networks of kinship reciprocity routinely precipitate. Instead they are primarily concerned with the relative weight that should be given to the right of every individual to determine his or her own futures on a wholly autonomous basis, as opposed to the freedom-limiting duties and obligations to which participants in networks of mutual reciprocity amongst kinsfolk are required to subordinate themselves.

This concern amongst the hegemonic majority white British/European population precipitates debate about the legitimacy of specific practices “most especially in terms of marriage, family and household formation” that give rise to corporately held values (Ballard 2008, 37). On the subject of ethnic minority marriage practices, Wray (2006, 311) has found that decision-makers judge whether a marriage conforms to his/her own “conception of how a genuine marriage, from a particular part of the world, would look”, and when marriages are deemed to fall outside of this conception, the parties may be unfairly refused. Thus, on the subject of cross-border marriage, for example, Wray (2006, 319) shows that the frequent claim of “sham marriage” is utilised by policy-makers and implementers to refer to marriages involving non-citizens and their decisions may represent a form of “moral-gatekeeping” (Charsley & Liversage 2015).

This section has demonstrated that multicultural accommodation in the realm of family law is a contested site, bounded by the fears and apprehensions of dominant voices within Canadian civil society. It is therefore understandable that little discussion about multicultural accommodation currently takes place in discourses about access to family justice. Perhaps some level of alienation has occurred for ethnic minorities, who do not see themselves reflected in Ontario family law nor its institutions.

Conclusion

This chapter has demonstrated that a significant tension exists in family law concerning the gendered regulation of the public and private aspects of life that have become increasingly important in a post-secular society (Baines 2009, 1). It was argued that Ontario family law is constrained by its individual, secular, and liberal conceptualisation of family and marriage and that this conceptualisation is compromised by the realities of accommodating ethnic minorities and their sometimes contrasting perceptions. The first section established the continued relevance of kinship in the Canadian context through discussion on nation-building, and the gendered nature of migration. The principles of liberal individualism and secularism laid the foundation for a discussion of *Charter* enshrined values of religious freedom and multiculturalism. The third section of the chapter examined Canadian family law as it pertains to marriage breakdown and finally, the chapter concluded with a discussion about multicultural accommodation in family law. It is before the background of such wider issues that the legal cases presently discussed need to be understood and analysed.

Chapter 6

Marriage and its breakdown in the official sphere

Situations of legal pluralism are explored in western legal jurisdictions through the linkage between law and culture, and the representation and regulation of social life (Merry 1992, 361). Chapter 2 introduced the concept of cultural defence, which is one aspect of accommodation and human rights that centrally relates to this chapter on the official sphere (Section 2.1.3).

Allowing cultural defence indicates that the judicial process accommodates culture, since it constitutes permitted expression and discussion in the official sphere. Existing literature has primarily focused upon its feasibility as a partial defence to murder,⁸⁸ however, cultural defence has the potential to be applied across civil and criminal domains (Renteln 2004). Relatively little scholarship exists in Canada that documents culture conflict with respect to marriage practices (but see fn. 62).⁸⁹ Cultural defence in the family law context is an apt subject for this chapter, which presents the first component of the fieldwork concentrating on marriage and marriage breakdown in the official sphere.

For a complex host of historical, political, and institutional reasons, “family law has become crucial for minority religions in maintaining their definition of membership” (Shachar 2010, 121). However, as demonstrated in Section 5.4, it is also in the realm of family law

[...] in which women have been historically and traditionally been placed at a disadvantage by both states and religious communities, in part because the recognition of female members plays a crucial role in “reproducing the collective”—both literally and figuratively. (Shachar 2010, 121)

With respect to multicultural accommodation in the realm of family law, the ethnic minority woman has become the battleground (Volpp 2001, 1181). Indeed, the problematic

⁸⁸ Classic examples often involve violence against women, which has spurred tremendous discussion about the dangers of multicultural accommodation for minority women (Okin 1999). One well-known case concerned the homicide (“honour killing”) of Canadian Jaswinder (Jassi) Kaur Sidhu, who defied her affluent family to elope with a lowly driver, a *riksha-wala* from her family’s village in Punjab. The homicide’s wider impact must be contextualised by a history of “honour killing” cases of Punjabi-Sikh and Muslim women often framed by cultural defence. The homicide cases of Amandeep Kaur Dhillon, Amandeep Atwal, Khatera Sidiqi, Aqsa Pervez, Jassi Sidhu, and the Shafia family women have mostly attracted calls for several legal interventions and enhanced criteria to obtain citizenship and immigration thus demonstrating that race is bound to nation-building (Section 5.1).

⁸⁹ British literature by Menski 1988, 1999, 2007, 2013; 2008; Shah 2005, 2010a, 2010b, 2013; Poulter 1987, 1989, 1999; Menski & Pearl 1998; and Ballard 1982, 1990, 1994, 2008, 2011; are helpful. On the US context, see Renteln (2002, 2004, 2010).

juxtaposition of “multiculturalism versus feminism” is not new to the Canadian context (Chapter 5). Claims of multicultural accommodation further complicate this juxtaposition, where difference is recognised but only to decry its existence and imply the superiority of the white mainstream norms (Lawrence 2001, 113; Fournier 2002). Indeed, Lawrence (2001, 111-112) poignantly demonstrates the dichotomous nature of cultural defence, since the legal system often produces “distorted and questionable versions” of non-mainstream cultures whereby “Judges seem unwilling to grasp the true complexity of cultural phenomena, whether in ‘Other’ cultures or their own.”

The official sphere exists in the public domain of civil society, which is characterised by the agency of the liberal and secular individual (Section 5.1.2). This individual is centrally challenged by the realities of adjudicating family law in a multicultural society, as this chapter will demonstrate. The purpose of this fieldwork chapter is to consider how Canadian state authorities handle kinship when addressing marriage breakdown issues. The examination of official law judgements and interviews with social and legal actors contributes to this thesis because it sheds light on the strengths and limitations of multicultural accommodation in family law. The hypothesis that Punjabi-Sikhs approach the official law assuming that the relief they seek are justiciable issues will be examined in this chapter in order to establish what issues Punjabi-Sikhs bring to court. This thesis also hypothesised that the official family law actors struggle to adequately comprehend and/or resolve such issues, and this chapter will therefore begin to examine in more depth how the courts addressed the issues brought forward by Punjabi-Sikhs.

This chapter is organised into three sections. The first section considers issues pertaining to marriage breakdown that were discussed in the legal case proceedings. The next section addresses the predominance of property and wealth issues that appear in the legal cases. In the third section, I finally turn to issues pertaining to marriage in the official sphere, which concerns the place of marriage, arranged marriage, serial polygamy and the legal treatment of the Punjabi custom *chadar-andazi*.

Situating Punjabi-Sikh transmigrants in the Canadian context

In the Canadian context, the form and function of social institutions and relationships of ethnic minorities is often attributed to the person(s) cultural background, values, and practices (Basran & Bolaria 2003, 220). Family formation is commonly seen as a product of individual preferences and cultural patterns and practices, however, this “orientation fails to consider the historical and structural forces that have had an important influence on family formation, family structure, and dynamics” in the Canadian context (Basran & Bolaria 2003, 220). As discussed in Section 4.3 and 5.1.2, the racist and sexist immigration and citizenship

policies that contour the journeys of South Asian transmigrants have an indelible impact on family formation.

The family legal cases harvested during fieldwork were clearly interwoven with migration (Table 5).

Table 5: Type of migrant

| | Primary | Family-class | Professional | Student | Refugee |
|----------------|---------|--------------|--------------|---------|---------|
| Wife | 0 | 6 | 2 | 1 | 0 |
| Husband | 2 | 9 | 2 | 1 | 0 |
| | 2 | 15 | 4 | 2 | 0 |

While the majority of parties were born outside Canada (Table 4), immigration became important in securing individual legal demands in family law courts. Parties sought recognition of a foreign marriage or divorce, as in *Garcha v Garcha 2010* or *Lalli v Lalli 2002*.⁹⁰ Harmful for Punjabi-Sikhs as a collective ethnic minority group, one party sometimes accused the other party of immigration fraud, as in *Cheema v Lail 2009* or *Burmi v Dhiman 2008*.⁹¹ In other cases, parties were deemed to be solely interested in immigrating to Canada as in the cases of *Grewal v Kaur 2011* or *Kaur v Brar 2003* and the cases were referred to Citizenship & Immigration Canada (CIC) for investigation.⁹²

With respect to family class sponsorship, “families are predominantly seen as private sites, but it is important to remember that they are also public and political spaces where broad social changes are enacted” (Williams 2010, 59). The historical assignment of South Asian women as the spouses and dependents of undesired South Asian male migrants has entrenched existing patriarchal structures in Punjabi-Sikh communities in Canada. However,

Recognizing the complexities of gender relations in a globalizing world, Kaplan & Grewal (1999) advocate a transnational feminist cultural studies that is particularly “interested in how patriarchies are recast in diasporic conditions of postmodernity” (358). This approach stresses the need to highlight complex subject positions and interlinked forms of inequality that defy homogenizing assumptions. (Walton-Roberts & Pratt 2005, 175)

The entrenchment of patriarchy, then, can take many shapes and forms, resulting in complex subject positions and interlinked forms of inequality that challenge homogenising assumptions. It is critical that the development of Punjabi-Sikh Canadian families should be understood in the context of the socio-political and economic forces that propel Sikhs to move from Punjab, their experiences in Canada, and the efforts made to adapt to Canadian

⁹⁰ *Garcha v Garcha* [2010] OJ 1231; *Lalli v Lalli* [2002] OJ 1957

⁹¹ *Cheema v Lail* [2009] OJ 1774; *Burmi v Dhiman* [2001] OJ 2010, OJ 2387

⁹² *Kaur v Brar* [2003] OJ 745

ways of life and society (Basran 1993, 344). In other words, the historical and structural factors in addition to the cultural elements must be taken into consideration.

Family class migration encompasses a broad range of kin relations, who are either permitted to travel with the primary migrant or may be sponsored at a later date, and include: spouse or common-law partner, dependent or adopted children, parents and grandparents, as well as other relatives (CIC 2007). In the 1970s and 1980s, family class immigration played a central role in community formation for Canadian Punjabis in Vancouver (Walton-Roberts 2003, 240-244). In 2009, India was reported as the top source country of immigration to Canada, with more than 32,000 permanent resident visas issued to Indian nationals (CIC 2010a). Also in 2009, Canada issued more than double the number of visitor visas out of the Chandigarh office than in 2004 (CIC 2010a). This represented a 13 per cent increase from 2008, and 53 per cent more than the three-year average from 1997-1999 (CIC 2010a). As Table 5 demonstrates, 15 parties came to Canada under family-class sponsorship, whether as spouses, children, adopted children, or otherwise. Family-class immigration also factors strongly in some cases where the parties sponsored relatives from India (i.e. *Gill v Jhaji* 2003, *Cheema v Lail* 2009). The centrality of transmigration in the legal cases this doctoral thesis examines is evidently an important contextual factor for the analysis. The following chapter section examines marriage breakdown in the official sphere.

6.1 Marriage breakdown

There are a number of ways in which separated (separating) parties can avoid going to court. However, when there are disagreements that remain unresolved, the court may step in to adjudicate the matters left outstanding (Section 5.3). This section addresses divorce and annulment and the subsequent section addresses financial and property issues.

I will begin with the divorce case of *Burmi v Dhiman*, followed by an analysis of *Bhandal v Bhandal* 1999 and *Kaur v Brar* 2003.⁹³

6.1.1 Divorce

Burmi v Dhiman 2001

In the first divorce case, *Burmi v Dhiman* 2001, the Petitioner-Husband initiated proceedings to end a 7-week marriage that occurred in Punjab. The Respondent-Wife counter-petitioned for interim spousal support, claims for general and punitive damages for deceit, misrepresentation, assault and a breach of fiduciary duty. Dhiman also motioned to add Burmi's parents and paternal aunt as respondents and claim similar relief.

⁹³ *Bhandal v Bhandal* [1999] OJ 1475, OJ 2220

The parties are of Indian descent, university educated, and were in their mid-20s when they got married. Burmi is a Sikh who works at his father's business in Toronto and Dhiman is a Hindu but shares the same *Ramgarhia* caste affiliation and was enrolled in business school at the time of the parties' marriage.

Burmi and his parents travelled to Punjab in November 1998 to find him a suitable wife. An advert was placed in the *Tribune* (Dhiman 2001b):

Tall match for Ramgarhia clean-shaven, Canadian Citizen 26/6'2" educated, well settled business family. Early marriage. Girl main consideration.

The advert indicated the Burmis were a business family that had citizenship status in Canada. Their reference to caste affiliation indicated their traditional preference for an endogamous match and "clean shaven" indicated the suitor was not a *keshdari* Sikh.⁹⁴ The Dhiman family responded to the ad. The parties and their families agreed to the marriage arrangement and a formal engagement occurred followed by marriage according to Sikh rites in December 1998. They cohabited for the month of December and then again in March 1999. Burmi called Dhiman in May 1999 and unilaterally ended the relationship.

Having resolved to mend the relationship, Dhiman flew to Toronto in the autumn. Burmi retaliated with a petition for divorce in October 1999. Dhiman counter-petitioned in February 2001 for various types of relief. The thrust of her claim was that Burmi deserted her and she consequently faced social ostracism amongst her kin. The court observed this claim to be contrary to Dhiman's other stated intention, which was the primary purpose of rehabilitating the marriage. Her motion for damages demonstrated that Dhiman felt the abrupt ending to the marriage was unfair. She argued that the Sikh marriage rites duty-bound the two families, not just husband and wife, and therefore a fiduciary duty existed between the two families.

Burmi attested Dhiman's motions were disingenuous because they were brought nearly two years after separation. Dhiman's conduct and timing were a means to bolster her immigration application and punish him and his family. Burmi pointed out that she speciously entered the country on a student visa and was now applying for refugee status. Dhiman admitted to deceiving the immigration authorities, and remarkably admitted that she was claiming refugee status on the basis of *izzat*.

In this interim proceeding, Justice Mesbur allowed the additional parties to the proceeding, however, he opined that under the provisions of section 15 of the *Divorce Act*,

⁹⁴ Pashaura Singh (2004a, 95) clarifies the continuity in Sikh practice is comprised of a middle, centre and periphery. The middle comprised the *Khalsa*, conceptualised as the norm of orthodoxy in modern Sikhism. A member of the *Khalsa* is called an *amrit-dhari*. The centre comprised *keshdhari* Sikhs, who maintained the visible markers of Sikh identity but had not undergone the rite of initiation (*khande ki pahul*). The periphery comprised the *sehajdhari* Sikhs, who were thought to be "slow adopters" of the Sikh identity.

Dhiman's claims were not a compensable reason for support. Furthermore, Dhiman's claim for interim spousal support was declined. Though it may appear that the justice's allowance of the additional parties indicates his acceptance of Dhiman's argument about izzat that was not the case. Justice Mesbur remarked, "Although the claims against the parents and aunt were novel, the proceedings were at an early stage and there was no reason not to allow their addition as parties" (*Burmi v Dhiman 2001*).

Bhandal v Bhandal 1999

In the second divorce case of *Bhandal v Bhandal*, the Petitioner-Husband sought a divorce based on separation for more than one year. Mr Bhandal requested the court to urgently dissolve the marriage because he had immediate plans to re-marry in India.

The parties were married December 1989 and had their first child in December 1990. Though the exact date of separation was unknown to the court, Mr Bhandal attempted to petition for divorce in January 1998, but the petition was stalled because it could not be delivered until April 1998. Ms Bhandal did not deliver her Answer and Counter-petition within the time stipulated and Mr Bhandal subsequently moved for an uncontested divorce. A Judgment for Divorce was issued in May 1998. However in June 1998, Ms Bhandal moved to re-open the case and argued, amongst other things, that one year of separation had not occurred. She filed her Answer and Counter-petition in October 1998 and the divorce judgement was set aside.

One year after the date of service in March 1999, Mr Bhandal made a second attempt to petition for divorce. At the time, he lived in the northern city of Thunder Bay where he was completing his university education. Mr Bhandal argued that he was entitled to a divorce, and the Respondent's previous conduct resulted in hardship. Bhandal argued he had sufficient reasons to bring the case to the Thunder Bay court rather than the court nearest to his ex-wife. Ms Bhandal subsequently counter-petitioned and sought sole custody, child support, and other relief.

The court allowed Mr Bhandal's motion for divorce, but the argument of urgency was not successful and hardship applied to both parties. The presiding justice allowed the Judgment of Divorce because the Respondent-Wife made a valid motion in Thunder Bay, on which the Petitioner-Husband could "piggy-back" his motion as if it had been made first. It is noteworthy that the presiding Justice responded to Mr Bhandal's claim of urgency by discussing serial polygamy (Section 6.3.3). Nonetheless, the justice admitted perhaps his views on marriage were out-dated and he granted the divorce. The court retained the authority to deal with the issue of support filed by Ms Bhandal, which would be held in her county of Mississauga. Since Mr Bhandal did not have any income, the motion for support was adjourned *sine die*.

Kaur v Brar 2003

The third and final case concerned parties, S. Kaur and Brar, who were married in an arranged/forced marriage in India. They met through a mutual friend, Cheema, who arranged S. Kaur's marriage to his friend in Punjab. The Petitioner-Wife sought a divorce from Brar in order to marry her current boyfriend "D" who was in the country on an expired visitor's visa. Brar was not in attendance since he continued to reside in Punjab at the time of the hearing. The parties had been separated since the date of marriage.

Kaur was born in Punjab, has a high school education, and her first language is Punjabi. S. Kaur's first marriage was in February 1992 to "A" in an arranged marriage in Punjab. "A" sponsored Kaur and she became a landed resident of Canada. In September 1993, S. Kaur's marriage with "A" was dissolved. She returned to Punjab and her marriage was subsequently arranged with "B" in February 1994. She sponsored "B" to Canada, but the marriage broke down and he returned to India and obtained a divorce in Chandigarh, Punjab.

In 1998, S. Kaur met Cheema in Canada, and the parties cohabited though he was married to someone else. S. Kaur accompanied Cheema to India in 1999 and claims she married Cheema according to Sikh rites but she was "forced" to civilly register her marriage to Brar in order to facilitate his immigration to Canada. She states in her affidavit that she was afraid that Cheema and his family would desert her. S. Kaur signed the sponsorship papers Cheema had drawn up, returned with him to Canada, and resumed cohabitation.

S. Kaur gave birth to a child in August 1999. Cheema is the biological father, however, the birth certificate stated that Brar is the father. Shortly after, the relationship between S. Kaur and Cheema broke down and Kaur was hospitalised for depression. Cheema gained legal custody at this time. The current arrangement allowed Kaur visitation every two weeks.

S. Kaur made an application for divorce on an urgent basis. S. Kaur was cohabiting with "D" and she desired to legitimately marry "D". Her explanation to the court was that she was an unwilling partner in the immigration scheme involving Brar. Clear evidence that the parties colluded to defraud the immigration authorities, however, resulted in the Court refusing to grant a divorce to the Petitioner-Wife. The matter was referred to CIC.

6.1.2 Void and voidable marriages

A second trend in the legal cases was the status of the marriage in question, or the marriage history of each party. Presently, I examine legal cases concerning marriage status where one or both parties requested an annulment or requested the court to void their marriage. *Grewal v Kaur 2011* was already discussed in Chapter 1, so this section concentrates on

Rahul v Rahul 2003 and *Sidhu v Chahal 2010*.⁹⁵ It is found amongst this group of cases that the husband was petitioner in two of the cases, all three cases were heard at the Brampton courthouse, and all parties were born in India.

Rahul v Rahul 2003

In this case, the Petitioner-Husband sought his marriage to the Respondent-Wife to be deemed *void ab initio*. Only Mr. Rahul appeared in court since his wife was domiciled in India.

Rahul, was born and educated in India, had status in Canada at the time of the legal proceeding, which appears to be related to his immigration following marriage to his previous wife. In September 2000, Mr Rahul married the Respondent according to Sikh marriage rites in Punjab. The Respondent, also born and educated in Punjab, had no legal status in Canada. At the time of the religious ceremony, the parties did not register the marriage. After the birth of their first child in July 2001, the parties made plans for family reunification in Canada. Rahul submitted the immigration sponsorship papers, however the application was declined because Rahul was still married to his first wife on the date of his religious marriage to the Respondent. Family reunification in Canada could therefore not occur unless the parties' marriage was annulled and they re-married in accordance with Canadian law.

Rahul's first marriage was then dissolved on 10 March 2001. Conveniently, Mr Rahul's second marriage was registered in India on 11 March 2001. The presiding Justice Wein expressed his scepticism regarding the one-day difference between the divorce and marriage registration. Justice Wein nonetheless endorsed the application for a declaration that the marriage was *void ab initio*. Justice Wein relied on an affidavit from an expert in Hindu family law, who verified that the September 2000 marriage between the parties was contrary to the *HMA*. Justice Wein stated an annulment was not appropriate since there was never a valid marriage and further clarified that his judgment should not be taken as an indication of approval or support for the purposes of immigration.

Sidhu v Chahal 2010

In the third case of *Sidhu v Chahal 2010*, two university students requested an annulment. Sidhu's legal counsel put the motion forward and Chahal was in attendance and expressed his agreement.

The parties met at York University in Toronto. They were born in Punjab and Sidhu is a permanent resident whilst Chahal is on an extended student visa. They each have a Canadian university degree and are fluent in English. The parties went through a civil

⁹⁵ *Rahul v Rahul* [2011] OJ 1480; *Sidhu v Chahal* [2010] OJ 11.

marriage allegedly without knowing they were getting married. Sidhu explained that on the date of the marriage in October 2007, they went to a friend's home and met a man who claimed to be a Christian priest. The man requested that the parties sign the marriage register. Chahal signed without reading and Sidhu signed the register under the pretense that the parties need to sign for *roka*, a form of engagement in the Sikh religious tradition. Both parties testified that they were not told they were getting married, or that the legal document signed meant that they were entering a Canadian civil marriage. The parties never lived together nor consummated the marriage after their civil marriage. Neither party told their parents about the marriage, no money had been exchanged, and neither party represented her/himself as married on any official Canadian documents or used the status to assist them in obtaining status in Canada.

Sidhu and Chahal requested an annulment because it would be difficult and embarrassing to marry in the Sikh community if they were divorced. The presiding justice understood that Sidhu's capacity to understand the nature of the marriage was absent since she thought it was equivalent to a Sikh engagement, although performed by a Christian. Both Sidhu and Chahal explained the significant differences between a Sikh marriage and what they now understand to be a Canadian civil marriage. Justice Wein ruled that though the evidence submitted by both parties counters common sense to some degree, it is clear that no fraudulent steps were taken. The Justice accepted that the civil marriage was not a planned fraud, but rather a mistake as to the nature of the ceremony, and he granted the annulment.

In summary, the divorce cases presented in section 6.1.1 demonstrate that the court plays a central role with respect to legitimately terminating a marriage or finding a marriage to be invalid. In *Burmi v Dhiman 2001*, the Petitioner-Husband wanted to terminate a marriage he realised was a mistake, but he failed to assess the amount of damage his unilateral decision caused to the Respondent-Wife. Her repeated attempts to reconcile the marriage and/or escape the shame of the marriage breakdown had important immigration implications, which presented her to be dishonest and therefore less credible. In *Bhandal v Bhandal*, it is remarkable that the Respondent-Wife blocked the Petitioner-Husband's attempts to divorce her. The case of *Kaur v Brar 2003* demonstrated with even more clarity the relationship between immigration and marriage. Though Kaur may have been aware she was doing something illegal, she naively underestimated the severity of her multiple marriages. With respect to section 6.1.2, we see that Mr Rahul needed the Ontario family law court to annul his marriage to the Respondent-Wife in order to facilitate the legal requirements of re-applying for immigration sponsorship. Meanwhile, in *Sidhu v Chahal 2010*, the naïve university students did not realise that a civil marriage is equivalent to a

marriage by Sikh rites in the Canadian context. This chapter section contributes to the thesis aims and objectives because it demonstrates that the issues brought forward by female Punjabi-Sikh disputants, most notably Dhiman, who argued on the basis of izzat, S. Kaur, who argued she was in a forced sham marriage, and Sidhu, who mistakenly got civilly married, were not comprehensible to the courts.

6.2 Property and wealth

While Ontario family law observes the spousal relationship as a financial partnership (MAG 2013), in the cases presently examined one or both parties used money and/or assets to delay legal proceedings or punish the other party. These cases occurred in the 2000s in the GTA courthouses of Brampton, Milton and Toronto. Three of the 5 cases explicitly concern arranged marriages, and in the other two cases, the parties' surnames indicate exogamy among the *Jat* caste group. Whether the marriages were arranged or by personal choice, caste appears to be a relevant category with respect to marriage suitability norms. Equalisation and spousal support are the two issues analysed in this section.

6.2.1 Equalisation

In the province of Ontario, the total value of property is shared rather than the property holdings. All assets must be valued and each spouse is presumptively entitled to an equal share in the value of the assets acquired by either or both spouses (Payne & Payne 2011, 588). There are three cases: *Brar v Brar 2010*,⁹⁶ *Gill v Jhaji 2003*,⁹⁷ *Brar v Dhinsa 2008*.⁹⁸

Brar v Brar 2010

The parties in *Brar v Brar 2010* lived in the USA for the majority of their marriage. The wife returned to Canada with her two children after the husband depleted the family assets, was disbarred, and criminally convicted of tax evasion. The case is presently discussed and further analysed in Chapters 8 and 9.

The parties were born in India and the UK, respectively, and their families moved to Canada in 1974. Both parties attended university and dated before they were married in 1995. The first time the parties separated was September 2007, at which time the wife learned that the husband had placed their family in a devastating situation. After a period of reconciliation, the parties separated again, and temporary custody was granted to Mrs Brar in October 2008. The parties reconciled again but following a domestic violence incident, they finally separated in February 2009. The issues before the court were child support quantum, income, equalisation payment, restraining order and divorce.

⁹⁶ *Brar v Brar* [2010] OJ 5146

⁹⁷ *Gill v Jhaji* [2003] ON 1496

⁹⁸ *Brar v Dhinsa* [2008] OJ 1282

After their marriage, the parties relocated to California in 1998. Mrs Brar was employed as a social worker and Mr Brar was self-employed as a lawyer. Around 2005, investigations began on Mr Brar's professional misconduct. The State Bar of California prosecuted him for 17 acts of misconduct, which led to over \$1.8 million in penalties and sanctions (CA State Bar 2015). Mr Brar was also criminally charged with driving under the influence of alcohol in 2007. He admitted to the California court that he was a drug and alcohol addict, and he placed evidence before the court that he suffered from bi-polar disorder. Mr Brar was incarcerated in September 2007 and the parties lost possession of their home. During his incarceration, Mr Brar underwent treatment for bi-polar disorder and was released 5 months later. He was returned to custody for failing to continue medical treatment. In July 2008, Mr Brar was released by mistake and then fled the US and returned to Canada. There is an outstanding warrant for his arrest in the US (*Brar v Brar 2010*, at 13).

Mrs Brar returned to Canada and from September 2007 to August 2008, she was the sole caregiver of the parties' two children. In August 2008, the parties reunited as a result of "extreme family and cultural pressure" (*Brar v Brar 2010*, at 11). The justice found the parties' attempt at reconciliation questionable because Mrs Brar testified that "in their Indian culture a woman has 'no value unless she is married'" and that "her parents pressured her, to the extreme, to take the husband back" (*Brar v Brar 2010*, at 12). Following cohabitation with Mr Brar's parents followed by Mrs Brar's parents, the parties moved into the matrimonial home purchased jointly by Mrs Brar and her mother in November 2009. Mrs Brar testified that, "during this so-called 'reconciliation,' she 'hid from the husband constantly' in an effort to keep safe and to keep the peace" (*Brar v Brar 2010*, at 12). Cohabitation ceased in February 2009 due to a domestic violence incident, at which time Mr Brar entered into a peace bond that prevented him from contacting his wife.

Madam Justice Snowie stated Mr Brar took "no personal responsibility and his misfortunes are everyone else's fault" (*Brar v Brar 2010*, at 5). In his testimony, Mr Brar stated he never had a mental illness, nor did he have an alcohol or drug addiction. His "history of dishonesty" led the Justice to conclude Mr Brar had "little credibility" (*Brar v Brar 2010*, at 8). Mr Brar called his father as a witness and upon cross-examination by Mrs Brar, he was "derogatory" and "accused her of only 'wanting money'" (*Brar v Brar 2010* at 19). Meanwhile, the justice found Mrs Brar's evidence to be "organized, sincere, fair, logical and straightforward. She was an extremely credible witness" (*Brar v Brar 2010*, at 20). Mrs Brar was deemed to have no part in Mr Brar's dubious activities or his reckless accumulation of debts. Her parents paid for the family's return to Canada and they were financially supported from September 2007 until November 2008. Mrs Brar sought an adjustment to repay actual payouts her parents made during this time. A divorce was issued and Mr Brar was ordered to continue paying \$1,000 per month in child support. A

permanent restraining order was issued and it was concluded that Mrs Brar's case met the high threshold of evidence required to deem equalisation "unconscionable."

It is noteworthy that Mr and Mrs Brar did not have legal representation. Mr Brar was a trained lawyer and though Mrs Brar initially had counsel, it appears she could no longer afford legal representation following the issuance of the peace bond; she consequently self-represented (Section 9.4).

Gill v Jhaji 2003

In *Gill v Jhaji 2003*, the divorced parties disputed the rental income generated from a unit in the matrimonial home.

Both parties were born in India in 1961. They had an arranged marriage in Ontario in January 1987 and had two children. Gill was employed as a computer analyst, whilst Jhaji was employed as an auto-mechanic. The parties bought the matrimonial home in April 1989 with the intention of renting out one unit. In 1994, Jhaji was unemployed and unsuccessfully attempted to start his own auto-mechanic business. This endeavour caused financial strain on the family and the parties separated in August 1994. Custody was awarded to Gill and Jhaji was ordered to pay child support with visitation rights. The petition for divorce was submitted in May 1999. Gill sought relief including a transfer of Jhaji's interest in the matrimonial home. Meanwhile, Jhaji counter-petitioned for partition and sale of the matrimonial home, accounting for all rental income and occupation rent.

Madam Justice Macdonald noted access was non-existent since 2001 and counselling for the family was urgently needed (*Gill v Jhaji 2003*, at 3). Gill's testimony revealed that, "almost nine years after separation, she has unresolved issues with respect to the circumstances of her husband's departure from the matrimonial home" (*Gill v Jhaji 2003*, at 8). The court ruled that it was a "correct and equitable approach" that Jhaji was entitled to a credit for occupation rent (*Gill v Jhaji 2003*, at 19). The evidence demonstrated that Jhaji reserved his claim to the matrimonial home but once he became aware that Gill took various "fundamentally dishonest" steps to surreptitiously obtain sole ownership, he moved quickly to have them set aside (*Gill v Jhaji 2003*, at 11). Jhaji's motion for entitlement to rental income was also approved. Jhaji maintained that he declined to assert his one-half interest because he wanted the children to reside in the home with Gill. The court accepted this evidence and saw it as an indirect contribution to child support. Gill's submission that Jhaji's interest in the matrimonial property be transferred to her was not viable and the court ruled that Jhaji succeeded in his claim for partition and sale of the matrimonial home. Finally, the court ruled Jhaji was entitled to \$20,000 for legal costs incurred.

Madam Justice Macdonald demonstrated regard for equity and fairness, whilst the various actions taken by Gill indicate her attempts to strategically employ the law to punish

Jhajj (Section 9.4.1). The Justice clearly saw through Gill's transparent attempts to usurp Jhajj's legal rights to equalisation. The legal proceedings did not disclose many non-financial elements to the marriage breakdown, however the corporate family is one extenuating factor.

Brar v Dhinsa 2008

The case of *Brar v Dhinsa 2008* concerns the matrimonial home. The parties did not have any children and the outstanding issues were divorce and division of assets.

Mr Brar and Ms Dhinsa married in June 2003, separated between January 2005 and January 2006, and the application for divorce was brought in May 2007. Both parties were employed in the retail banking industry. The decree of divorce was delayed by almost one year because of a failure to produce financial records. Both parties claimed that the other was hiding assets through his/her father. Brar provided a record of his assets, and his counsel repeatedly attempted to communicate to Dhinsa and her lawyer, however there was inadequate response. The court ruled Dhinsa to be in contempt for failing to follow a court order and ordered her to pay \$4,000 in costs.

The submissions of both parties reveal there are a number of issues with respect to financial disclosure. One, this marriage was the second marriage for both parties.⁹⁹ This is a recurring theme throughout the cases (Section 6.3.3). The second marriage is perhaps why the fathers were involved, which inadvertently contributed to mistrust (Section 8.1.1). Two, both parties claim the issue of intimate partner violence. While Brar asserts the criminal charge laid by Dhinsa was a false allegation and that in fact Dhinsa was abusive towards him (Dhinsa, 3a, at 4; Brar 2007, at 6), Dhinsa alleges the abuse began shortly after the marriage when she confronted Brar about his infidelity, and the abuse was sustained throughout their marriage. She asserts the abuse coincided with Brar's exorbitant spending habits and expensive lifestyle, which resulted in a \$30,000 refinance to the matrimonial home. The police were called to the matrimonial home on three occasions, and it was the last incident that led to a peace bond and criminal charges being laid against Brar, which were pending at the time of the divorce proceeding. It appears that equalisation was deliberately stalled due to allegations of hiding assets, criminal charges and bitter feelings on the part of both parties and their families.

⁹⁹ It is not mentioned whether it was an arranged marriage between Brar and Dhinsa.

6.2.2 Spousal support

In the case of marriage breakdown, the person with more income or assets may have to pay support to the other. Separation agreements oftentimes set out the terms for support, however, if the parties do not agree, the spouse seeking support can start an application to request an order for support. There are two pertinent cases with respect to spousal agreements and support: *Lalli v Lalli 2002* and *Takhar v Takhar 2009*.¹⁰⁰ Counsel represented all parties. The former case was heard in Brampton and the latter was heard in Kitchener and Toronto.

Lalli v Lalli 2002

The Petitioner-Wife Mrs Lalli sought spousal and child support *in loco parentis* as well as a restraining order. This case will be only briefly discussed here since it will be re-visited in Section 6.3.4, 8.1 and 9.3.3.

Mr Lalli had a permanent job in aircraft manufacturing and he described himself as an astute businessman with influence in the Punjabi-Sikh community. After the death of his first wife, Mr Lalli, travelled to India to spread her ashes. He wanted to re-marry and his kin relation suggested the Petitioner. Both parties were widowed, with high social standing, and common kin relations. After a brief meeting, Mr Lalli agreed to the proposal and in a subsequent trip, the parties married in June 1997. Following the marriage and honeymoon, the parties signed a 10-year sponsorship agreement for Mrs Lalli and her son.

The marriage ended in January 2000. At the time of the judgment in May 2002, the Petitioner was 34-years-old and her son was 12, whilst the Respondent was 48-years-old, with two children aged 17 and 22. Mrs Lalli sought spousal support, custody and child support for her son, and a restraining order. Mr Lalli counter-petitioned for a restraining order and costs. The Court awarded Mrs Lalli spousal support for two years, child support, and a restraining order. Since she used a significant amount of her personal savings to come to Canada, she was entitled to two years of spousal support to allow her to upgrade her English language skills and re-qualify as a teacher in Canada.

When the parties initially met, the Petitioner was a primary school teacher. She pursued a teaching career after the tragic death of her first husband. In a Punjabi society where women of high social standing seldom work, Mrs Lalli returned to university to obtain qualifications in education. After her marriage to Mr Lalli and immigration in February 1998, Mrs Lalli resigned from her teaching post and used her savings to fly to Canada. She and her child were initially treated well, but a month after her arrival, Mr Lalli insisted that she find work. She did not speak English and was not permitted to take language instruction, so the only employment available was a nightshift manual labour job

¹⁰⁰ *Takhar v Takhar* [2009] OJ 3882, OJ 5598

at minimum wage, which she sometimes worked 7 days per week. She was expected to hand over her earnings and attend to all the housekeeping. Her health deteriorated and she was prescribed anti-depressants. Mr Lalli's family eventually shunned her son and in her absence, he was diagnosed with depression.

It was around this time that abuse intensified and Mr Lalli demanded Mrs Lalli sign a spousal agreement relinquishing her rights to his wealth and assets. The court ruled the agreement's legal validity was limited due to suspected coercion, Mrs Lalli's limited English language capacity, and lack of informed consent. Mr Lalli eventually presented her a formal marriage contract and she was afforded independent legal counsel. She was advised against signing the contract and she and her son were subsequently thrown out of the matrimonial home. Mr Lalli allowed Mrs Lalli to return home on condition that she reconsiders the agreement. In January 2000, however, Mr Lalli called the police and alleged that she threatened him. No charges were laid and Mrs Lalli and her son were escorted to a women's shelter. She eventually moved into subsidised housing and has since been unable to work due to her ill health.

The presiding Justice Stauth remarked that Mr Lalli would have successfully safeguarded his property and "honour" had he drawn up a pre-nuptial agreement as a condition for marrying Mrs Lalli. Instead, he sought legal advice before the marriage, transferred the matrimonial home to his oldest son, and then returned to India to complete the arranged marriage. Though Mr Lalli abused his position of financial and emotional power, the presiding Justice Stauth was able to identify these dynamics and permitted Mrs Lalli the opportunity to make a better life for herself and her son.

Takhar v Takhar 2009

The case of *Takhar v Takhar 2009* was reported in the local news. In accordance with a marriage contract the Applicant-Wife, a highly successful physician, was ordered to pay her husband, an under-employed technician \$6,000 per month in spousal support. This case will be further addressed in Sections 8.1 and 9.4.

The parties are from the UK. This was the second marriage for both parties. The wife's family placed an ad in *Des Pardes* magazine and the parties met following their family's approval. Their marriage took place in January 1995 after dating for approximately one year. The wife explained that the parties moved to Canada because the parties already had marital issues that led her to lose her job in the UK:

Our problems centered around the Respondent's violence and alcohol abuse. I did not want to get divorced at that time. I was hoping that we could make a fresh start in Canada. (Takhar, Form 14A, at 17)

Dr Takhar discovered during the immigration process that Mr Takhar misrepresented himself. She found out he was criminally charged for driving under the influence and that

he did not have a university degree, a fact she still had not disclosed to her family (Takhar, Form 14A, at 16).

The Takhars had two children and their safety became an issue as violence escalated. The parties jointly held numerous properties in Canada and the UK and decided in February 2005 to enter into a marriage contract that provided for equal division of net family property and no spousal support. In February 2006, the marriage contract was amended to state that Dr Takhar would pay Mr Takhar \$6,000 per month in spousal support, which Dr Takhar signed under duress and coercion. The amendment coincided with Mr Takhar's arrest for threatening to cause death and two counts of assault. Mr Takhar allegedly threatened to kill the parties' children and had a sustained history of alcohol and drug abuse. After pleading guilty, Mr Takhar was placed on probation and relocated to the UK (Takhar 2008, at 23). The parties have been separated since November 2006. Dr Takhar alleged a sustained history of verbal, emotional, sexual and physical abuse during the marriage (Takhar 2008, at 6). Following the parties' separation and probation order, Mr Takhar launched a number of serious professional malpractice charges against Dr Takhar.

The court awarded Dr Takhar temporary sole custody and she was given sole discretion with respect to Mr Takhar's contact with the children. His child support payment was increased on a temporary basis. With respect to spousal support, Mr Takhar maintained that he had a financial need. Dr Takhar accused Mr Takhar of under-reporting his income since the UK rental properties held were not included in his stated income. It was her opinion that Mr Takhar did not need the money but used the marriage contract in order to financially harass her. Financial records were unfortunately incomplete and the presiding justice could not make a final ruling. Dr Takhar was ordered to pay \$6,000 per month on a temporary basis. The spousal support payment was upheld since spousal misconduct was not a relevant consideration for a temporary support order. The presiding Justice Reilly noted in his judgment that a legislative provision allows a judge to reduce support payments if a spouse has exhibited behaviour that "is so unconscionable [that] it constitutes an obvious and gross repudiation of the relationship" (*Takhar v Takhar 2009*, at 19). Since this was not the final judgment, Justice Reilly emphasised that proving this legislative provision should be utilised by the Respondent at the final divorce trial.

Cases concerning equalisation demonstrate that power/control play an important role in the breakdown of marriages and will trigger official law intervention if there is evidence of physical violence (Section 9.4). In the cases of *Brar v Brar*, *Gill v Jhaji* and *Brar v Dhinsa*, the court played an active role in disciplining parties that took deliberate steps to delay or obstruct due process. Third party intermediaries and violence are two key features in these cases. With respect to spousal support and agreements, the *Lalli v Lalli* case demonstrates

the forceful attempts made by Mr Lalli to safeguard his financial assets, whereas the *Takhar v Takhar* case remarkably demonstrates the complications presented when the wife possesses financial agency and the husband responds with violence and domination. It is significant that literature on South Asian marriage migrants to Canada indicate the prevalence of abuse, violence and oppression, in cases where the woman does not have strong English literacy skills and/or access to resources as a result of immigration status (Kang 2006; Merali 2009). Whilst immigration related impacts are not necessarily relevant in all the cases, the subordinate position of women within Punjabi kinship contours these disputes.

6.3 Marriage in the official sphere

In light of changing social norms, the concept of marriage is increasingly contested in multicultural western countries.¹⁰¹ The marriage and family practices of ethnic minority groups, however, are seldom considered within western discourse regarding access to family justice.¹⁰² The exception is the public outcry with respect to polygamy and forced marriage (often misinterpreted as equivalent with arranged marriage), which are further complicated through immigration control discussions (Section 1.2.2).

6.3.1 Civil marriage

Though Punjabi-Sikhs comprise a sizeable component of the South Asian population in Canada, little is understood about the differences between Punjabi-Sikh conceptions of marriage and Canadian concepts of marriage as a civil union. On a social level, the *anand karaj* affirms the monogamous conjugal relationship created between bride and groom, whereas on a spiritual level, the performance of the rites signifies the central place of the Guru Granth Sahib in the individual's/couple's entrance into householder life (*gristijiwan*), witnessed by society, the Guru Panth. The Sikh way of life is entirely grounded in interdependency – of individual souls entwined with the Transcendent Reality, each other, and also the witnessing community. While not all case judgments provide complete information about the parties' marriage ceremony or religious affiliation, I deduce that aside from *Sidhu v Chahal 2010*, the remaining thirteen cases (93%) involved marriage in accordance with Sikh religious rites.

¹⁰¹ Due to the nature of English family law, there are a number of studies concerning South Asians whose marriages are not recognised. See Menski (1987, 1988, 1993, 1998a, 1999, 2008, 2013), Shah (2005, 2006, 2007, 2008, 2009, 2010a, 2012), Wray (2006a, 2006b, 2009, 2011).

¹⁰² A good example of sustained non-western marriage practices in spite of official law requirements is the prevalence of unregistered marriages in the British context. See Bano (2007, 2012), Carroll (1997), Douglas (2012), Hoque & Shah (2012), Malik (2012), Menski (1998b, 2001), Nichols (2011), Poulter (1999), Shah (2005), Shah-Kazemi (2001).

In the annulment case of *Sidhu v Chahal 2010*, Sidhu explained that she did not think signing papers counted as marriage:

I didn't believe that I was getting married by signing the registration. I believed that I could only get married in the temple in presence of my family and with all the rituals. (Sidhu 2008, at 8-9)

Sidhu's explanation coincides with earlier observations by Menski (1987; 1988) who asserted at that time that British South Asians do not attach much importance to the legal consequences of a registered document; they are more concerned with the performance of marriage rites and rituals that affirm to their religious community they are married. Paradoxically though, Sidhu and Chahal do attach importance to legal consequences, since both parties did not want the marital status of divorced. Decades after Menski's observations, Sidhu explained plausibly that she thought the registration process was synonymous with the Punjabi-Sikh custom of *roka*, a form of engagement. The misunderstanding baffled the presiding justice. The *Sidhu v Chahal 2010* case demonstrates a key component of the main thesis argument: that Punjabi-Sikhs attempt to transplant their socio-legal norms into the Canadian context, though with varying degrees of success, since the parties naively misinterpreted *roka* and civil marriage. The presiding justice acknowledged their mistake and granted the annulment. This case is an example where the Ontario family law court believed the parties' explanation and facilitated an "honourable" resolution to a legal predicament. The judge's decision to grant an annulment instead of a divorce entailed socio-culturally significant implications for the parties concerned (Section 9.2.2). This case is pertinent to the present doctoral thesis because it demonstrates the complexity of multicultural accommodation; however, it is not a coincidence that before the justice granted the annulment, he provided a legal analysis of the parties' legal status in Canada and whether they had misrepresented their legal status. Multicultural accommodation thus stands alongside the legal regulation of immigration in the case of *Sidhu v Chahal 2010*.

In *Rahul v Rahul 2003*, the Petitioner-Husband sought an order declaring that his unregistered marriage to the Respondent-Wife was *void ab initio*. He explained to the court that he needed this decree so that he could re-apply for immigration sponsorship for his wife and child. The judge expressed his scepticism that the submitted date of marriage registration in Punjab merely one day after the date of the Petitioner-Husband's earlier divorce decree in Ontario. Unlike the Ontario context where the marriage registration often occurs alongside the religious marriage by a marriage registrar, in India marriage registration is optional (*HMA 1955, s. 8(5)*) and may be arranged at any time after the religious marriage. Whether or not his religious marriage to the Respondent-Wife was legally valid, it met the parties' social and religious needs for legitimacy and recognition

(Menski 1987, 1988). This case demonstrates that the Petitioner strategically utilised legal recognition in both the Canadian and Indian contexts to facilitate his plan to re-marry and sponsor his family's immigration.

6.3.2 Arranged marriage

The concept of marriage based on romantic attachment between two consenting adults is labelled "love marriage" in the Indian subcontinent. It is distinct from the dominant concept of *vyah* or *shaadi* as generally arranged on the basis of corporate interest rather than individual interest. In the west, this form of marriage is called "arranged" marriage.

Matrimonial matches amongst Punjabi-Sikhs in Canada are subject to various factors, such as family needs, status (*izzat*), and the desire for suitability in matrimony (Walton-Roberts 2003, 246). Marriages amongst diaspora Sikhs today are generally subject to *zat*, *got* (exogamous clan or sub-caste group), region, social standing of the family, in addition to physique, geographic location and education (Mand 2008, 289; Johal 1998, 51).

Participants oftentimes clarified what they considered arranged marriage since its current form (i.e. marriage via introduction with explicit individual assent) is markedly different from their parents' generation (i.e. marriage approved through parents or close kin oftentimes without explicit individual assent). Arranged marriage remains a dominant form of marriage amongst Sikhs today, both in Punjab and within the diaspora, but such marriages "are better described as a complex and varied social trend than as traditional practice" (Thandi 2013, 234). In the diaspora, what may appear as "arranged" is a considerably complex, variable and fluid social practice that increasingly blurs the distinctions between a "love" marriage and its polarised opposite, the traditional arranged marriage (Thandi 2013, 234) (Section 7.1). Arranged marriage occurred in 10 legal cases (71%). Two cases (14%), *Sidhu v Chahal 2010* and *Brar v Brar 2010*, appear to be "love marriages" and two cases, *Brar v Dhinsa 2008* and *Bhandal v Bhandal 1999*, are uncategorised.

In *Kaur v Brar 2003*, the justice appears sceptical of arranged marriage norms because the Petitioner-Wife had a history of failed transnational marriages entangled with immigration repercussions (Section 9.3.2). In *Burmi v Dhiman 2001*, the Respondent-Wife unsuccessfully argued that the parties' arranged marriage entailed moral and fiduciary responsibilities for both families, which entitled her to spousal support:

Wife's counsel urged me to find that the religious marriage ceremony in India carries with it a notion that it is some kind of agreement relating to the support of the wife. There is no cogent evidence to persuade me of this, other than the wife's statements that she expected the marriage to continue, as a traditional marriage, forever. That expectation is no doubt shared by many spouses at the outset of their marriages, regardless of their religious affiliation. (*Burmi v Dhiman 2001*, at 13)

In the Indian context where the welfare state is unable to support the practical demands of divorce and separation (Subramanian 2014; Menski 2002), Dhiman's argument may have been considered legally viable. In the Ontario family law context however, this normative understanding of marriage was missing. Arranged marriage remains a norm amongst Punjabi-Sikhs and this indicates that despite migration to the west, non-western marriage practices have continued relevance. As demonstrated in *Kaur v Brar 2003* and *Burmi v Dhiman 2001*, arranged marriage is misunderstood in the official family law context because this type of marriage is based on kinship approval instead of solely individual consent. Most importantly, though, arranged transnational marriage encompasses marriage migration; hence it intrinsically involves state (dis)approval of Punjabi-Sikh marriage and kinship norms.

6.3.3 Serial polygamy

Sikhs are generally monogamous in their marriage practices (GGs, 788; Mandair 2002, 258).¹⁰³ Marriage is not regarded as simply a conjugal bond or social necessity; marriage is a means toward self-realisation and transcendence (Maini 1995, 43). However, Punjabi marriage practices are often contradictory to the *Rehat Maryada* pertaining to mate selection, and tend to follow entrenched customary practices guided by kinship (*biraderi*), caste and/or tribe affiliation (Section 4.1). Ballard (1994, 4) asserts that, "most settlers' everyday lives are largely grounded in much narrower loyalties of caste, sect and descent-group". Kinship loyalties have proven to be an effective foundation for transnational networks of reciprocity (Ballard 1994, 4). An important result of migration might be a corresponding liberalisation or exacerbation of features that characterise the traditional system of kinship and marriage (Palriwala & Uberoi 2008, 27). Though serial polygamy does not have any legitimate place in Sikhi discourses, a central issue for analysis is the predominance of cases where one or both parties were married at least once before (Figure 5).

"Serial monogamy" refers to the contraction of sequential marital relationships over a person's lifetime. This practice is increasingly common amongst divorced Canadians (Milan 2013, 10), however, amongst transmigrant Punjabi-Sikhs it appears such arrangements may give rise to suspicions concerning immigration designs. Justice Wright expressed his dismay in *Bhandal v Bhandal 1999* regarding the husband's "urgent" plans to re-marry:

¹⁰³ Polygamy is sanctioned, however, men have historically taken second wives in cases where a woman lost her husband and needed protection (*Rehat Maryada* Ch.11, article 18; Mandair 2003, 258).

The issue of summary divorce has given me a great deal of concern. The father is a student. His major source of support is said to be student loans. He wants the divorce because he has contracted to enter into a marriage with another woman this summer. My initial reaction was that sec. 11 gave support to the concept that one should take only that number of wives one could support. My initial reaction was that if adequate support for an existing wife and child cannot be provided then the court should do nothing to enable the man to take on the responsibilities of another family. (*Bhandal v Bhandal 1999*, at 10)

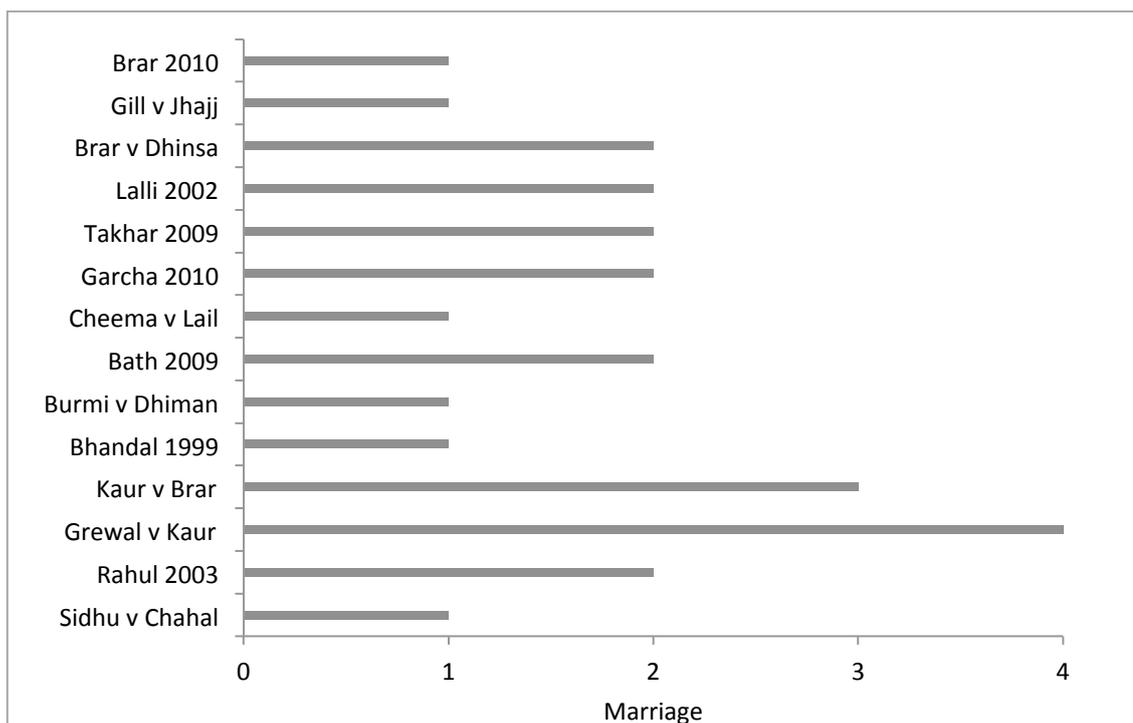
Justice Wright goes on to state:

What our legislation does is provide for polygamy entered into serially. Even those cultures that countenance concurrent Polygamy restrict the number of wives by the ability to support them. (*Bhandal v Bhandal 1999*, at 11)

Justice Wright's seemingly xenophobic response to the Petitioner-Husband's request perhaps identifies a suspicion about Mr Bhandal's decision to travel to India and contract yet another marriage without appearing to sincerely consider his existing responsibilities.

Overall, the situation of my sample cases is as follows:

Figure 5: Incidence of serial ploygamy



The first group consists of 6 cases (43%) where the marriage in question concerned the first marriage for *both* parties. Aside from *Sidhu v Chahal 2010* that concerned a mutual application for annulment, the Husband was petitioner in 3 cases whilst the wife was petitioner in 2 cases. In *Cheema v Lail 2009* and *Bhandal v Bhandal 1999*, the Petitioner-Husbands were divorcing their Respondent-Wives who had custody of their one (biological) child. Cheema was already re-married, and as above-mentioned, Mr Bhandal had immediate

plans to re-marry. Also relevant is that both Cheema and Mr Bhandal went to/were going to India to marry.

The second group of 6 cases (43%) concerned the second marriage for *at least* one party. The *Rahul v Rahul 2003* case concerned Mr Rahul's second marriage and he requested the marriage be deemed *void ab initio* in order to legally re-marry the Respondent-Wife in accordance with Canadian law. The husband was Petitioner in 4 cases (66%) and the wife was Petitioner in the remaining 2 cases (33%), which concerned spousal support. Aside from Mr Rahul, none of the second group of cases overtly involved plans for immediate re-marriage.

The last group is comprised of *Kaur v Brar 2003* and *Grewal v Kaur 2010*. These cases concerned dissolution of the third marriage in the former case and fourth marriage in the latter case. Kaur requested a divorce from the Respondent-Husband and claimed she was forced into the sham marriage to facilitate Brar's immigration to Canada. The parties had been separated since the date of the marriage. The presiding justice declined her request for divorce and referred the matter to CIC. In the latter case, the "exchange" marriage failed and Grewal applied for an annulment whilst Kaur requested a divorce (Chapter 1). The justice preferred the testimony of Grewal, who asserted that Kaur married him solely to immigrate to Canada. I question: was Grewal's testimony acceptable just because the court could "understand" or "interpret" what he was saying, whilst Kaur's explanations remained unsupported? But this outcome also reflects the official law's deficient or patchy understanding of exchange marriage and the importance of kinship.

6.3.4 Chadar-andazi

In *Lalli v Lalli 2002*, the Petitioner-Wife's motioned for spousal and child support and custody (Section 6.2.2, 8.1, 9.3.3). The Respondent-Husband's counsel responded to these requests by arguing that the marriage was invalid because Mrs Lalli was already married at the time of the parties' marriage in June 1997. Counsel for Mr Lalli was referring to a customary ritual called *chadar-andazi* that was performed between the Petitioner-Wife and her deceased husband's brother. Mr Lalli claimed that if he had known she had undergone the *chadar-andazi*, he would have never married her because of the social stigma attached to it.

Mrs Lalli was first married in 1987 to an Olympic cyclist. Ten months later, he was killed in an accident. The *chadar-andazi* ceremony was conducted in the presence of family members directly after her first husband's last rites. *Chadar-andazi*, or *karewa*, is a customary form of marriage. On behalf of the Petitioner-Wife, visiting Indian barrister Mr Dhaliwal testified on the custom's purpose:

Actually, the main purpose was to keep the lady in the same marriage house with the purpose to retain the properties and all that, so that she may not take all of the things. (*Lalli v Lalli 2002*, at 19)

On the same question, Mr Gill, who has presided over numerous Sikh marriages at a local *gurdwara*, testified on behalf of the Respondent:

When a wife loses her husband, she is married to either the deceased's older or the younger brother. That ceremony is very simple. That is never registered in any court. That is amongst the relatives, close relatives, brother, sister and the family. (*Lalli v Lalli 2002*, at 27)

Mr Lalli's counsel argued that the *chadar-andazi* negated any legal obligations arising against the Respondent. The Justice, however, ruled that the parties' marriage contract was indeed valid, pursuant to the "presumption of regularity" doctrine. The Petitioner-Wife provided documentation that the ceremony was legally set-aside two months after it was conducted. Mrs Lalli was supported by the testimony of a witness who attended the *chadar-andazi*. Mr Sodhi reported that the Petitioner was there for only a short period of time since she was in severe labour pain and became unconscious during the ceremony. The Petitioner's likely traumatic state as a result of her husband's death and her labour pains led the Justice to conclude Mrs Lalli did not have the capacity to contract the *chadar-andazi* ceremony. Justice Stauth concluded that: a) the Petitioner did not have the capacity to undertake the *chadar-andazi* ceremony; b) if indeed the ceremony took place, it was repudiated two months later through customary procedure; and, c) the *anand karaj* marriage rites did not accompany the *chadar-andazi* ceremony and a Sikh priest was not in attendance; therefore, the ceremony was not legitimate. The ruling favoured Mrs Lalli and the trial proceeded to consider the issues before the court. However, there were fundamental flaws in the judge's ruling on the (in)validity of the custom, which will be further explored in section 9.3.3, below. The *Lalli v Lalli* case therefore demonstrates that Punjabi customs continue to have (misguided) relevance in the Ontario family law context.

Section 6.3 has examined marriage practices in the official sphere, which are varied, complex, and often misunderstood in the official context of family law courts. The legal cases demonstrate that strategies of partner selection are increasingly fluid, diverse, and complex, and include matches that would normally be frowned upon. The prevalence of serial polygamy demonstrates that a misunderstanding – or incongruence – manifests between the official family law courts and the Punjabi-Sikh parties who approach them. Punjabi-Sikh parties request to obtain divorce decrees, and as shown above, oftentimes this request is enmeshed in a desire to re-marry in India. However, the Ontario family courts observe these requests for divorce in order to re-marry as verging on immigration fraud. Another key finding was that a total of 10 cases (71%) involved re-marriage or plans to re-

marry. I think the prevalence of serial monogamy is because marriage is an organising principle in Punjabi-Sikh diaspora communities (Section 7.2, 9.2). The examination of *chadar-andazi* in the *Lalli v Lalli 2002* case demonstrates that customary law continues to be relevant though misunderstood in the official sphere. This section has demonstrated the sustained migration of Punjabi-Sikhs from Punjab to diaspora communities of the west and elsewhere have given them the skills to adapt to the host society yet also to maintain, *adapt*, and strategically utilise Punjabi-Sikh marriage practices.

Conclusion

This first fieldwork chapter concentrated on 14 family law cases concerning issues of marriage breakdown. It was established in the first section that in cases of divorce and void/voidable marriages, the role of the official law is central to dissolving the marriage. The analysis provided in the first chapter section established that Punjabi-Sikhs present unique justiciable issues, and official law actors do not necessarily comprehend these issues or address them within the parameters of Ontario family law legislation. In fact, in *Kaur v Brar 2003*, the justice remarked that S. Kaur evidently appeared to need help, and that perhaps he should be “a priest or a psychologist in giving advice” (Transcript 2002, 28 at 13). Indeed, some issues were outside the comprehension of the learned official law actors. This chapter does not intend to quantitatively determine how many judges were successful, but rather to compare and contrast the responses of official law actors. The second chapter section considered equalisation and spousal support, demonstrating that control and power are significant factors in marriage breakdown. These issues will be further analysed in Section 9.4. In the final chapter section on marriage, the varied, complex marriage practices of Punjabi-Sikhs posed difficult for official law actors, since a number of factors that instrumentally utilise Punjabi kinship norms are employed in order to facilitate marriage and chain migration. On the other hand, the cases examined in this section demonstrated the centrality of marriage in the diaspora Punjabi-Sikh community.

Chapter 7

Marriage and its breakdown in the unofficial sphere

Fieldwork analysis presented so far has focused on the state's governance of marriage and marriage breakdown. This is only one part of the jigsaw puzzle that this doctoral thesis is centrally concerned with. It is an objective of this thesis to de-centre the state by considering how kinship simultaneously relates to marriage and marriage breakdown and this chapter contributes to this objective.

An understanding of both marriage and marriage breakdown within the context of kinship structures is needed in order to appreciate how Punjabi-Sikhs engage with dispute resolution forums in both the official and unofficial spheres, which is addressed in the following Chapter 8. The present chapter explores the continued relevance of the entwined concepts of kinship and custom (Section 4.3), in the Canadian diaspora context, where western, Punjabi and Sikh values and norms intersect and compete. The result of this dynamic process is what constitutes the unofficial sphere, as personal law is not part of the official Canadian legal structure. This chapter confirms that the entwined concepts of kinship and custom predominantly regulate the gendered norms and practices of marriage and marriage breakdown. The dynamic interaction of western and Punjabi norms and values with Sikh principles and precepts, however, can result in remarkable shifts as this chapter demonstrates. Interview participants come from a broad range of marital statuses as well as religious beliefs and practices. I found that those participants who attempted to embody the teachings of the Gurus and Guru Granth Sahib, who can be called Gursikhs, remarkably influenced kinship norms and practices in the unofficial sphere.

The first section of this chapter addresses marriage norms and practices in order to analyse trends identified in my interviews with Punjabi-Sikhs, which are organised into three themes: western, Punjabi and Sikhi. These themes are not watertight categories, and some subjects, like arranged marriage and caste preferences, are considered in more than one theme as a means of exploring the spectrum of shifting norms and practices. This section's final analysis explores areas of overlap amongst these three themes to draw out distinctive features of the unofficial sphere in the Canadian diaspora context. In the second section, the impacts of marriage breakdown in the unofficial context are considered. This section contributes to an understanding of the factors that impact marriage breakdown that do not necessarily correspond with the official sphere. The themes identified in this chapter will be further analysed and assessed in the following Chapter 8 concerning forums and

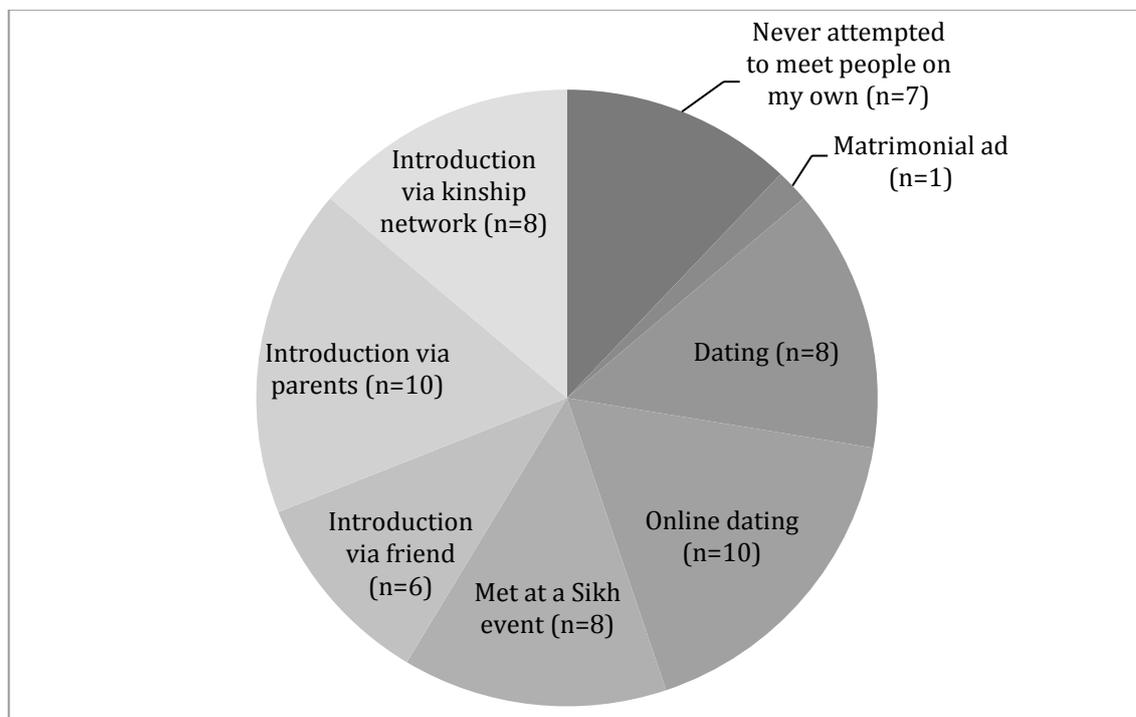
actors. The research impact of this chapter is that it provides an ethnographic study of marriage breakdown amongst Punjabi-Sikhs in Canada.

7.1 Marriage norms and practices

Though Punjabi-Sikhs comprise a sizeable component of the South Asian population in Canada, little is understood about the differences between a Canadian conception of marriage as a civil union and Punjabi-Sikh conceptions of marriage. A rite of passage, such as marriage, refers to customary rites and/or rituals that mark an important stage in an individual's life cycle. Amongst Punjabi-Sikhs, in Punjab or its global diaspora, marriage plays a pivotal role in the kinship structure of the Punjabi-Sikh community. It is an important event that consciously and unconsciously perpetuates the dominant values of a tradition (N. Singh 2010, 221). Marriage practices amongst Punjabi-Sikhs vastly differ, as a result of a number of factors, including place of origin, religious beliefs and practices, caste and class, immigration and settlement experience, and access to cultural/religious resources.

Legalities aside, it is within the unofficial sphere that people decide whom, when, where, and how to marry. Unlike the Indian context where introduction via parents and kin are the primary means of meeting one's spouse, Figure 6 demonstrates that in the Canadian diaspora context, adults looking to marry utilise numerous avenues, including traditional routes through parents and kin, as well as friends, Sikh events, dating and online dating.

Figure 6: How did you go about meeting people?



Participants who said that they never attempted to meet people on her/his own spanned the age range, from the youngest female (Jaspreet) to the oldest male (Nirmal) interviewed. Five of the 7 people in this category are *amrit-dhari*. Participants in this category are not people who resorted to dating to meet their spouse, but rather, relied on other means, such as introductions or Sikh events, in other words, means that uphold Gursikh conduct and decorum.

By far, introductions via parents or the kinship network (67%) is a major category many interview participants explored, though this may not have been how participants met their spouses.

Dating and online dating could be considered within the same category, however some participants clearly distinguished between the two. Online dating can offer more conservative interview participants, like Tina, an appropriate means of meeting a potential spouse because her parents did not allow her to date. Tina, unfortunately, did not find suitable men via general South Asian matrimonial websites. She ended up meeting her husband at a wedding, an orchestrated introduction facilitated by their shared kinship network.

7.1.1 Western

The western theme encompasses dating and marriage practices that are not predominant in the Punjab context but rather, are catalysed by the multicultural landscape of the GTA. Examples of western dating and marriage practices include dating, inter-faith marriage, and re-defining the concept of arranged marriage.

All 27 of the interview participants underwent a civil marriage alongside the Sikh marriage rite, *anand karaj*.¹⁰⁴ With respect to inter-faith marriage, a total of 3 participants (Deepa 2013; Kamajit 2013; Jasmeen 2015) underwent a Hindu ceremony. Kamaljit and Jasmeen married Hindu-Punjabi spouses, while Deepa married a Sikh but performed Hindu marriage rites for the purposes of immigration.

Dating is a western practice that is increasing in levels of acceptance amongst diaspora Punjabi-Sikhs. One-third of the interview participants mentioned that they had previously dated. They met people through school, work and online through mainstream western websites like eHarmony or South Asian websites like Shaadi. Kamaljit and Sangeeta both met their former spouses in university. Meanwhile, Jyoti was in France on a language exchange programme when she first met her husband. All three participants had inter-faith marriages: Kamaljit married a Hindu-Punjabi woman, Sangeeta is Hindu-Punjabi

¹⁰⁴ Amongst the Indian marriage migrants, civil registration was completed.

and married a keshdhari Sikh, and finally Jyoti married a Catholic French man. The three participants also share the marital status of divorced.

On the subject of arranged marriage, interview participants quite often would clarify that arranged marriage is defined according to a person's western or non-western perspective (Mahmood & Brady 2000, 79-80). Naindeep explains:

It depends on what your definition of arranged marriage is. I guess because from a western perspective – a non-Indian perspective – arranged marriage is when you get married to someone and that's it. But if you look at it in the context of what most people go through, it's more of a setup, where someone is suggested to you and the formal introductions go through the parents. [...]

For myself, during the entire process of looking, there were a couple of times where the arranged aspect came into play: Someone was suggested and it began with the idea that the parents should meet etc., etc. I always pushed away from that because I didn't want to go through that process. I wanted to agree to the person myself, I wanted to have discussions and feel comfortable before any development involving the parents or families. (Naindeep, Interview, 2015)

Naindeep was able to navigate the terms upon which he was introduced to women through his parents. He was open to an introduction to the woman, but not her family. Naindeep clearly articulates that autonomous consent is central to his acceptance of an introduction, a concept which older interview participants, like Nirmal, Amrita, Prem and Gurjeet, benignly commented they were not afforded; marriage was for their parents to arrange, not them.

Jatinder takes Naindeep's point a step further: Canadian-born Punjabi-Sikhs do not have arranged marriages.

I don't know anybody our age in Canada who's had what you would call an arranged marriage. Most of the people I know – they either met because they knew each other or they went to school together or they met online. My mom calls it "assisted marriages" which is the same thing as a referral. So it's "Hey, you guys should meet!" If things work out, great! If not, no big deal. [...] I don't know anybody who's married [that would fit into] what I consider the definition of arranged marriage. (Jatinder, Interview, 2012)

The legal cases explored marriages that were predominantly arranged marriages through parents or kinship networks, while Canadian-born Punjabi-Sikhs like Jatinder point out that no one he knows has had an arranged marriage. Instead, people might be introduced, as Naindeep indicated. In the Canadian context, then, the concept of arranged marriage has a range of forms and meanings.

7.1.2 Punjabi

The Punjabi theme encompasses phenomena that more closely follow Punjabi pre-marriage and marriage norms and practices. While the distinction between Punjabi and Sikh is circumspect, there appears to be increasing differentiation amongst diaspora Sikhs on the differences between these two identity markers (Mahmood & Brady 2000). It is often for some Punjabi-Sikhs to distance themselves from Punjabi marriage norms and practices

deemed “anti-Sikh”, such as the giving and receiving of dowry, various pre- and post-wedding ritual practices, the ostentatious display of wealth that accompanies many Punjabi-Sikh weddings, in addition to the power dynamics between “bride-givers” and “bride-takers”. These themes elicited a range of responses from participants that stand in contrast to the predominantly negative opinions of Gursikh women in Mahmood and Brady’s (2000) study. Diaspora communities can sometimes “fossilise” the norms and practices from their home countries (Uberoi 1998) and these static ideas are exposed through an analysis of marriage practices. The Punjabi theme thus explores shifting arranged marriage practices as well as caste preferences.

Figure 7: How did you meet your spouse?

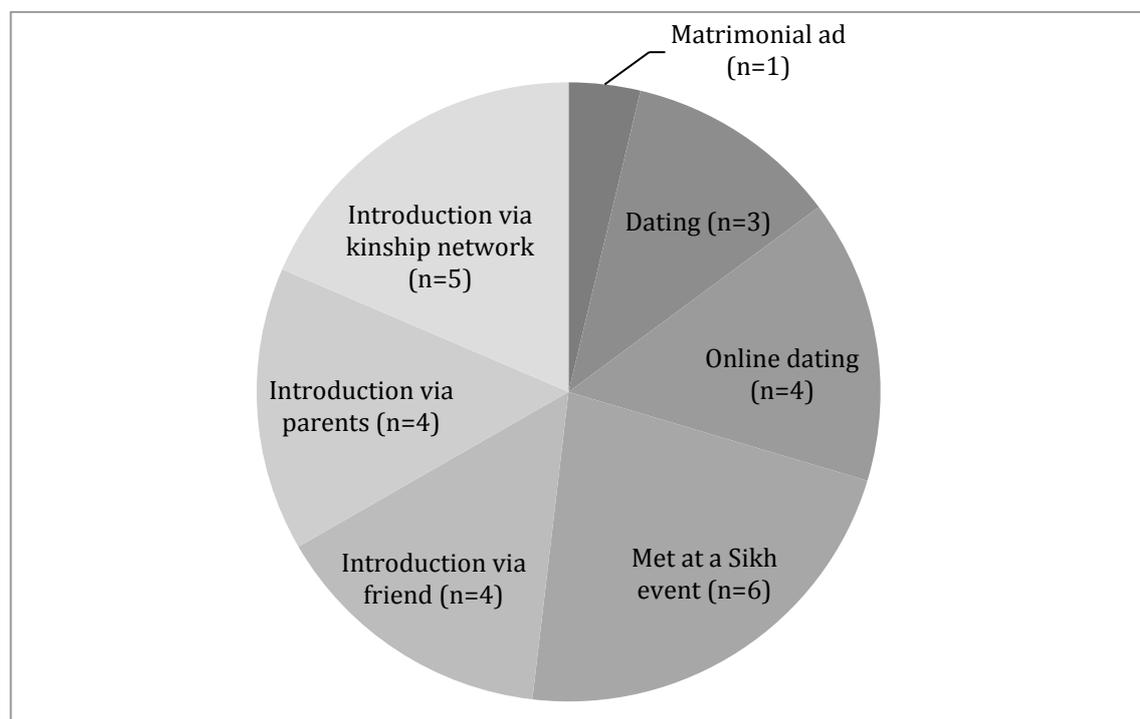


Figure 7, above, illustrates how interview participants met their current or previous spouses. The “Introduction” category encompasses women and men who were introduced to their spouses in a variety of ways. In the sub-category of friend, for example, Zorawar, a newly arrived professional immigrant from India, had no family nearby to arrange his marriage so he asked a friend for assistance. Zorawar was introduced to a woman from Punjab who belonged to the AKJ group (*jatha*). Meanwhile, retirement-aged participants, Nirmal and Amrita, as well as the middle-aged participants, Inderpal and Sunpreet, met through their immediate families; both couples married within their caste group. In the final sub-category of kinship network, interview participants like Gurbans, Isha and Tina were introduced to their husbands through their extended family relatives. Prem and Gurjeet’s marriage was also arranged through kin, though it was a pious Sikh elder, who was considered a part of both families’ kinship networks. Finally, Deepa utilised a matrimonial

advertisement in an Indian newspaper to meet her second husband. It is pertinent that all the above-mentioned interview participants (except Zorawar) married within their caste group.

Regarding shifting arranged marriage practices, Punjabi-Sikhs in the diaspora utilise arranged marriage as a tool to “assist” women and men to meet a spouse that meets the family’s needs/expectations. This method continues to be preferred by some because arranging marriages through referrals acts as an insurance policy in case things go awry (Section 4.3.3). Deepa, a re-married beautician from India, has had her unfair share of negative experience. She advises:

Honestly, what I noticed is that if your parents are strong, arranged marriage is very good – but, the boy should be good. First you have to check the background, don’t just trust what somebody says... In my case, they introduced and accepted the marriage proposal (*rishta*). They didn’t even ask [me]. (Interview, Deepa, 2015)

Deepa’s experience in the Indian context is comparable to the accounts provided by parties in the legal cases, who were predominantly from India (Merali 2009; Alaggia et al 2009). She makes the critical point that the extent to which a traditional arranged marriage might work is dependent upon the parents’ due diligence in crosschecking all the details about the potential spouse and his/her family (Thandi 2013).

For Isha, a Canadian-born pharmacist, arranged marriage was her “choice” but she faced formidable pressure from her family to consent:

I would say it was an arranged marriage but I had a choice at the end of the day. So the way it worked was, my parents wanted me to meet my ex because he is also a pharmacist. He had all the credentials: Punjabi, Sikh, caste was the same; he was a pharmacist, professional, whatever. All this stuff, so they made me meet him.

When I met him, I didn’t like him. After the first date, I said that I didn’t want to see him again and then, I had an intervention with my family. My aunts (*massis*) and my mom told me that I need to give him a chance because he checks all the boxes. They said that I would be happy. But I was telling them that there are [other] things that are important to me and their response was that those things would come. So at age 23-24, I believed my family and I continued to go on dates. Within 4 months, we had a *rokh*. (Isha, Interview, 2015)

Sanctioned by both families, Isha and her ex-husband were able to get to know each other to some extent. Isha’s experience fits into the Punjabi theme because her family facilitated the whole process and she trusted her family to choose a suitable husband.

Regarding caste preferences, the preference for endogamous marriages according to caste affiliation is evident in Isha’s experience. Her mother’s reasoning was related to certain qualities and bio-data she felt made Isha’s ex-husband the “perfect” match: “a good family” that was “well off” and a husband who was “a professional”, “Punjabi”, “Jat” and “Sikh” (Isha 2015). Indeed, the lay understanding of caste preference is about much more than caste:

[...] there is such a hierarchy within our community – well, first of all, within Sikhs and Punjabis, the caste system created the hierarchy – and then how much money, land and education you have. (Paramjeet, Interview, 2016)

Though land is a commodity that has historically belonged to the Jat caste, the above quote demonstrates that caste preference is not only about caste affiliation, it is a multi-layered concept that accounts for status-enhancing qualities that are intrinsically bound with class (Bhachu 1991a).

Isha's family is not alone in their preference for caste-specific marriages. Sunpreet is an Indian-born dental assistant who grew up in Singapore.

My parents were "typical Indian" in their mentality. The reason why my dad wanted to move away from Singapore was because there were a lot of Jats there and he was afraid that his two daughters would find some Jat guys. Since he was the only family member outside of India, it would disgrace his family, and give him a bad name. So we moved to Canada because we had a couple of relatives here and there were more *Ramgarhias* here. He thought it would be better for his daughters as we approached marriageable age. So that's the reason why we moved here. (Sunpreet, Interview, 2012)

Sunpreet's father was protecting his own status and reputation (*izzat*) by relocating his family to the other side of the world in order to facilitate endogamous marriages for his daughters. Unlike Isha, Sunpreet was not so trusting of her parents' best intentions:

I was afraid he promised me to someone in India and I remember asking my parents. I told them they could not force me to marry anyone I didn't want to. They were shocked.

But it worked out great that we moved to Canada because I saw Inderpal a couple of times on the subway, out of the blue, going to school. And a couple of weeks later, I saw him at the *Ramgarhia gurdwara* and one of our relatives knew his family, so the families got introduced. (Sunpreet, Interview, 2012)

Though she asserted her right to consent to marriage, Sunpreet was careful that she worked within the caste preferences that her father so strongly adhered to. It was serendipitous that her path crossed with Inderpal's, a turbaned Sikh man from the same *Ramgarhia* caste.

Amongst the 27 interview participants, 7 (26%) noted that caste was important to them individually and 15 (56%) noted that caste was important to their families. In the former group, it was almost evenly split between over-40 (4 participants) and under-40 year olds (3 participants). Within the latter group, though caste might have been important to the participant's family this did not stop 6 participants (22%) from choosing their spouses from other caste groups.

The Punjabi theme explored pre-marriage and marriage practices of Punjabi-Sikh interview participants. Sunpreet and Isha's experiences demonstrate how Punjabi arranged marriage practices have adapted to the Canadian context where dating is a norm. Both women married within their caste affiliation, however, Sunpreet was able to at least assert her autonomous choice over whom she married, whilst Isha reluctantly accepted the man

her family chose for her. Caste preferences, which are intrinsically bound up with class, continue to be relevant in the Canadian diaspora context. This brings us to the final theme, Sikhi, where caste preferences will be further analysed.

7.1.3 Sikhi

The third and final theme, Sikhi, helps to expose how Punjabi-Sikh interview participants worked within cultural/religious parameters in order to circumvent entrenched marriage norms and practices. Referring back to Figure 7, online dating is an interesting option that allowed Gursikh interview participants to exercise autonomous choice outside their families, caste affiliation, and race. Birpal, a white amrit-dhari Sikh woman commented:

So yeah, temporarily I also had a profile on Sikh matrimonials. I kind of put it up and took it down depending on how comfortable I felt with actually engaging in the process of meeting people. Also on Gurmat, there is another site that is a lot more stringent in terms of who it will take, for example you can't talk about caste on there. I liked the limitations that it made. I don't think it was for amrit-dharis only, I think it was just focused on Gursikhs. So that one, I definitely had a profile up all the time [...] (Birpal, Interview, 2015)

Birpal wanted to meet someone who didn't ascribe to entrenched Punjabi values that discriminated on the basis of caste. Amongst those who dated online, 5 participants (19%) utilised Sikh-specific matrimonial websites, such as SikhNet, Sikh Matrimonials, and Gursikh Matrimonials; these participants did not engage in dating. Additionally, within this subset, 4 participants also utilised Sikh events to meet people. Sikhi-focused individuals, whether amrit-dhari or otherwise, thus utilised a number of forums to find suitable partners.

Amrit-dhari couple, Sukhwinder and Jaspreet, belong to different caste affiliations. They met after volunteering at a Sikh youth camp. When they finally broached the subject of getting married with their parents, both Sukhwinder and Jaspreet experienced resistance. Jaspreet explained:

Yeah, [...] for my mom it was kind of like "He's not Jat," whatever. But I think she got over it when she started to get to know him, then she said he is such an amazing guy, how can I say no just because of that one little thing. But my dad, from day one, was okay [with Sukhwinder]. (Jaspreet, Interview, 2015)

Jaspreet explained that between her mom and dad's kinship networks, she was the first one who was not marrying a Jat. "So that's why it was a big deal. Not a big deal, but it was something new that they never thought would happen" (Jaspreet 2015). Sukhwinder's parents had a different reaction:

My parents were a bit more subtle, I think. They were beating around the bush a little bit, asking questions about her level of education, and I said that's not important. And then they would ask something else, like would the families get along, and I said, "That's up to you!" [laugh] (Sukhwinder, Interview, 2015)

Jaspreet and Sukhwinder each took a different tact, but both were able to reason with their parents on the basis of their Sikhi principles and precepts (Sukhwinder 2015). Marriage is indeed a union of both individuals and their respective families. Both Sukhwinder and Jaspreet noted that their parents are cordial with each other, but by no means do they share any commonalities: Jaspreet's parents don't speak English fluently like Sukhwinder's, and whilst her parents prefer home-cooked Punjabi meals, Sukhwinder's parents often go out to restaurants (Jaspreet 2015). The social differences between the families are not only caste-based, but also class-based. These differences, however, have not stopped Sukhwinder and Jaspreet from establishing firm roots in each other's families. It also has not obstructed Sukhwinder and Jaspreet from influencing their siblings and cousins to overcome caste barriers in courtship.

The present chapter section has utilised the themes of western, Punjabi and Sikhi to analyse how particular features of Punjabi-Sikh marriage, such as arranged marriage and caste preferences, have shifted in the diaspora context.

7.1.4 Areas of overlap

This final sub-section pushes past the three themes to explore areas of overlap. I present three examples that consider tensions such as, western-Punjabi, Punjabi-Sikhi and western-Sikhi.

Sonni, a Canadian-born Punjabi-Sikh divorced woman, suitably demonstrates the tension between western and Punjabi themes, in her explanation of why she married before completing her university degree:

I got married at the age of 22. In fact, it was me who decided I wanted to get married. I wasn't very happy with my choice of subject discipline, my dad would remark that any taxi driver who saw me outside a club in Hamilton would report back to him, and I generally didn't know what I wanted. I considered marriage to be a "way out." (Sonni, Interview, 2013)

Sonni comes from a large business family in the GTA. She met her ex-husband when she was in high school; he also came from a wealthy business family and the same Jat caste. Her family's roots in Toronto extend many decades and her family's business ventures enabled her father to establish a prominent reputation in the GTA community. Any misstep on Sonni's part was reported back to her father. As one of only two daughters within her large joint family, she evidently felt constrained. Sonni's remarks demonstrate that she attempted to exercise her autonomy and choice, two values explored in the western theme, in order to overcome the control of her father and family. Since her husband was American, marriage provided her the means to escape beyond the reach of her family. Sonni's experience is relevant because she utilises traditional Punjabi norms of marriage at a relatively early age

in adulthood to escape patriarchal kinship control, exerted by her father and his vast network of contacts.

The competition between Punjabi norms and practices and Sikhi-centred ethics and beliefs has been highlighted in previous examples pertaining to caste preferences. To take this point further, I turn to Ravneet, who was introduced to his wife through friends. After Ravneet and his wife solidified their intention to marry, he approached his parents with the marriage proposal (*rishta*).

Family was really important to them [parents]. They wanted someone that would look good, not physically, but look good in our family, and adapt to our family. They were [...] into caste but not so much when I pressured them about it. I don't care about caste. In our Sikhi, we don't believe in caste, especially when I became *amrit-dhari*. But they did pressure me, not into caste, but mostly they were looking for someone that would look good in our family. We would go home as a family, adapt as a family, people would look at us and be like, and "yeah, that's one big happy family." (Ravneet, Interview, 2015)

In this quotation, Ravneet discusses what his parents wanted from a potential daughter-in-law. He explains that his parents placed emphasis on "adaptability." Caste was an issue of contention his parents saw as an impediment to adaptation:

Before we got married, my parents went to the UK to stay with her family and see how her family is, because you know what they say: in an Indian culture, you're not [just] marrying each other, you're marrying each other's families too. [...] [After] they saw her family, how they were, [my parents] said "Look, they're from this caste, this is how they are, I [sic] don't think our families look good." I put them off. I was like, "Look, do you like her?" They were like, "Yeah, we see that she's good for you but our families are not good, [and] we did not like the family." I told them I'm marrying her and not her family. As much as [I might] believe that, that was a very key mistake that I made there. (Ravneet, Interview, 2015)

Ravneet is an *amrit-dhari* Punjabi-Sikh man from Brampton. He is a father of one child and currently separated from his British wife, who has temporary custody. His parents' unfavourable impression of his wife's family was attributed to their caste affiliation. Another interview participant, Amrita, explained that parents prefer to use caste as a criterion in their children's marriages because "the upbringing and the environment and certain values and customs are so different" (Amrita 2015). The differences between families are based on numerous qualities, such as class, education and migration experience; yet, these complex differences are ironically attributed to the single criterion of caste. It is also related to a social divide between Punjabis whose origin is from the village (*pindh*) or the city (*shehr*), which is another way of alluding to caste (Nirmal 2015; Zorawar 2015; Deepa 2015).

The third example of overlap concerns western versus Sikhi themes. Neelam is a Canadian-born woman who grew up in East GTA. She met her ex-husband at a Sikh camp and instant chemistry led them to establish a long-distance relationship, between Toronto and the US. At the time of the meeting, she was not *amrit-dhari* but things quickly transformed:

My whole thinking about “I don’t want an arranged marriage” is funny because essentially I gave myself in arranged marriage. We skyped quite a bit because he lived in the States and I was in Toronto, so there was not a lot of connection one-on-one, in person. We met up maybe 3-4 times and I am not underestimating.

I remember that he was into it [the relationship] and he said that he was ready whenever I was. I wasn’t sure about marriage. It went from dating to marriage all of a sudden.

[...]

I just thought to myself that if he was fitting all the right cards except that he is *amrit-dhari* and I wasn’t...at that point I didn’t at all have any intention to take amrit. I remember that I texted him the question, “Don’t you have to marry an *amrit-dhari*?” implying where is this going, and he replied “Yeah, I do but don’t let that stop you from getting to know me.” I remember putting my phone down thinking this is not going to work. My mind-set was so far away from that – I was still shaving my legs, drinking wine here and there. I was still into Sikhi but not in a way that was 100%. (Neelam, Interview, 2015)

Neelam and her ex-husband’s initial physical attraction rapidly developed into a serious conversation about marriage. The pressure to get married was compounded by sexual conduct proscriptions as per the *Rehat Maryada*, which did not permit Neelam to get to know her husband physically without getting married to him. The marriage proposal concerned life-altering decisions about becoming *amrit-dhari*. Now divorced, Neelam reflected on her decision to marry her husband:

In hindsight, I think I was falling in love with Sikhi and Guru Ji and this path, and I thought I was falling in love with him. I think my love for him was pretty superficial, to be honest. I was attracted to him and we got along at the beginning but the love that I really had – or what I thought he was offering – was because he was a Gursikh. Because he was on this path of truth, love, service (*sewa*) and sweet, humble speech (*mitte bol*), everything - I didn’t see it in him but I thought that he had all those qualities because he was Gursikh. Like I said, I gave myself in an arranged marriage. (Neelam, Interview, 2015)

Neelam’s spiritual journey coalesced with her marital journey, to the US and back. She calls her autonomous decision to marry her husband a “self-arranged marriage” because she felt she did not get to know her husband well enough before the marriage took place. Neelam’s experience demonstrates the contrary pulls of western and Sikhi themes because, what began as a long distance romance between two adults transformed into a very personal and significant individual journey to self-realisation. Neelam’s story further demonstrates the distinctive phenomena in the transformation of Punjabi-Sikh marriage norms and practices in the Canadian diaspora context.

Little Canadian socio-legal research exists on ethnic minority marriage and marriage breakdown. If we return briefly to *Grewal v Kaur*, the justice was hesitant to apply foreign law concerning marriage practices when it was found to be inconsistent with fundamental Canadian values (Chapter 1). In order to address the justice's concerns, then, this thesis must critically analyse the norms, practices and laws that govern marriage and marriage breakdown and how they adapt in the Canadian context. This chapter section analysed the marriage norms and practices of Punjabi-Sikh interview participants in order to consider how and to what extent the Canadian diaspora context might have its own distinct patterns. The Punjabi-Sikhs interviewed demonstrate that courtship is a dynamic process, where Punjabi norms interact with Sikhi as well as wider Canadian/western norms, attitudes and practices. While certain practices like caste preferences continue to factor into spousal selection, this section has demonstrated that shifts amongst interview participants who more closely align with Sikhi-centred ethics and values are challenging this practice. This chapter section is relevant to the thesis aims and objectives because it provides an ethnographic study of how kinship norms are adapting in the Canadian context, which can assist Canadian official law actors to better understand the dynamism of Punjabi-Sikh marriage and marriage breakdown norms and practices.

7.2 Marriage breakdown

The breakdown of marriages represents an important crack in the social fabric of the Punjabi-Sikh community (Section 1.1). A growing number of Punjabi-Sikhs fall outside the social norm of marriage, thus compromising the central place of the family unit in Punjabi-Sikh social structures and therefore representing an increasingly relevant ethnic minority community in the Ontario family law context. Marriage breakdown is conceptualised as a spectrum comprised of married, separated, divorced and re-married interview participants. Marriage breakdown as a spectrum is relevant because, one, it was found a person does not need to be legally separated or divorced in order to experience issues related to marriage breakdown, and two, given the social stigma around divorce and the centrality of marriage and family within the Punjabi-Sikh community, people are reluctant to leave broken marriages (Section 4.3.3).

For example, Deepa re-married and moved to Canada to be with her current husband. She did not know he was an alcoholic and given the violent circumstances of her first marriage, as well as the resulting insecurities she continues to endure, Deepa is not willing to leave her husband. Other interviewees, such as Neelam and Jasmeen, were married for a very short period of time before ending the marriage after observing mental instabilities in their husbands and enduring the emotional and psychological abuse they inflicted. Others

were persuaded/coerced for a length of time to work through the difficulties in their marriages, such as Isha, Rita and Sangeeta.

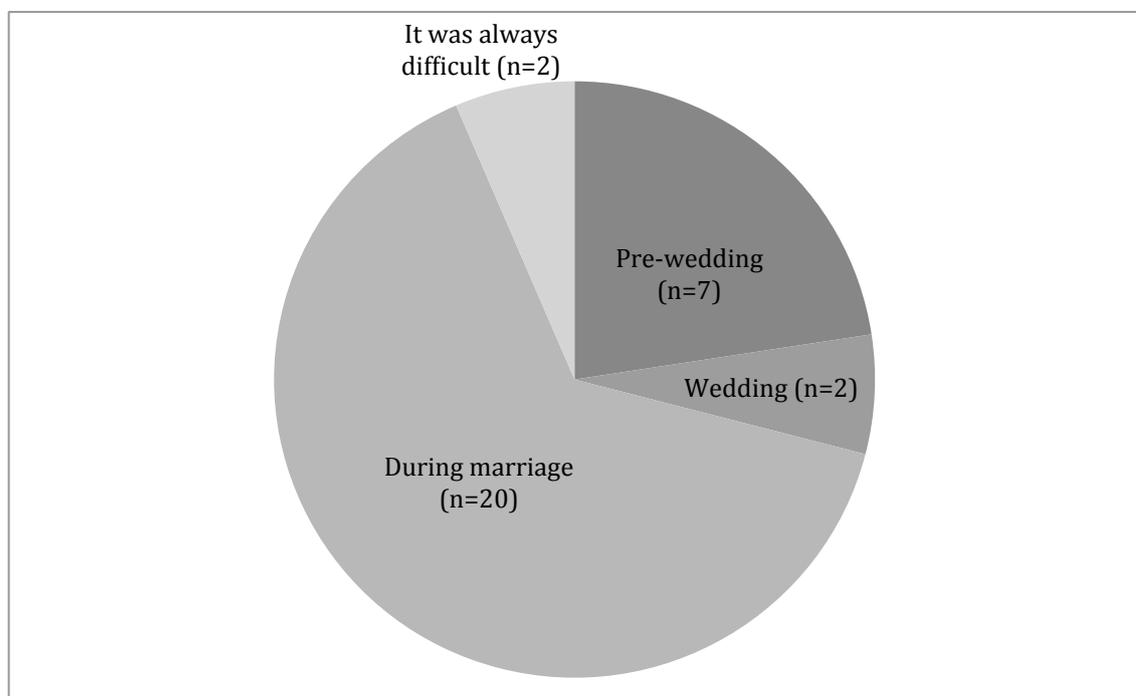
In her study of transnational Sikh women in East Africa, Mand (2008, 286) found that many women think of marriage as necessarily involving putting aside one's own desires (*cha*) in reference to their needs or their natal kin, in order to ensure the welfare of her husband, children and the corporate family. This attitude is reflective of the ideological expectations of the married state for Punjabi-Sikh women. The centrality of marriage to Punjabi social structures means that even when difficulties in the marriage are encountered, women are encouraged to endure and resolve these matters quietly.

In the case of Rita, the ideological expectations of the married state were implicitly adopted and reinforced by her mother, but also internalised by Rita herself. Her ex-husband reinforced her own vehement rejection of divorce:

The date of the divorce was December 2011. I initiated the proceedings. I warned him hundreds of times that if he didn't improve his behaviour, we wouldn't survive. He threatened me and said, "What, are you going to be a divorced Indian girl?" He implied that no one would want me. It was honestly cruel. (Interview, Rita, 2015)

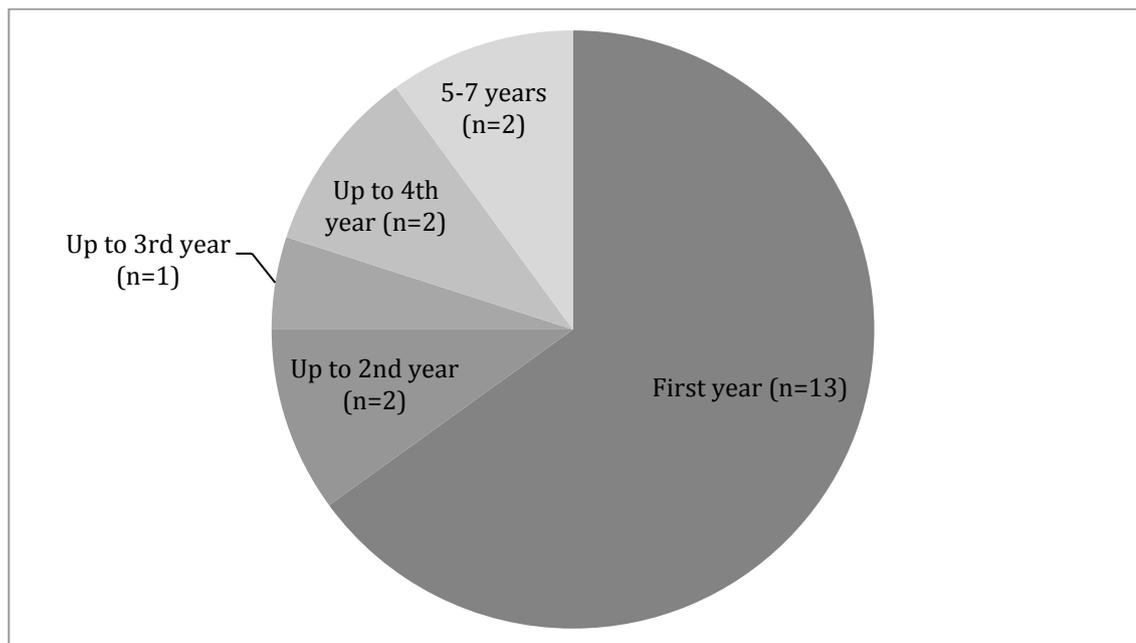
Rita's experience will be discussed further in this section as well as subsequent chapters in order to explore her personal beliefs in the centrality of marriage and her abhorrence of divorce (Section 9.2).

Figure 8: Most difficult period of adjustment



Punjabi-Sikh participants of all marital statuses answered the survey question, “What was the most difficult period of adjustment?” Interviewees responded in multiple ways to the question and commented on the first concern as well as on-going concerns that evolved over the parties’ marriage (Figure 8). To analyse the “during marriage” component further, Figure 9 demonstrates that 20 participants (74%) reported that the first year of marriage was the most difficult period of adjustment. Two divorced participants, Rita and Ravneet, responded that their relationship with their ex-spouse was always fraught.

Figure 9: Period of difficulty during marriage



Participants provided a range of explanations as to why the first year of marriage is critical (Table 6).

Table 6: Challenges during marriage

| | N | % |
|------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------|---------|
| Adjusting to cohabitation | 7 | 26 |
| Birth of child(ren) | 6 | 22 |
| Managing new family relationships, parental expectations (including religious beliefs) | 14 | 52 |
| Living arrangements | • Living in/moving out of a joint household | 5 19 |
| | • Limited “time together” | 5 19 |
| | • Moving, re-locating post-wedding | 4 15 |
| Immigration-related (including economic difficulties, such as employment or lack of opportunity in new country of residence) | 9 | 33 |

Some participants generally commented that a challenging period is when the couple first cohabit (Deepa 2015; Zorawar 2015; Jasmineen 2015), since it was a general norm amongst

the participants that cohabitation did not occur until after marriage. This is the period when the couple really get to know each other (Inderpal 2012; Sunpreet 2012), establish their goals, daily routines and ways of life (Harinder 2013; Prem 2013; Gurjeet 2015), and, if they live in a joint household, establish relationships with the husband's family (Isha 2015; Naindeep 2015; Birpal 2015; Sonni 2013).

Six participants, including married and divorced, noted that another challenging period was the birth of their first child. Jatinder and Simran had twins and relied on Jatinder's parents and siblings who lived close-by, as well as Simran's immediate family, who lived farther away but still maintained an active role. Harinder (married) and Jyoti (divorced) are both academic women who married, migrated, and faced hardship establishing themselves professionally, which was made more difficult when they became mothers.

As Table 6 reveals, two issues that participants commented upon, oftentimes in great detail, was: (a) managing new family relationships, and (b) living arrangements.

7.2.1 Managing new family relationships

Amrit-dhari couple, Jaspreet and Sukhwinder, have been married for 3 years and live in the US. Jaspreet explained why managing their parents has been difficult:

Jaspreet: I think it's been the expectations of both families that have been very frustrating, sometimes. Especially when we go home, everybody wants to hang out with you and I feel like...

Sukhwinder: I think that compared to the beginning, it's gotten better. Now, they realise that we are going to see both families but in the beginning, we felt guilty for going to one or the other.

Jaspreet: Not even guilty but you would notice that they would get upset but they wouldn't say it directly, you just know that they are upset. It was frustrating because, for me, my parents are just as important as his parents, so I think that it should be equal. I think that was the most difficult part, trying to meet expectations that were set for you but questioning why they were there in the first place. Those expectations shouldn't be there because the parents should be equal.

(Jaspreet & Sukhwinder, Interview, 2015)

Indeed, the idea of equality between the husband and wife's parents is a recurring theme commented upon by the female interviewees Isha, Jasmeen, Rita, Sangeeta and Tina.¹⁰⁵ I assert this imbalance is related to the inequality between the bride-givers and bride-takers entrenched in Punjabi marriage practices (Ballard 1990, 230), which is further reinforced

¹⁰⁵ Amongst the male interviewees, the responses were mixed. Naindeep and Inderpal appeared to be neutral, whereas Nirmal, Sukhwinder, Jatinder, Gurjeet, Kamaljit and Arvinder had good relationships with their in-laws. Ravneet and Zorawar, on the other hand, were less favourable in their comments about their ex-wives' parents.

through pervasive male preference in Punjabi socio-economic norms and practices (Section 4.1; Purewal 2010).

Another topic brought up by participants concerned religious practice or belief. This theme is most clearly explored by Gurbans and Arvinder. After Gurbans and Arvinder were engaged (*roka*), the parties and their family members were on a train from Ludhiana to New Delhi when her father-in-law handed Gurbans a gift.

So I opened it, and it was a book called “Importance of Unshorn Hair” [*kaesha di mahadita*]. He gives me that book, “Importance of Unshorn Hair” [*kaesha di mahadita*]! (Interview, Gurbans, 2013).

Arvinder was furious because he felt his father was unknowingly “sabotaging a relationship before it even begins” by “putting a condition on something” when “that’s not what our relationship was ever about” (Arvinder 2013). Arvinder clearly saw past the physical Sikh articles of faith and observed Gurbans according to her character, beliefs and practices. His father, meanwhile, balked at the lack of adherence to the Sikh article of faith, *kesh*, unshorn hair. Gurbans came from a Sikh *keshdhari* family; though she never cut or trimmed her hair, she did remove facial and body hair. Arvinder, meanwhile, was *amrit-dhari* for most of his life and his family piously adhered to the *Rehat Maryada*. His father’s not-so-benign gesture was an indication to Gurbans that there was an expectation that she cease hair removal, which she obliged after their marriage. However, this did not stop the strictures, as many conversations took place over the course of their marriage:

[My father-in-law] would give me hints that because I was married to a Gursikh. [sic] Even his sister would take me upstairs and give lectures – discussion of Sikh stories [*katha vichar karde han*] – whatever the hell that is. I would just go because I am not a conflict-oriented person. But at times, it felt like I couldn’t even breathe and I couldn’t have a straight conversation with him [father-in-law]. (Gurbans, Interview, 2013)

Gurbans eventually established a bond with her father-in-law, which she deeply valued but the relationship was severed after Arvinder’s meditation practice led to him to distance himself from “conventional religion.”

Arvinder: My attachment to conventional religion was becoming less and less the more I did Vipasana meditation. After our marriage, we did three Vipasana courses together.

[...]

Arvinder: It’s pretty intense meditation. It really opens you up and shows you what’s inside. You start to take responsibility for your own spirituality in a much more fundamental way than you would ever experience through organised religion.

Gurbans: The best part is that it’s all in sync with *Gurbani*.
(Arvinder & Gurbans, Interview, 2013)

Arvinder’s spiritual exploration helped him realise dualities within himself. After spending his entire life as an *amrit-dhari*, Arvinder took the deliberated decision to cut his unshorn

hair (*kesh*). In retaliation, Gurbans explained that, “For one year he [father] did not speak to us [*Ik saal oh sadey nall gaal nahi keetee*]”, and furthermore, she was blamed for Arvinder’s decision.

Arvinder and Gurbans sincerely believed his decision was firmly rooted in the process of self-realisation central to Gurbani, however, his family vehemently did not agree since his spiritual consciousness entailed a distancing from the physical embodiment of the Khalsa identity and the Panth.¹⁰⁶ Their spiritual journey has continued nonetheless through the aid of a spiritually enlightened guide (*brahm giani*).

The difficulties Gurbans and Arvinder faced with his father’s expectations of the kind of religious life they should lead demonstrates the contradictory pulls of gendered Punjabi norms, which dictate obedience to elders on the one hand (especially for females), with spiritual autonomy and consciousness that is unmoored from the organised aspects of contemporary Sikh religious practice and identity, on the other. Indeed, Sukhwinder and Jaspreet’s attempts to navigate parental expectations also demonstrate that Canadian Punjabi-Sikh couples navigate uneven terrain as they challenge entrenched cultural and/or religious practices that their parents’ generation unquestioningly adopted.

Other participants, including Isha, Rita and Sangeeta, also commented on religion being an issue in their marriage. All three women came from families that did not ascribe to a *kesh-dhari* or *amrit-dhari* identity (Sangeeta is Hindu-Punjabi). All three women married into families that had markedly different Sikh beliefs and practices compared to their own families. Whilst Isha and Sangeeta lived with their in-laws, Rita did not. Sangeeta married into a *kesh-dhari* family and was expected to adapt whilst Isha’s in-laws followed a particular saint (*sant*), which is a vernacular spiritual Punjabi practice that she was unfamiliar with yet she was expected to adopt unquestioningly (Purewal & Kalra 2010). Meanwhile, Rita’s controlling ex-husband had enormous demands and expectations, some of which centrally concerned Sikh articles of faith for their future family. These three participants’ experiences, in addition to Gurbans’s experience, demonstrate that parental expectations may centrally concern disciplining religious practice, since women play the central role in perpetuating the family lineage and religious practices.

¹⁰⁶ There are important and complex reasons that Arvinder felt cutting his kesh was important, which are related to Sikh institutions rather than Sikhi as a spiritual practice. In particular, Arvinder’s pre-marital dating experience led to severe disciplining by the *panj pyare* (5 learned Sikhs), which was one aspect of the duality Arvinder was attempting to unroot. (Arvinder 2013)

7.2.2 Living arrangements

Isha attributed living in a joint household as a major problem in her marriage. After explicitly discussing living arrangements when they initially met, Isha understood that it was an expectation that she quit her job and living on her own, to move in and settle at her in-laws' home in Brampton following marriage. Isha incredulously exclaimed that one month after their marriage, her husband requested they she pay his parents on a monthly basis. She refused after pointing out that he made it a requirement that she relocate to his parents' home. Following one year of living in the joint household, Isha told her husband she was not happy because she felt like she couldn't be herself and felt like she was "tiptoeing" around the house (Isha 2015). Her husband refused to consider moving and deemed Isha could "bear it" a little longer. "He thought that in order for us to move out, me and his mom would be fighting like cats and dogs, like intense" (Isha 2015). As a result, after one year of marriage Isha was "so miserable" that she returned to her parents' home in East GTA. When her husband showed no remorse, Isha second-guessed her decision and returned to her in-laws' home. Her husband assured her that they would look into moving, but only after another year did Isha and her ex-husband move out. The relocation was brief due to the pressures her ex-husband faced to be a dutiful son.

Isha attributed her husband's traditional view of living arrangements to his place of residence, "He was from Brampton, and I always said to myself I never wanted to be with a guy from Brampton because they are very close-minded" (Isha 2015). Brampton is a suburb located on the northwest corner of the GTA. Statistics Canada reports that whilst the average number of people in an Ontario household is 2.6 people, in the ethnic enclave of Springdale (dubbed "Singhdale"), the average is almost double, at 4.4 people (Grewal 2013a). Isha was not the only one to connote the (negative) eccentricities of joint family living in Brampton (Sangeeta 2011, Paramjeet 2016, Antoinette Clarke 2011, Baldev Mutta 2015, Aruna Papp 2011).

A tear-jerking lament from Isha's interview was that, "He was a son before he was a husband" (Isha 2015). This statement reflects the entrenched patriarchal norms in Punjabi society that have yet to be systematically displaced in the Canadian diaspora context (Section 5.4).

Even though we celebrated our anniversary together June 2015, we are separated. We are living separately but I was still trying to see if we could make it work. He wanted me to move back in with his parents because he thought that living with his parents would solve our issues. I put my foot down there; it made no logical sense to me and I already lived with his parents for 2 of the 4 years that we were married and I was absolutely miserable...After we celebrated our anniversary on June 2015, I filed for divorce at the end of the month. (Isha, Interview, 2015)

It appears, then, that the reason for marriage breakdown in Isha's case was centrally related to her husband's responsibility to care for and reside with his parents (more specifically, his mother), which resulted in his inability of being a husband who felt empowered to put his marriage and spouse first.

Indeed, the vast majority of female interviewees (Tina 2014, Birpal 2015, Sangeeta 2011; Isha 2015) who lived in joint households vehemently expressed the unfairness they experienced as daughters-in-law. Tina explained that her in-laws have a "double standard" with respect to how they treat their daughter versus her. Tina lived in her in-laws' home for 3 years, and like Isha, she felt it was a time during which she was not free to be herself. When Tina and her husband finally moved out, the move took place after irrevocable damage to her relationship with her father-in-law (Section 9.4).

While other female interviewees demonstrated that living in a joint household was less of a choice and more of an expectation (Isha 2015; Sangeeta 2011; Sonni 2013; Tina 2014), Birpal and Naindeep lived in a joint household because of "health needs" of an unspecified family member. Both are *amrit-dhari* and whilst Naindeep has been *amrit-dhari* his whole life, Birpal converted to Sikhi and became *amrit-dhari* a couple of years before the parties met. After their marriage, Birpal joined Naindeep at his family's home in GTA West. The question, "what is the most difficult adjustment to married life?," elicited the joint response "joint family life."

Naindeep: [...] I am going to try and be a bit vague but you kind of need to know a little background. So there are some health concerns at home which makes things more challenging. Some of that has to do with sensitivities to everything, like scents, smells, sounds – like, super sensitivity. We don't use anything at home that has scent, for example, which means you have to adjust everything.

Birpal: And sometimes unscented things create a reaction, too. So it's infinitely complex.

[...]

Naindeep: Yeah, and it's still an adjustment.

Birpal: Yeah, we are still adjusting.

Naindeep: And for me, having grown up in that slowly, it's just been a part of my life. So it's been an issue but it's never been as much until you have a kid and a new person comes in. There are challenges. I think there's difficulties with that aspect but I think there is oftentimes the types of things you hear for people who do get into an extended family situation and the challenges they have, it's not that.

Birpal: We don't have that. It's more around health.

(Naindeep & Birpal, Interview, 2015)

Birpal and Naindeep admitted that they themselves had few if any difficulties (merely joint "decorating decisions"). Rather, it was caring for their toddler whilst simultaneously tending to the unpredictable and "infinitely complex" aspects of caring and cohabiting with a family member who has mental health needs. The situation was particularly difficult for

Birpal, who is a white Canadian who spent her adult life living independently before she and Naindeep married. Further complexity is added when Naindeep and Birpal's situation is contextualised by the norms of the GTA Punjabi-Sikh diaspora community, which is analysed in Section 9.4.2.

A final theme that had a moderate presence in the interviews was the immigration-related impacts of marriage breakdown. Unlike the majority of legal cases this thesis examines, the immigration experiences of 6 female interviewees primarily involved movement between western countries of Canada, US and France, and only 3 female interviewees discussed movement between Canada and India. On the former grouping, all 6 interviewees (Harinder 2013; Neelam 2015; Jasmeen 2015; Jaspreet 2015; Jyoti 2013; Sonni 2013) explained that immigration resulted in a variety of ways on a restriction to their employment. This restriction implicated their ability to act autonomously, both economically and physically. With respect to the latter category of female migrants from India, difficulties became more acute in an unfamiliar environment. Since many households do not function as corporate households, this has distinct advantages but also potential disadvantages depending on the woman's level of economic and social independence. Living separately from the joint family has benefits, since a woman is less affected by day-to-day acts of control as a result of living in her in-laws' home. However, living separately with her husband also poses difficulty since "[g]reater independence may bring isolation unknown to migrants from the subcontinent" (Ballard 1982, 192) and makes the parties more directly dependent on each other. The centrality of the extended family in Punjabi families means that as a migrant woman's sole social circle, she may have no one to turn to when faced with marital difficulties.

Deepa, for example, had undergone tragic hardship and tremendous abuse. When I asked to whom she goes to for help, she replied, that she takes solace in her beauty business.

Sometimes I call my mom, sometimes my mom says just let it go (*hun jaan-de*)! So, this life is done, I am 47. My life is done, where to go, where I will live, where I will have a house, what to do. (Deepa, Interview, 2015)

A sense of loneliness and isolation was prevalent amongst all the Indian migrants, both men and women, but the circumstances of marriage breakdown exacerbate this loneliness.

This section has demonstrated that marriage breakdown in the unofficial sphere is multi-faceted and highly variable. Participants generally agree the most difficult phase in marriage is during the early phases of the marriage itself, and 74% of interviewees deem the first year as the most challenging. It is during the first year that spouses cohabit for the first time, whether within a joint household or separately. Interview participants noted that particular issues in the marriage concern managing new family relationships and parental

expectations, as well as the living arrangements, most acutely concerning living within a joint household.

7.2.3 Reconciling marriage breakdown

One particular aspect of marriage breakdown that has not yet been explored is the Sikh dimension. I asked Amrita, a retired *amrit-dhari* woman, and her husband Nirmal, about divorce and Sikhi:

Amrita: I don't think there is...I think divorce is not a concept in Gurbani [*Gurbani te vich nahi hai*].

[...]

Nirmal: I think they separated for a long time. I think I have heard many cases in Indian history where the woman left the husband's house for whatever reason and never went back.

(Amrita & Nirmal, Interview, 2015)

Chapter 4 demonstrated that the concept of formal divorce is a secular legal concept that was introduced through the Hindu personal law reforms. Amrita reflected on shifting gender roles and expectations:

No. You know, in India, in the olden times, there were not very many divorces because couples mostly have very defined roles. Husband used to be the earner, and wife used to run the house. They had very defined roles and they understood those roles. In olden times, always men used to earn the money but woman used to have all the control. Men used to never interfere too much in household things. So, then things used to move very smoothly because they had very defined roles. Now, in Canada, a woman is expected to earn money and plus you still have to run the household. Still the responsibility – I mean husband can help, maybe he can go grocery shopping, he can help with the cleaning or whatever – but still, the major responsibility is the woman's. Even raising the kids. (Amrita, Interview, 2015)

In correspondence with Amrita's remarks, the interviews reveal that most female interview participants struggled to establish fair power relationships with their husbands and/or their in-laws.

The male interview participants cannot be simply cast aside as patriarchal, however. Sukhwinder and Jaspreet demonstrated how a Sikhi-centred way of life helped them to overcome unfair gender ideologies:

Jaspreet: One of the things we talked about was never letting your ego get too high, to never think that you are lower or higher than the other person, as long as you are on the same page....

Sukhwinder: Lower is okay.

Jaspreet: I mean that you are not better than the other person.

Sukhwinder: That was the guiding principle for pretty much everything. To be ego-less. Whenever there are problems, you talk. Nobody is right just because....

(Jaspreet & Sukhwinder, Interview, 2015)

The concept of “*Mann neeva maat uchi*” (mind low, morality high) instruct that a Gursikh should live in remembrance of the Transcendent One, by remaining humble and steadfast in her/his moral and spiritual principles.¹⁰⁷ Other participants, such as Birpal, Naindeep, Jatinder and Simran were not able to communicate the concept of humility in the same eloquent manner, but also commented on the centrality of Sikhi in their marriage.

Well, we do have a Guru Granth Sahib Ji at home. Both of us are not *amrit-shak* but I think having Sikhi in our life is really important. I think it really guides our life decisions in a lot of ways. (Simran, Interview, 2012)

One particular question that I asked divorced and re-married interview participants was how they reconciled their marriage breakdown with their Sikhi. Isha replied that she’s taken a “spiritual position” rather than a “religious” one, which focuses on loving herself, self-growth, and inner strength. She said that her parents had given her some cassettes from India and instructed her to listen to them. Given her experience living with her in-laws and being forced to attend public gatherings for a religious saint, Isha had no interest in a “religious” approach whatsoever. Indeed, Kamaljit and Sonni share Isha’s sentiment. All three participants identified as “spiritual” not “religious” and Sikhi had a limited role in their marriage breakdown.

Meanwhile, Rita’s ex-husband instrumentally used Sikhi to make her feel guilty about dating men before their marriage and for consuming alcohol. The real issue was his jealousy and mistrust, nonetheless, Rita almost believed him and considered becoming *amrit-dhari* to “cleanse” herself (Rita 2015). The guilt Rita felt was so intense that she attempted suicide before finding the inner strength to petition for divorce (Section 9.2).

There are other interview participants, like Neelam, Ravneet and Zorawar, who did find Sikhi to be an explicitly agentive force. Following her marriage, Neelam migrated to the US to reside with her husband and his parents. The in-laws were in fact not the difficult parties; she explained that it was her husband and his seemingly depressed, emotionally and psychologically abusive attitude and behaviour that compelled her to leave after three months of cohabitation. To my question, Neelam replied:

That’s been a struggle for me, especially at the beginning when I was getting input about the divorce process. I was being told by my husband that getting a divorce is anti-*Gurmat* and there is no such thing as divorce. But in my heart, I just trusted that things happen for a reason and if we say that everything happens in Divine Will (*hukam*), how can we say that the marriage (*laavan*) happened in Divine Will (*hukam*) but the divorce was ego-driven (*manmat*). How do we sit here and pick and choose our own definitions of the Divine Will? (Neelam, Interview, 2015)

¹⁰⁷ “*Mann neeva maat uchi*” is a quotation from the third part of the congregational prayer, *Ardas*. The first part of the phrase “*maan neeva*” meaning, “mind low”, concerns the concept of humility, whilst the second part “*maat uchi*” means “morality high” and highlights the concept of living a life that adheres to high moral and spiritual values and principles (Sikhiwiki: http://www.sikhiwiki.org/index.php/Maan_neeva_maat_uchi).

Zorawar, is also *amrit-dhari*, and he was previously married to an *amrit-dhari* woman from Punjab. Within three months of her arrival in Canada and cohabitation, Zorawar and his wife separated. To my question about divorce and Sikhi, Zorawar vehemently replied:

I am a very practical guy; I don't just blindly follow what people say. One thing that I kept on hearing again and again and again from the Sikh community or the Sikh families who were around me was, "Oh, you are *amrit-dhari* and you are not supposed to get divorced." People say there is no divorce in Sikhi but I questioned those people. I said, "there is divorce in Sikhi and I can prove it. If you can prove me wrong, I am happy to accept your argument."

When you get married, you make a promise in front of Guru-Sahib¹⁰⁸ that you are going to live a faithful life, you are not going to be a cheater. I forgot to tell you this thing: they [ex-wife's kin] even tried to offer me money to get her PR [permanent residence]. Her aunt (*Pooa*) actually offered me money and I have that thing on recording! So, aside from divorce, if you are already breaking that vow you made in front of Guru-Sahib, then its dissolved right there. Guru-Sahib is putting conditions on your marriage, if you are not committed to Guru Granth Sahib's four *laavan* [Sikh marriage rite] or Guru-Sahib's message [as an *amrit-dhari* Sikh], then you are divorced right there. You don't even have to get this legal document. (Zorawar, Interview, 2015)

Amrita and Nirmal, a retired, highly educated, *amrit-dhari* couple, struggled to conceptualise the place of divorce in Sikhi, which is perhaps a reflection of their generation, Punjabi origin and beliefs. Meanwhile, family and/or friends challenged Neelam and Zorawar for divorcing their spouses, and more so, both participants spent significant time deeply reflecting on divorce and Sikhi.

Neelam felt trapped in a loveless marriage where she was constantly criticised and ridiculed. Her final decision to leave her husband occurred on a regular day; her husband and in-laws were out and she had returned home. Over the 3 months that Neelam cohabited with her husband, he repeatedly asked her to leave. Before her husband left that morning, he flippantly asked her for the last time. Neelam took her time leaving, writing an apology note to her in-laws, reciting a prayer (*Ardas*), leaving behind her US mobile phone, leaving, and then returning back to the house to retrieve a small carry-on bag she had already packed for a future trip home. She felt like it was a sign that no one had yet returned home.

¹⁰⁸ *Guru-Sahib* is a pious referential term that I loosely translate to refer to the Divine Spirit embodied through the Knowledge imparted from the Guru Granth Sahib.

In my heart... the fact that I did *Ardas* every single day for those three months, that Guru-Sahib keep me on the true path... and the fact that I had the strength and opportunity to write a note and leave...I realised that no one can ever tell somebody to tell their spouse because they are the ones who have to have the strength to deal with the aftermath. Just having the strength made me realise that this is not against anything that is right for me, and feels right for me.

The other thing that I see is in line with *Sikhi*, is that Guru Tegh Bahadur Ji stood up against oppression of the Hindus. So if he stood up against oppression of people of another faith, but on a deeper level, he stood up against oppression of a soul, right? So we all have a soul (*sab me joth joth hai soi*), so why would I put up with oppression against my own soul? So, that was me honestly feeling that I was standing up for my *Sikhi*. I was not going to stay in an oppressed situation. How am I going to do any community service (*sewa*), remembrance of the Transcendent One (*simran*), or inspire people, if I am oppressed? It's not helpful to anybody; it doesn't serve the Sikh community (*panth*) to stay in an oppressed relationship. It's just so hypocritical, especially if I have chosen to wear a turban (*dastaar*) because I physically embody the responsibility [...] in an honest way and it feels so dishonest. So, I either remove my turban (*dastaar*) or I actually follow this path. I am so in love with the embodiment of the Khalsa (*saroop*) that I knew I needed to follow the path of truth, whatever that looks like, whatever people say.

So many people think so many things and I genuinely don't care. That's Guru-Sahib giving me the strength. It's not about what they think and I know that it's not worth my time trying to fix what other people think about the marriage. (Neelam, Interview, 2015)

Neelam's reply exemplifies the complex process of bargaining she underwent as a Punjabi-Sikh amrit-dhari woman. She reflected not only on Gurbani, but also on the life of Guru Tegh Bahadur, before she realised that she was in an oppressed situation and it was her responsibility to get out of it. Divine Will (*hukam*), commitment to a higher path, sovereignty and justice are concepts that inform the agentive force Neelam and Zorawar embody.

Neelam and Zorawar's remarks stand alongside other interviewees, amrit-dhari or otherwise, who demonstrate that public and private space is being carved into the GTA/Canadian diaspora where women and men can legitimately challenge entrenched and problematic gender norms. Neelam's remarks provide a most eloquent example of why *Sikhi* might offer a compelling platform upon which to reclaim public and private space for non-married Punjabi-Sikhs within the GTA/Canadian diaspora community.

Conclusion

This chapter serves an important function in this doctoral thesis, since it provides an ethnographic account of current marriage and marriage breakdown practices within the unofficial kinship sphere, where western and *Sikhi* values and norms intersect with Punjabi norms and practices. It was demonstrated that certain Punjabi kinship structures, specifically caste, continue to have relevance in the Canadian diaspora context in the marriage norms and practices of interview participants. However, Punjabi customs, like

arranged marriage, have undergone a transformation in the Canadian context so that a wide range of practices exist, from formal introductions through the families characterised by less autonomous choice, to less formal introductions through family or friends characterised by more autonomous choice. With respect to marriage norms and practices, some interview participants were able to utilise Sikh principles and precepts to persuade their parents to adapt marriage norms and practices. This chapter also analysed interview participants' experiences of marriage breakdown. It was established that though gendered cultural prejudice against divorce continues to persist and shape/control interview participants' own perception of their marriage breakdown, for interview participants who embody Sikh-centred values and precepts, the impact can be tremendous in overcoming cultural prejudices against divorce. This finding contributes to the argument that within the multicultural context, the in-group practices of the Punjabi-Sikh community are incredibly dynamic and contested through the assertion of Sikhi-centred principles versus gendered kinship norms (Shachar 2000, 2010). In-group practices are significant in determining a sense of agency and belonging/alienation within the community as a person facing marriage breakdown. As Neelam and Zorawar indicated, kinship norms are actively reinforced in the unofficial sphere. Furthermore, this chapter provides much-needed dimension for the following Chapter 8 on forums and actors within the official and unofficial spheres. It is within the unofficial sphere that the specificities of Punjabi-Sikh kinship norms interact with western and Sikhi-centred norms and practices, which result in a dynamic context that significantly impacts the choice of dispute resolution forum. There is certainly a dearth of literature that dually examines the legal and kinship dimensions of marriage and marriage breakdown and therefore, this chapter contributes much needed analysis of the unofficial sphere.

Chapter 8

Before, in parallel and after: Deciphering forums and actors in the official and unofficial spheres

Chapter 8 explores “law in process” (Chapter 2) utilising Nvivo to visualise the various forums Punjabi-Sikh disputants resort to in order to address conflict within marriage and family. The purpose of this chapter is to analyse the legal cases and interviews in order to map out which forums and/or actors disputants resorted to before, in parallel, and/or after family court proceedings. Through the completion of this analysis, this chapter (a) confirms the multiple framework approach disputants utilise, (b) discerns forums and actors utilised before, in parallel and after family law proceedings, and (c) considers whether these forums exist within the official or unofficial spheres. Though it may appear that resorting to family for assistance, support and mediation is not remarkable, an analysis of the data reveals that kinship is not only central to marriage, it is also central to marriage breakdown. It is found in this chapter that kinship actors remain important before, in parallel and after legal proceedings, and even contour the legal process as the parties move through the bureaucratic process.

8.1 Deciphering forums and actors

Nvivo assisted in the discernment of which forums Punjabi-Sikh disputants utilise before, in parallel and after family court proceedings. Primary fieldwork data, including all legal case documentation (n=28) and interviews (n=27), inform the analysis presented in this chapter. The forums identified are best compared and contrasted in 5 groupings: kinship actors, kinship forums, Sikh forums, official sphere forums, and finally official law forums.

Kinship actors, kinship forums and Sikh forums encompass the unofficial sphere. Kinship actors include immediate family members, as well as the joint and/or extended family, and friends. Kinship forums refer to various types of strategies utilised within the kinship network or between the two spouses’ kin in order to resolve the marriage breakdown or family issue. Sikh forums encompass consulting with a Sikh elder, the five wise ones (*panj pyare*), or appealing to leaders at the local Sikh place of worship (*gurdwara*). Official sphere forums include community organisations, counselling, legal aid, mediation, lawyer, the Office of the Children’s Lawyer, and the police. For the analysis presented, I have divided these forums into 2 groupings. Official sphere forums refer to community organisations and counselling services. Finally, official law forums refer to actors and

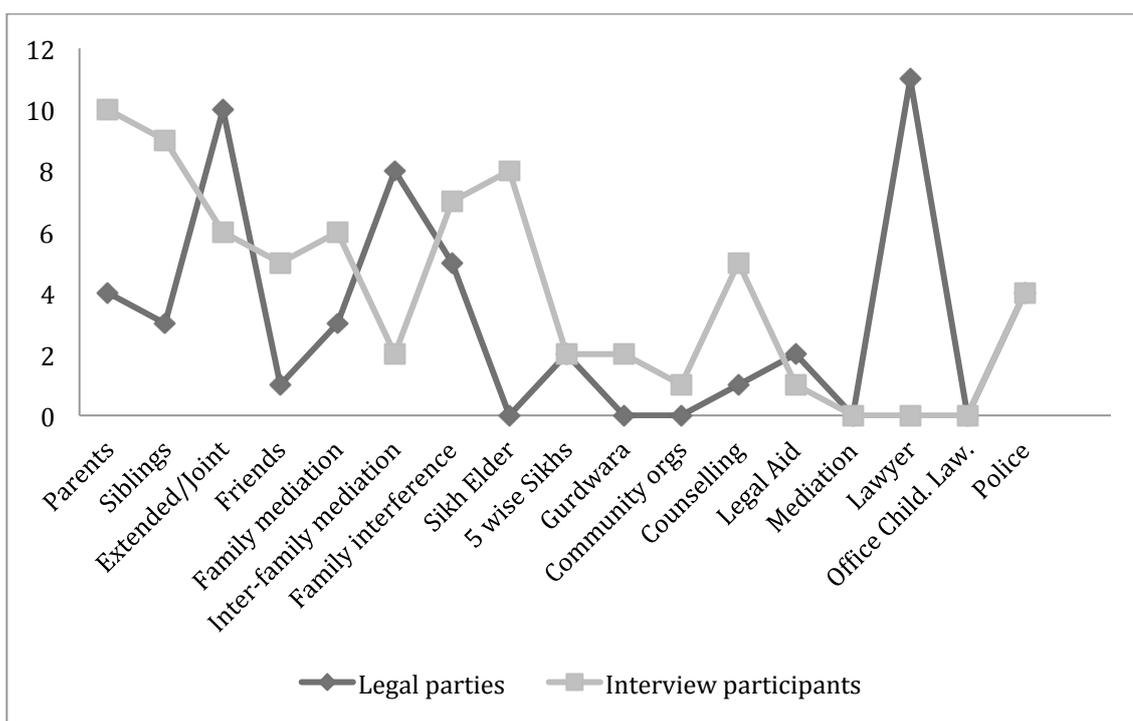
forums found within a courthouse: lawyers, the police, legal aid and the Office of the Children's Lawyer.

The results recorded for each category refer in multiple ways to the strategies disputants utilised. In the legal cases, key words that indicate forums and actors were coded and these responses were then analysed to come up with an affirmative or negative judgment on the use of the forum for each legal party. In the interviews with separated, divorced and remarried participants, participants were asked specifically what they did before approaching the official law for divorce proceedings. The interviews with Punjabi-Sikhs include various marital statuses, therefore the analysis considers, and perhaps skews the "before" category since, as I explain in Chapter 3, many interview participants who participated in the fieldwork are married.

8.1.1 Before family law proceedings

This section addresses the number of forums disputants utilised before any family law proceeding was initiated.

Figure 10: Forums utilised before family law proceedings



In Figure 10, it is clear that kinship actors were favoured as the primary forum to resolve marital issues or family disputes in the legal cases and interviews. Amongst the parties in the legal cases, the joint and/or extended family slightly outweighed immediate family members. This reflects not only forums where parties resorted to them for help, but also forums where problems allegedly began. There are a total of 4 cases where kinship actors played no role at all. In *Sidhu v. Chahal 2010*, the 2 university students absolutely did not

want their parents or kin relations involved, as they alleged the civil marriage was done by mistake. In *Takhar v. Takhar 2009*, the British couple was far removed from kin relations and therefore did not have this option readily available. The remaining 2 cases are among the few for which I did not obtain the legal case files.

Meanwhile, the interview participants were also receptive to the involvement of kinship actors in marital or family disputes and all marital status categories responded favourably. Dissimilar to the legal cases, interview participants preferred to go to immediate kin relations rather than joint/extended family or friends. Aside from Naindeep and Rita, the other participants (Tina 2014, Isha 2015, Sangeeta 2011, Zorawar 2015) responded negatively about the involvement of joint/extended family. Friends were a good source of moral support though not necessarily helpful as a forum for resolving disputes. Isha and Birpal, for example, commented on the fact that it was difficult to explain the cultural specificity of living in a joint household to their non-Punjabi-Sikh friends.

Disputants who noted the use of kinship forums is found to be on par amongst the legal parties and the interview participants, however, it is noted that a total of 5 legal cases make no reference to kinship forums at all whilst interview participants are dispersed amongst the options within kinship forums. An interesting feature about this grouping of forums is that it appears to be a matter of perspective whether a form of kinship mediation is considered a forum for resolving a dispute, or, third party interference. Amrita and Nirmal discuss the importance of a “neutral” party to resolve marital and family disputes:

Amrita: You know, in the olden times in India, if there were family disputes there were people, older people, who were considered. They used to do mediation.

Nirmal: But the qualification is that the person was a *sincere* elder. They were not taking sides.

[...]

Amrita: It's possible when you try to mediate in between, the wife may think that you are taking the guy's side within the family. If you are from the guy's side she may think you will only take the guy's side. So, you want a neutral person, a neutral stranger person [who has credibility in the eyes of both spouses].

(Nirmal & Amrita, Interview, 2015)

Indeed, how each spouse views her/his in-laws, and vice versa, profoundly impacts on the efficacy of this forum. Neelam recalls:

Neelam: In those three months, we would have meetings with his parents. He would explain his side; I would sort of be the quiet wife. I am not going to sit there and put down the mother's son. She's not going to see my side and it's just going to make me look bad, so I would barely say anything.

MKV: So nothing would get resolved.

Neelam: No. [...] Just at the beginning his father would defend me when my husband would say these ridiculous things that were absolutely not true but painted a picture of me a certain way. But then it got to a point where

his parents would defend their son, and I am this girl who is not making him happy.
(Neelam, Interview, 2015)

Neelam's experience coincides with other interview participants, like Isha and Ravneet, as well as Gurbans and Arvinder, who also had negative experiences dealing with their in-laws (parents, in the case of Arvinder). With respect to the legal parties, the fathers of Brar and Dhinsa were central to resolving outstanding issues with the matrimonial home, but on the other hand, each spouse blamed each other's father for hiding their respective financial assets. In the case of *Burmi v Dhiman 2001*, Burmi was fully supported by his family to suddenly end the marriage, whilst Dhiman was supported financially, because she flew to Toronto, and socially, because her father accompanied her to address Burmi's family in person.

There are clear patterns discernable in the kinship mediation grouping. Multiple forums were utilised by disputants *within* the kinship mediation group. Also, the grouping includes parental involvement in resolving marital disputes between spouses as well as in-laws. Sangeeta and Isha were miserable living in a joint family and for a brief period, they returned to their natal homes. Isha's parents did not confront her in-laws but she was actively encouraged by her immediate family to end the marriage. Sangeeta's parents accepted her home and this resulted in criticism from her in-laws:

So our dads started talking, then his dad and I started talking. I didn't want to talk to him [husband], so they kind of had to force us to meet up and talk. We didn't meet at the house, we would meet elsewhere; this went on for three months. He [My husband] was so angry with my parents because he questioned what kind of Indian parents would let their kid leave home – leave their in-laws' home – and stay at their house.

[...]

His parents and sisters and their husbands were mad at my dad. Everybody was pissed off with my dad. They questioned how this father could support this daughter who's walked out? We met up a few times and I said, "Listen, I want my own place." That's when I was firm. He said, "It's not happening." His dad said, "Don't worry child [*beta*], whatever you need or want, we will fix it." I said to my father-in-law that my issue wasn't with him, but I can't talk to mom or him.

Somewhere along the way, I got vulnerable and my parents convinced me. I felt sad and I missed him. So he goes, "What will it take?" We negotiated that we would move to the basement. It had a separate entrance and two bedrooms; it had everything you need. I was so excited because we would start our life in the basement, together. (Sangeeta, Interview, 2011)

What is clear from these examples is the Punjabi-Sikh norm of patrilocal residence continues to stand strongly. The female interview participants in joint households implicitly commented from a subordinate position of power and their natal families were often similarly viewed. Conversely, Sangeeta's husband evidently dominated in the period of inter-family mediation and significantly impacted viable options for their reconciliation.

While Sikh forums were briefly mentioned in the legal cases, interview participants had much more to say with respect to Sikhi-centred approaches. Though *amrit-dhari* divorced participants had experience with Sikh forums, married participants were the most detailed in their advocacy of Sikh elders for advice and assistance. Sikh elders sometimes coincide with kin relations. Jatinder commented that Sikhs do not have a “professional clergy” like the Jewish and Catholic communities, and he was unsure if it is what the community needs. The Sikh forum of five wise Sikhs (*panj pyare*) is a unique type of forum utilised in two legal cases for the purposes of intervening in a marriage breakdown. Also Arvinder discussed his pre-marriage experience of facing five *amrit-dhari* Sikhs when he transgressed proscriptions on pre-marital sexual conduct. After confessing to his actions, Arvinder was ordered to undergo the *amrit-sanchar* ceremony again.

On the grouping of official sphere forums, none of the legal cases mentioned the use of community organisations or counselling. Meanwhile, 4 interview participants noted that they have utilised marriage and/or personal counselling or psychotherapy. In Jyoti’s transnational custody battle, she turned to a women’s organisation for assistance. Ten legal parties resorted to lawyers in the before category and it was due to two major factors. One, some cases like *Bhandal v Bhandal 1999*, *Cheema v Lail 2009* and *Gill v Jhaggi 2003*, are pre-existing cases. Two, the husbands in *Lalli v Lalli 2002* and *Takhar v Takhar 2009* coerced their wives into signing spousal agreements, which thus involved legal counsel representation and involvement.

Aside from legal counsel, 4 legal parties (*Bath v Bath 2010*, *Brar v Brar 2010*, *Lalli v Lalli 2002*, *Takhar v Takhar 2009*) turned to the police in cases of domestic violence. Legal aid and social assistance are relevant in *Bath v Bath* and *Lalli v Lalli 2002* and also for interview participant Ravneet. At the time of the interview, Ravneet was criminally charged by his wife for assault and death threats and had successfully defeated 2 of the 3 charges. The police also interviewed Zorawar but no charges were laid.¹⁰⁹ Deepa is currently in an abusive marriage and though the police have previously been called to her home, she is convinced that the police have nothing to offer. She feels solely responsible for raising her drug-addicted son; and as a marriage migrant, she has nowhere else to go.

This section has demonstrated that before disputants approach the official law to resolve their marriage breakdown, the spouses and their kin relations resort to numerous unofficial sphere forums, such as kinship actors, kinship mediation and Sikh forums. Despite Nirmal and Amrita’s reflection on how mediation would occur “in the olden times”,

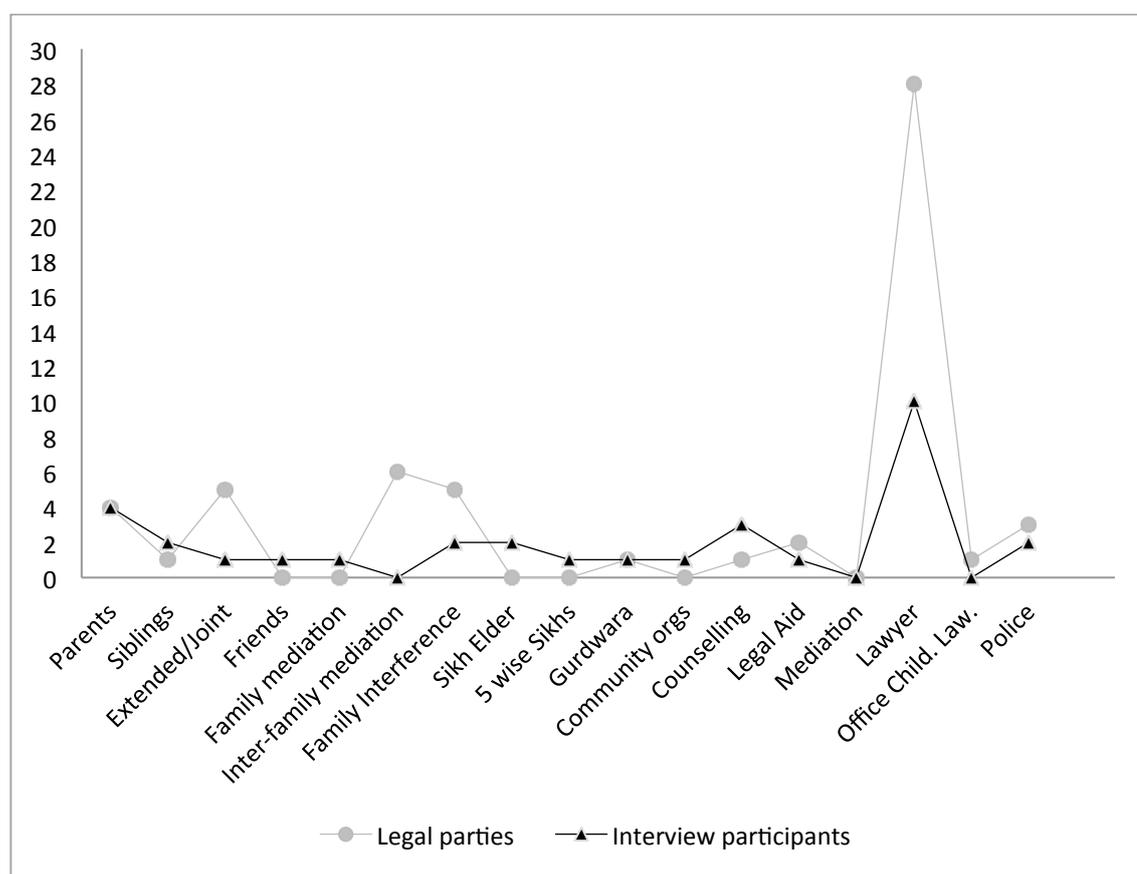
¹⁰⁹ Zorawar’s wife was from Punjab, and given the lack of official law forums in the Punjab context, perhaps resorting to the police was one of the only coercive strategies she thought to turn to. Indeed, further research is needed to establish such postulations, especially since I only had access to Zorawar’s perspective.

the examples provided by the legal cases and interviews demonstrate that neutrality is a rare occurrence, and unequal power positions are embedded in the negotiation that occurs between the husband's and wife's parents. Official sphere forums were utilised by interview participants and not legal parties, which indicates that Canadian-born or brought up disputants are more likely to resort to these strategies than new/recent immigrants. Finally, the official law forums (particularly legal counsel and the police), were utilised significantly by the legal parties and significantly less so amongst the interview participants, who mostly interacted with police.

8.1.2 In parallel to family law proceedings

The forums and actors discussed in this section were utilised whilst family law proceedings were underway (Figure 11).

Figure 11: Forums utilised in parallel with family law proceedings



When family law proceedings are initiated, it inevitably involves legal counsel. Amongst the legal cases, legal professionals were utilised by 23 of the 28 parties. While the 10 separated, divorced and remarried participants also had legal representation, Kamaljit and Zorawar did as much on their own before hiring lawyers/paralegals to finalise their paperwork. In fact Kamaljit and his ex-wife worked together to determine equalisation. Factoring the two groups together, it is clear that Punjabi-Sikhs generally hire counsel and

do not fit the Canadian trend towards self-representation (DeGreeve et al 2010, 116). Indeed, it is reported that 40 to 50 per cent of family litigants, depending on the issue and the province of residence, seek access to the courts without legal representation (Payne & Payne 2011, 13).¹¹⁰ Aside from legal counsel, legal parties sought assistance from the police and legal aid. The police had a continued presence in *Brar v Brar 2010* because Mr Brar violated the peace bond issued. The police was also a factor in *Burmi v Dhiman 2001* and *Grewal v Kaur 2011* because Dhiman and Kaur's families had initiated criminal proceedings against the husbands in Punjab.¹¹¹ In *Brar v Brar 2010*, the Office of the Children's Lawyer was involved throughout the process as a result of Mr Brar's repeated access requests and his violation of the peace bond. The children consequently underwent counselling.

Legal parties also continued to resort to kinship mediation as a secondary strategy, whereas interview participants turned to kinship actors. Inter-family agreements, which primarily concerned financial issues, cropped up in the legal cases. For example, in *Bath v Bath 2010*, the husband claimed that the matrimonial home was in fact held in trust to his sister-in-law. In the same case, Mr Bath also said he had given to and received numerous financial loans from his sister, which effectively decreased equalisation payments. In *Brar v Brar 2010*, the wife's mother contributed towards the down payment of the home and was therefore joint owner. Also, Mr Brar's father had given the family a vehicle and subsequently placed a lien on the vehicle. Finally, in the cases of *Lalli v Lalli 2002* and *Takhar v Takhar 2009*, the husbands coerced the wives into signing spousal agreements that significantly disfavoured them. On the other hand, the interview participants were more inclined to turn to their families during legal proceedings. All separated, divorced and remarried interview participants commented on the (mostly supportive) roles their immediate families played throughout the family law proceedings.

Interview participants resorted to Sikh forums more than legal parties. When Burmi delivered divorce papers to Dhiman after their unsuccessful attempts at inter-family mediation, Dhiman's family appealed to the local *gurdwara*, which, in Burmi's opinion, was a ploy to shame him into changing his mind. Meanwhile, the *amrit-dhari* separated and divorced participants turned to various Sikh forums. Ravneet said that it was his volunteer efforts at Sikh youth camps that have carried him through the custody battle and divorce, whereas Neelam and Zorawar turned to Sikh elders to mediate the marriage breakdown. Zorawar also faced five wise Sikhs (*panj pyare*) in the resolution of his marriage breakdown.

¹¹⁰ Furthermore, an Ontario study on civil legal problems found that almost 1 in 10 low and middle-income Ontarians indicated they did not seek legal assistance because they believed they would not qualify for legal aid or free legal assistance (Sossin 2010, 32). This position was found to be most likely amongst those with family relationship issues (Sossin 2010, 32).

¹¹¹ This is a reflection of the lack of official law forums aside from police that are available at a local level in the Punjab context (Chapter 4).

He agreed to pay his wife a one-time payment of five thousand dollars and settled the divorce outside of court.

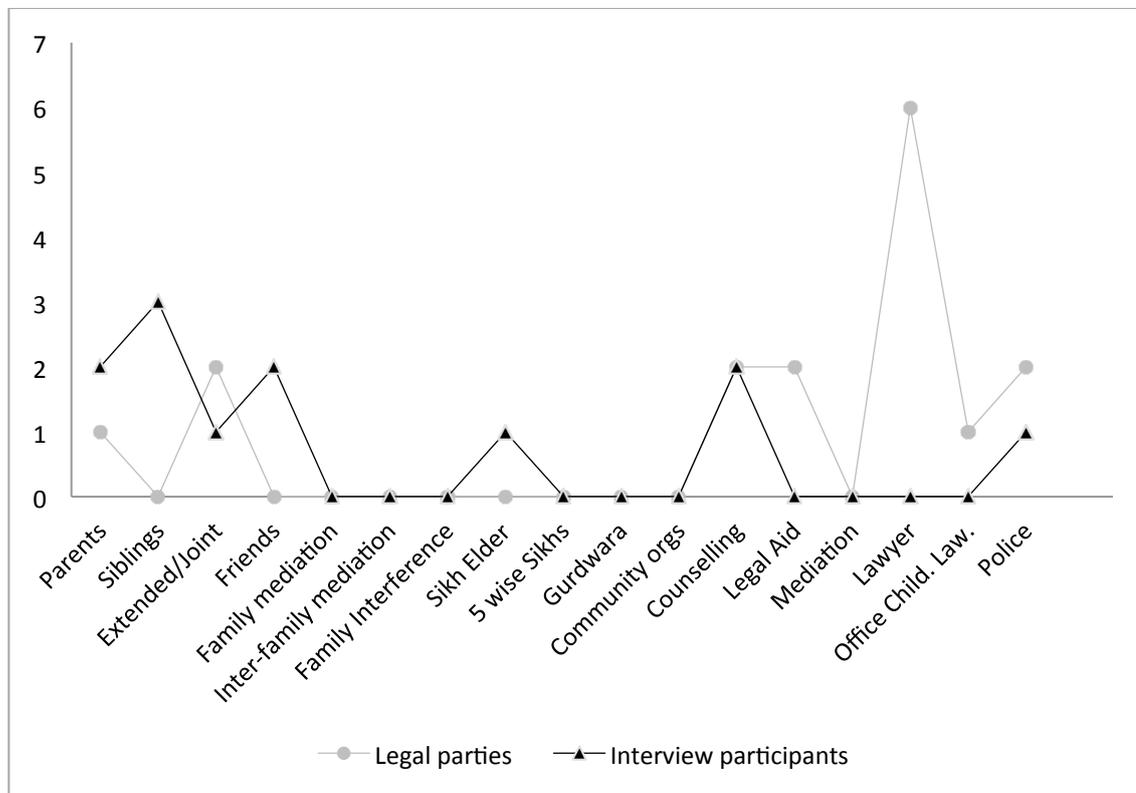
Finally, to a lesser extent interview participants also called on kinship mediation and official sphere forums. None of the legal parties resorted to community organisations or counselling, except in the *Brar v Brar 2010* case where the children were attending counselling, and also the Lalli case, since Mrs Lalli was forced into a shelter and subsequently placed into social housing. It appears that kinship mediation applied to Rita, since her parents unsuccessfully attempted to reconcile her marriage. Meanwhile, Zorawar and Deepa experienced instances of family interference from extended kin relations. Zorawar also attended a family mediation with his ex-wife. A prominent family from the AKJ Sikh sect represented the wife and they unsuccessfully attempted to resolve the marriage breakdown. Finally, with respect to official sphere forums, Jyoti had on-going support from a women's organisation to gain custody of her child, whereas Jyoti, Ravneet, Rita and Sangeeta underwent counselling throughout the divorce process.

This section on forums resorted to in parallel with family law proceedings demonstrates that numerous forums are utilised, and while some forums (i.e. counselling) are about personal wellness, others are focused on reconciliation (i.e. kinship mediation) and others are about disciplining divorcing parties (i.e. approaching the *gurdwara*). Due to the continued impact of kinship mediation, or Sikh forums, as well as inter-family agreements concerning financial assets, there is a dynamic relationship between unofficial sphere forums and the official law proceedings concerning the divorce and financial assets. The continued role of kinship actors indicates that families still try to reconcile the couple despite the marriage breakdown. This indicates again the centrality of marriage within the Punjabi-Sikh community, as well as the gendered dynamics of this intervention. It also shows that in cases where there is no immigration dimension involved, a couple facing marital breakdown may in fact largely avoid formal legal forums and could settle matters out of court. That is not an option, as noted in Section 1.2.2 and 2.2.3, where there are immigration-related implications for either/both parties.

8.1.3 After family law proceedings

This final section addresses the forums and actors that disputants utilised after their legal proceedings took place.

Figure 12: Forums utilised after family law proceedings



As Figure 12 illustrates, the number of forums dramatically decreases; however, amongst the legal cases, parties continued to utilise official law forums, especially legal counsel, since some cases were not completely resolved. This happened, for example, in *Takhar v Takhar 2009*, which was about interim custody and child support, and also *Brar v Dhinsa 2008*, a divorce case significantly delayed, because Dhinsa would not disclose all her financial records. In other cases, counsel was important because of outstanding matters, like enforcing the payment of lawyer's fees, selling the matrimonial home, or re-applying for immigration sponsorship. The Office of the Children's Lawyer and the police continued to be involved in the *Brar v Brar 2010* case due to continuing issues with access. In *Garcha v Garcha 2010*,¹¹² Mr Garcha also requested that the police are involved in the transnational enforcement of an interim custody order for the return of his son. Thus, custody and access issues appear to result in continued engagement with family law following divorce proceedings. Meanwhile, interview participants who concluded their cases had no reason for recourse to official law forums.

112 *Garcha v Garcha* [2010] OJ 1231

Counselling is one particular forum from the official sphere grouping that has relevance in both the legal cases and interviews. While 2 interview participants, Jyoti and Rita, underwent on-going counselling after the resolution of their divorce, 2 legal cases involved court orders for counselling, primarily for children of the marriage in the cases of *Brar v Brar 2010* and *Gill v Jhaji 2003*.

There is evidence in the legal cases and amongst interview participants that kinship actors continued to be involved also in the post-divorce process. With respect to legal parties, official/legal forums were utilised, as discussed, and also kinship forums. Amongst the interview participants it was primarily immediate family and friends. There is no way to consider if kinship actors continued to be involved in the legal cases due to the nature of the legal case documentation. However, it is clear from the judgments that extended family is important in two cases, *Bath v Bath* and *Garcha v Garcha*, due to the sale of the matrimonial home, in the former case, and access arrangements, in the former and latter cases. Amongst the interview participants, parents and siblings are important actors throughout the divorce process. In addition, Zorawar continues to seek support from a Sikh elder post-divorce. Neelam also appears to rely on Sikh forums to reconcile her marriage breakdown.

As expected, the forums and actors utilised after the family law proceedings concluded are significantly less. The legal cases demonstrate the importance of counselling for children, whereas interview participants commented on the perceived need for counselling due to the nature of the marriage breakdown as well as the stigma and isolation they felt within the Punjabi-Sikh community.

This chapter section has addressed forum and actor usage before, in parallel, and after family law proceedings. It was demonstrated in the before category that across the fieldwork data, neutrality is a rare occurrence in kinship forums, and entrenched gender dynamics operate in inter-family mediation. Interview participants are more likely to utilise official sphere forums and police, whereas legal parties resorted to official law actors, like legal counsel and police. With respect to the parallel category, it was evident that kinship mediation continues, along with Sikh forums and inter-family agreements concerning financial assets, which indicates a dynamic relationship between unofficial sphere forums and the official law proceedings concerning the divorce and financial assets. The centrality of marriage in Punjabi kinship is noted; the continued role of kinship actors indicates that families still try to reconcile the couple despite the marriage breakdown. Finally, in the after category, there is an expected decrease in forum usage, though the incidence of counselling increases for both legal parties and interview participants.

8.2 Within and between official and unofficial spheres

In this section, I analyse the data presented in the previous section. It is apparent that there are significant issues concerning gendered power imbalances, and while this section compares and contrasts the forums utilised within and between the official and unofficial spheres in order to address the gender issues, further gender analysis is presented in Chapter 9. Interviews with social and legal actors are utilised in this section to draw attention to counselling, mediation and legal aid forums. The analysis presented is organised in the same groupings of before, in parallel and after.

8.2.1 Before: A balanced approach to official and unofficial forums

An analysis of the before category reflects that legal parties resorted to legal counsel, the police and legal aid primarily. This combination of forums suggests that legal parties resorted to these forums when their marriages were already compromised. The interview participants, meanwhile, primarily turned to counselling. The police were also involved, and one participant, Ravneet, utilised Legal Aid for his transnational custody battle.

As a private service not covered by provincial health insurance, counselling is primarily a “middle class or upper middle class” forum for men and women, according to Paramjeet, a psychotherapist from GTA West (Paramjeet 2016). Interview participants who turned to counselling were: young professionals who could afford counselling, primarily women, and they resorted to counselling at a late stage in the marriage breakdown (Isha 2015; Neelam 2015; Rita 2015; Sangeeta 2011). It appears then, amongst interview participants that the emphasis was on rehabilitating the marriage even if it was in fact too late. This is perhaps a reflection of parental or kinship pressure to reconcile the marriage. In the case of police involvement, these marriages had already crossed the threshold that necessarily involved the official law due to the presence of alleged violence.

With respect to unofficial sphere forums, the intervention and involvement of kinship actors was prevalent amongst both types of disputants. Inter-family mediation was prevalent amongst legal parties, whilst Sikh elders were prevalent amongst interview participants. Inter-family mediation occurs when family members of either spouse’s family coordinate a meeting to discuss the marriage breakdown. Sometimes multiple family members attend the meetings alongside each spouse, like in the case of *Burmi v Dhiman*, and at other times, the meetings are merely set up by the families and only the spouses meet, like in Sangeeta’s case. Issues in dispute are central to the discussion and some form of separation agreement is the objective if reconciliation is not feasible. For instance, in *Brar v Brar 2010*, Ms Brar called her aunt and uncle from Hamilton to mediate a separation agreement, however the meeting concluded unsuccessfully because Mr Brar felt mocked

and insulted. The mediator's ability to address power imbalances between the spouses is central to the effectiveness of this process, as Amrita and Nirmal indicated in Section 8.1.

Married interview participants felt that reading and reflecting on Gurbani was first and foremost related to addressing issues within the marriage, because oftentimes the issue begins with the individual himself or herself (Arvinder 2013; Birpal 2015; Gurbans 2013; Jaspreet 2015; Naindeep 2015; Sukhwinder 2015). The forum of the Sikh elder was thought to be a useful and confidential option to overcome issues within a marriage, either individually (Prem 2013; Birpal 2015; Naindeep 2015) or as a couple:

Maybe we're lucky, maybe we haven't reached that stage yet. But, both of our parents have been guides and counselors for other people who have had marriage issues. We know Simran's parents were helping people who had marriage issues and I remember in the past my parents as well. But they didn't hold any official position, they were just trusted and respected members of the community and people went to them because they trust them. So I think that's where... if people really needed it and they don't have family and they don't have somebody else, they can find trusted members of the community they can go to. (Jatinder, Interview, 2012)

It is clear from Jatinder's comment that a Sikh elder may also be a kinship actor, but not necessarily. Indeed, the boundary lines between kinship actors are fuzzy, as is the distinction between kinship actors/forums and Sikh forums.

Zorawar discussed his experience consulting with a Sikh elder, as well as a mediation meeting in front of five wise Sikhs.

So what happened was, when that guy from AKJ got involved we had a meeting and there were things we agreed on to make the marriage work. She wouldn't honour those things that she promised in front of 5 people. That her parents actually got involved, I didn't know these people before. So they were very fair people, they said it's not that they are from the girl's side and we are going to do you an injustice. They said they would listen to both of us and then decide what you both need to do. One thing was for her to stop lying and stop talking to her mother about everything that happens in our house. They called her mother and asked her to stop interfering in our marriage. So both of these things never stopped. She continued to lie. (Zorawar, Interview, 2015)

Zorawar observed the mediation offered by the AKJ Sikh elder to be fairly administered. He explained that each spouse had to agree to specific changes to address the issues within the marriage. Unfortunately, the mediation was not successful since his ex-wife did not honour the promises she made to the 5 Sikh elders (*panj pyare*). The importance of the *panj pyare* is symbolic amongst Sikhs because when a person is initiated, the *amrit-sanchar* ceremony is overseen and administered by any 5 wise Sikhs, who collectively embody the Khalsa and their collective wisdom is rooted in Gurbani (*Rehat Maryada*). The de-centralised nature of the ceremony itself indicates that matters of conduct are addressed in an equally de-centralised manner. While conduct may be enforced or disciplined if an *amrit-dhari* person belongs to a particular sect, like the AKJ, but in practice and aligned with Gurbani, a person

is ultimately accountable to him- or herself for acts of (mis)conduct (Arvinder 2013; Neelam 2015; Ravneet 2015; Zorawar 2015). As Zorawar states in Section 7.2.3, breaking a promise that was made to Guru-Sahib in the case of marriage, or the *panj pyare*, in the present example, is an act of spiritual deception that effectively dissolves the marriage.

8.2.2 In parallel: Forums utilised alongside legal counsel

An analysis of the in parallel category demonstrates an expected increase in lawyer usage amongst both legal parties and interview participants.

The Brampton courthouse, a central site during fieldwork, addresses a variety of civil law issues. It houses a unified family court as well as a number of front-end services, including: (i) family mediation services, (ii) a mandatory information program (MIP), (iii) a family law information centre (FLIC), and (iv), a dispute resolution officer (DRO) program.¹¹³ Family mediation is a drop-in or appointment-based government-funded service to assist family law litigants to resolve issues related to family and marriage breakdown. MIPs are mandatory sessions which provide litigants both represented and unrepresented with essential information about the family justice system, the options available to resolve their disputes, and the effects of separation on children and adults. FLIC is an office that provides information about separation and divorce, family justice services, alternative forms of dispute resolution, local community resources, and court processes. Finally, DROs are senior family lawyers who provide litigants with an early evaluation of their case. Each of these front-end services is the result of collaboration between the court, the Ministry of the Attorney General, and local justice partners. Legal Aid Ontario (LAO) administers the collaboration with justice partners and directly manages the MIPs and FLIC. The programmes implemented at the Brampton Courthouse provide an efficient method of facilitating cost effective solutions for families since they systematically inform potential litigants of affordable and state-funded options, particularly through FLIC and MIP. Aside from the few who utilised legal aid, it was not evident from the legal cases or the interviews that disputants utilised any of these alternative forums.

Whilst legal parties continue to interact with kinship actors and forums, there is a marked decrease in interview participants' usage of these actors and forums. Parents continue to factor into the process along with Sikh forums; however, the general trend is that interview participants shifted their focus from unofficial sphere forums to official sphere forums. The legal parties appear to not make use of any official sphere forums aside from lawyers, police and legal aid. The interview participants have relatively smaller numbers but there is more emphasis on counselling, whether individual or marital.

¹¹³ For more information on Ontario's family law courts, see www.attorneygeneral.jus.gov.on.ca/english/family/famcourts.asp

On the subject of marriage counselling, Paramjeet and I had a discussion about the mismatch of South Asian clients' expectations versus the objectives of marriage counselling.

Paramjeet: With all of my South Asian clients, they view they want the court system or somebody to tell them what's going to happen. Like, with all my South Asian clients, they want me to tell them what to do. They don't see therapy as a process of where you are going to learn about yourself and you're going to come up with – it's not collaborative. Instead, they tell me the story and then they say to me, now you tell us what to do. Tell us what to do. They want direction; they see it as more of a medical model. [...]

MKV: Maybe they see it, as their parents can't do that for them. Maybe, us coming from an immigrant generation, our parents can only help us so much and that largely depends on how educated your parents are and how they see the world. Maybe that's why they look to you for very direct advice?

Paramjeet: Might be. Yeah, we are very much into that model of when something is going wrong we consult the expert, the elders. That's how they see it, they come to me and they always want to know, what do you think we should do. Just tell us, we will do it, we will do whatever you say. They say that!

MKV: And what's the outcome?

Paramjeet: It doesn't work that way. Never works. Like, the behavioural approach, to me, it just doesn't work. I can't say to you, go home, you are going to start vacuuming, you're going to stop doing this, and you're going to start doing this. It doesn't last; it doesn't work. You have to look at why – why is this happening? I need more information too, and they need to take that time to slow down. But they want me to tell them what to do.

(Paramjeet, Interview, 2016)

My conversation with Paramjeet illuminated for me that Punjabi-Sikhs, even the middle and middle-upper class ones who can afford to pay for counselling, might not understand the objectives or the expectations of counselling.

In Isha's case, she and her husband began counselling in the second year of their marriage after she left the joint household and returned to her parents' home, and continued to see a counsellor periodically up until their separation a few years later. Isha reflected on why there was little progress:

He was a son before he was a husband. I remember going through therapy and one of the things the therapist was trying to explain to him: One day, we were at this new year's party and his mom's family was there. My ex-husband's mom made a comment about my family, basically disrespecting my mom in front of her whole family and everyone laughed. I didn't think it was a joke. I told my husband how I felt, and he protected his mom. We went to therapy because of this whole thing. My husband didn't see what he was doing wrong. The therapist was saying to him, do you see how you are a son before you are a husband. He was protecting his mom and saying that she had not done anything wrong, it was just a joke. The therapist asked him to see it from his wife's perspective. So this was also an issue: his obligations were to his mom and not to me. I constantly, constantly felt that. (Isha, Interview, 2015)

As discussed in Section 2.2.2, kinship is grounded not so much in the conjugal tie between husband and wife, but rather in the more demanding links of mutuality which bind parents and patrilineal offspring (Ballard 1982, 2008, 50; Das 1993). Isha was unable to accept that she would be a subordinate priority to her mother-in-law, while her ex-husband and in-laws called her selfish when she tried to explain this (Isha 2015). Similar to Sangeeta, Isha was made to feel guilty for wanting a marriage that ascribed to a western conjugal model rather than a Punjabi joint household model. Isha's experience illustrates that part of the reason her marriage broke down was because her ex-husband's obligations were primarily to his kin, specifically his mother, which ultimately contributed to the marriage breakdown. In a similar way, the loyalty and deferment to elder kin is what characterises the clients who approach Paramjeet for marriage counselling.

8.2.3 After: Resolved versus on-going family law proceedings

An examination of the official sphere forums indicates that family law forums and actors continue to be involved in numerous legal cases, as previously discussed. Meanwhile, interview participants no longer engaged with any official law forums and solely utilised counselling. Within the unofficial sphere, kinship actors – particularly siblings – continue to be a major source of support and advice for interview participants, whereas extended family is a continuing actor post-family law proceeding, since various extended family members were involved in financial or custody-related matters.

An overall picture of the data presented in this chapter indicates that the legal parties' interactions with kinship actors and forums are markedly more contested, since the interactions centred on the extended/joint family, inter-family mediation and family interference. Though interview participants also discussed issues of family interference within the marriage, positive emphasis was placed on kinship actors, primarily immediate family members. Sikh forums appear to coincide with the constructive approach taken by interview participants in comparison to the adversary approach of legal parties. A part of this difference between the two types of disputants is that amongst the legal parties, who are primarily immigrants, there may be no immediate family to turn to (Section 8.1.1, 10.2).

It also generally appears that numerous strategies emphasise keeping the couple together in spite of apparent strife and hardship. In the *Brar v Brar 2010* case, Madam Justice Snowie questioned whether evidence of reconciliation was legally viable given the circumstances:

“Reconciliation” in the legal sense is questionable. The wife testified that in their Indian culture a woman has “no value unless she is married”. Her parents pressured her, to the extreme, to take the husband back. She was very vulnerable at this time and suffering depression. She obeyed her parents against her better judgment. (*Brar v Brar 2010*, at 12)

It is essential that disputants have the option of turning to official sphere forums, which provide a means of addressing gender discrimination associated with the negative dimensions of kinship. While family law forums cannot remove harmful attitudes and practices, it may provide at least some form of gender justice. Indeed, abuse and violence are a major theme where the official law has intervened in order to address the power imbalance between the spouses (Section 9.4).

8.2.4 Family mediation

Family mediation is generally understood as an agreement-oriented, problem solving, cooperative method designed to help divorcing couples create their own resolution (Goundry 1998, 20). It rejects an objectivist approach to conflict resolution and promises to consider disputes in terms of relationships and responsibility. Mediation was initially viewed as a viable alternative for women litigants since it occurred outside the inhospitable formal legal system imbued with patriarchal values. It was widely accepted amongst both the general public and legal professionals as a relief to an overburdened family legal system. However, feminist critics exposed widening cracks in the façade. For example, it was found the widespread adoption of ADR meant that mediation was no longer perceived as a choice and thereby forced women into unsafe or unjust bargaining positions (Mack 1995, 124).

Though court-mandated mediation in the province of Ontario offers disputants of all income levels a viable option to resolve outstanding issues in the marriage breakdown (MAG), it is striking that mediation appears to not be a strategy that any disputant utilised, before, in parallel or after the family law proceedings. Nirmal Singh is a professional mediator, who has worked with individuals, families and Sikh institutions to resolve disputes, however, it appears that mediation is not always successful within the Punjabi kinship structure, as demonstrated in Section 8.1 by his and Amrita's remarks.

Whilst on fieldwork in 2011, I visited Peel Mediation Services (PMS), a full-service mediation office at the Brampton courthouse. I spoke with the executive director, Antoinette Clarke, who has been in family mediation for over 20 years and is currently completing her PhD in law at York University.¹¹⁴ She discussed her experience working in Peel Region and what she perceives of the predominantly South Asian community:

What we found is that there is a need, and that the information is useful to people. **But what didn't happen, which we hoped, is that we would get more South Asian clients into family mediation.** (Antoinette Clarke, interview, 2011, emphasis supplied by me)

PMS obtained provincial funding to conduct studies to identify the family mediation needs for the South Asian community and tailor their services appropriately. Clarke reported that

¹¹⁴ See: www.adrweb.ca/antoinette-clarke

abuse is a significant issue amongst South Asians in the Peel Region, but the issue is kept private within the family and people are reluctant to discuss the issue with anyone outside the community (Antoinette Clarke 2011).

One South Asian legal aid officer commented that in general, it takes longer for South Asians to understand the mediation process and expectations, and that there also appears to be a perception amongst South Asian men that Canada is a “pro-woman” country (LAO 2015). Clarke further explained:

We ran information sessions in the community and those were very successful. We got to the point where we were running sessions in different languages, like in Punjabi. We had brochures translated into Punjabi, Urdu and other languages...Peel is a very multicultural community, very South Asian, so that was why we decided to focus on the South Asian community... **But why they didn't reach the mediation is still a question.** (Antoinette Clarke, interview, 2011, emphasis supplied by me)

PMS has been operating in the Brampton Courthouse since 2001, with full time service from 2011. However, Clarke reported that despite a significant portion of the ethnic minority population in the Peel Region being South Asian, PMS did not have any South Asian clients to date (Antoinette Clarke 2011).

When I followed up in 2015 with the Legal Aid Office at the Brampton Courthouse, it was confirmed that South Asians are becoming more open to mediation, though it is still not a high percentage and South Asians appear reluctant to engage with any of the services offered through Legal Aid, PMS, or the Children's Aid Society. On top of language barriers, the group replied that domestic violence, issues facing new immigrants, and strongly gendered power imbalances appear to contribute to this reluctance (LAO 2015).

Aruna Papp, a Punjabi Christian social worker with over 30 years of experience in social work, reports that over 70% of her clients are immigrants of various ethnic backgrounds, and as a publicly-funded counsellor, her clients are more economically diverse than Paramjeet's. Ms Papp explained that indeed, some women are okay with a patriarchal family framework; “they just want to stop the abuse” (Aruna Papp 2011). Aruna Papp's contentious perspective highlights the complexities of navigating gendered violence and immigration within the kinship structures of Punjabi society:

And in 30 years, what I know from talking to thousands of women, 90% of the time, they go back because they can't deal with that isolation. [...] It's the holidays, it's the Christmases, it's the children, it's the pressure, you left a four-bedroom house – [and] you say, “That is not the Canada I imagined. I better go back. I am the only one he beats, not the kids. Majority of the time, I was fine.” That has been my experience of 30 years, 90% of the time South Asian women only leave an abusive husband when the children are abused.” (Aruna Papp, Assessing the Complexities of South Asian Migration Conference, 2011)

Aruna Papp's approach to mediating abusive marriages in immigrant communities stands in stark contrast to the feminist discourse surrounding family mediation (Goundry et al 1998).

What is missing from the feminist approach is an understanding of the direct implications of removal from the home, which equally entails a removal from kinship-specific support mechanisms (Aruna Papp 2011; Antoinette Clarke 2011). According to Baldev Mutta,¹¹⁵ from Punjab Community Health Services:

[...] I think that less than 10% of our women want to go to shelters. They have this stigma that somehow if they end up there, the first thing they will be taught is how to divorce, which they are scared of. (Baldev Mutta, Interview, 2015)

Similar to the comments provided from the Legal Aid officers, what is apparent from Mr Mutta's comments is the general lack of knowledge Punjabi-Sikhs have about official sphere forums and oftentimes, a lack of English language skills amongst first-generation migrants maintains this ignorance. Aruna accordingly stresses that it is important to ask the women themselves what they want since many are not willing to leave an abusive situation (Aruna Papp 2011). At the South Asian Legal Clinic of Ontario (SALCO), staff lawyer Deepa Mattoo finds that women come to SALCO 5 or 6 times before they open up, and this is a form of test before the women entrust Ms Mattoo with their stories (Deepa Mattoo, Osgoode Hall Law School, 2014). Indeed, Mr Mutta also talks about the centrality of longevity and trust within the Punjabi-Sikh community before people will approach him for help (Baldev Mutta 2015).

This section has demonstrated the complexity of forum usage within and between the official and unofficial spheres. Forums that are utilised before and in parallel with family law proceedings favour kinship-related actors and forums, particularly immediate family actors and Sikh elders amongst interview participants where a constructive approach emphasises reconciliation, and kinship forums amongst the legal parties where an adversary approach emphasises on-going disputes over assets, custody and access. It was also found that it is a matter of perspective whether a kinship forum is perceived as mediation or interference. With respect to official sphere forums, legal parties resorted to forums in order to end their marriages, whereas interview participants preferred counselling, even when it was too late to save the marriage.

While there are exceptions, it is a general trend that legal parties are transnational migrants and interview participants have been educated and/or were born in Canada. These differences appear in the disputants' attitudes to the forums utilised, as well as the accessibility of various actors and forums. The before category demonstrates relative

¹¹⁵ Baldev Mutta, executive director of the Punjab Community Health Services (PCHS) reported that the centre's 1995 report identified that amongst low- and low-middle income Punjabis in Brampton, a high rate of addiction and alcohol use are the causes of domestic violence and family breakdown (Baldev Mutta 2015). The rate of addiction was found to be higher amongst Punjabis than in any other community (Baldev Mutta 2015). As a result, PCHS has developed a range of programmes to address addiction, mental health, immigration and domestic violence.

balance between official and unofficial sphere forums, whilst the in parallel category indicates a preference for official sphere forums to resolve the marriage breakdown. The after category indicates the continued importance of immediate family, as well as the continued role of legal counsel to address on-going legal issues. Kinship actors remain an essential forum for interview participants, and it is demonstrated amongst both legal parties and interview participants that kinship forums, correspondingly decrease in usage as disputants move from category to category. Finally, it is significant that social and legal actors comment that there is a lack of knowledge and a general reluctance amongst Punjabi-Sikhs, particularly new and recent immigrants, about the legal contours of marriage breakdown. There are, accordingly, profound gendered impacts that will be further addressed in the following Chapter 9.

The forums addressed in this chapter have been put into 5 groupings and mapped to the official sphere and unofficial spheres. This exercise has attempted to demonstrate that certain forums that exist within the kinship structure of Punjabi-Sikh communities have a significant impact on marriage breakdown, and alternately, that certain forums within the official sphere have an expected role to play in marriage breakdown. This chapter has contributed empirical research on how Punjabi-Sikhs experience marriage breakdown and the various forums disputants and their kin might employ.

It is important, however, to recognise that the distinction between the official and unofficial spheres is far from distinct, and there is significant overlap depending on the forum, the nature of the marriage breakdown and the disputants themselves. The forum of community organisation, for example, might be a South Asian-focused entity, like SALCO or Social Services Network, or it might specifically focus on the Punjabi community, like PCHS. These publicly-funded organisations provide essential services, but also, these organisations may have employees who speak Punjabi and understand the Sikh worldview. As a result, community organisations straddle the boundary between the two spheres, encompassing the multicultural secular and individual-focused nature of the official sphere, as well as the non-western kinship-focus of the unofficial sphere.

Conclusion

This chapter has demonstrated that Punjabi-Sikhs utilise a multiple framework approach in the Ontario family law context, where numerous forums from the official and unofficial spheres are utilised in order to address marriage breakdown before, in parallel, and after family law proceedings. This chapter has demonstrated that kinship and Sikh elders significantly impact on the marriage breakdown in the before category, and there is a notable focus within the unofficial sphere forums to “reconcile” the couple. This appears to be related to *izzat* and shame, and gender, but also the attitude of the older generation (i.e.

to stay in the marriage and work things out). As the marriage breakdown progressed, disputants began to favour official sphere forums and kinship forums became less relevant and Sikh forums were utilised by interview participants though to a lesser extent. This indicates a switch from attempting to reconcile the spouses and the respective families, to obtaining the economic and physical arrangements that would facilitate a divorce. Whilst legal cases emphasised immigration-related dimensions and retribution in some instances (Chapter 6), interview participants expressed their desire to move on and remarry. Female interview participants discussed the urgency of divorce so they could re-marry and have children. The shift in perspective on the marriage breakdown directly correlated with the forums utilised by the disputants. In this process, it also highlights the continued centrality of marriage within Punjabi social structures.

Awareness of culturally appropriate services is indeed the first step to obtaining assistance with family problems and marital breakdown. However, as indicated by Paramjeet, Aruna Papp and Baldev Mutta, there may exist a disconnection between the liberal individualist and secular ideology informing family mediation services offered by PMS and that of South Asian clientele. Given the collective/corporate organisation of the Punjabi-Sikh communities though, and the cultural and language barriers, it is possible the lack of perceived interest demonstrated in PMS's outreach efforts is related to the importance South Asians place on public perception and social stigma (Walton-Roberts 2008, 501-505). The services might not have been deemed to be culturally appropriate or sensitive to the cultural and gender nuances of corporate families and obligations South Asians, particularly Punjabi-Sikhs, prioritise over and above individual needs (Walton-Roberts 2008, 501-505). More research is needed on this. For now, in conclusion, it is evident that there continues to be a need for improvement with respect to access to justice, especially with respect to family relationship problems and the subjects of this study.

Although official state law dictates family law in the Ontario context, Punjabi-Sikhs do not immediately observe state law as a central justice dispensing mechanism (Menski 2006, 193). If access is defined as "approach" or "entry into", and accessible encompasses the idea of being able to influence, the concept of access to justice entails much more than being able to raise one's case in a court or other official institution of justice. Conceptualising forums and actors as belonging to the official and unofficial spheres, as this chapter has presented, allows for fruitful discussion on the cultural specificities of marriage breakdown and permits an analysis of the significance of kinship and Sikhi. The approach developed in this chapter contributes to further theorising on access to family justice for ethnic minorities. It shows that in efforts to improve access to family justice as broadly conceived by Macdonald (2003) for ethnic minority Canadians, and the cultural appropriateness and culture-sensitivity of forums and actors, attention needs to be given not only to official law actors

and structures, but also to unofficial forums and actors (Section 1.2). The unofficial sphere encompasses multiple forms of associated services that clearly, in practice, play a major role in helping individuals and their families to manage marital breakdown issues. Therefore, a revised approach that enables and empowers ethnic minority communities to develop gender sensitive and kinship-oriented forums and actors within the unofficial sphere, that align with the aspects they themselves value, would significantly improve and contribute towards the objective of access to family justice. Since Ontario family law is characterised as individual, liberal and secular, it is questionable if such an approach could be accommodated. However, given the lack of legal empirical studies of access to family justice for ethnic minorities, perhaps this thesis is just the beginning of a much wider discussion about multicultural accommodation in the realm of family law.

Chapter 9

Navigating factors

Dispute strategising is highly dependent upon the individual circumstances surrounding the marriage breakdown (Mnookin & Kornhauser 1979), however, the efficacy of the current analysis is to shed light on the compelling factors that inform the multiple framework approach of Punjabi-Sikh disputants. In resonance with skilled cultural navigation (Ballard 1994), this chapter addresses navigating factors, which are various norms, values and practices that impact on the dispute resolution strategising of disputants. The completion of coding analysis on Nvivo, unearthed four factors found to have a fundamental impact on dispute strategising, where parties moved from forums and actors located in the unofficial sphere to forums and actors located in the official sphere, or vice versa. The four particular factors include: children, kinship values, the navigation of the legal system, and finally, control, violence and mental health. These navigational factors are significant because one or more of them were present in the divorce cases and interviews as contributing to the impetus behind the divorce case. Clarity is provided on what kinds of disputes may require official legal intervention in order to safeguard individual human rights. Finally, this chapter ruminates on what might be the prerequisite knowledge and skills official law actors should possess in order to address marriage breakdown issues amongst Punjabi-Sikhs.

The first chapter section briefly addresses children before moving on to consider kinship values, legal navigation and control, violence and mental health.

9.1 Children

Examination of the fieldwork data reveals that when disputants have children, legal intervention is almost certain, particularly with respect to custody, access and support. Compared with Indian studies of divorce where the majority of cases do not involve children, the Ontario context is markedly different (Bhattacharyya 1987; Choudhury 1988; Sharma 2006; KBK Singh 2004). Four cases (*Garcha v Garcha 2010*; *Cheema v Lail 2009*; *Brar v Brar 2010*; *Gill v Jhajj 2003*) concerning divorce involved children, and all cases concerning spousal support involved children (*Bath v Bath 2010*; *Lalli v Lalli 2002*; *Takhar v Takhar 2009*). Only one annulment case (*Rahul v Rahul 2003*) involved a child. Two interview participants (Ravneet 2015; Jyoti 2013) involved children. I recognise the complexity of child-related issues of marriage breakdown and its gendered impact; however, it is outside the scope of this doctoral thesis to consider bi-jurisdictional specifics regarding Canadian

child law. This chapter section provides a snapshot of the gender and kinship dynamics of child-related issues that arose in the cases harvested for this research.

Garcha v Garcha 2010, *Cheema v Lail 2009* and Ravneet's interview are instances where the father has or wants custody, however, in all other cases and interviews, the court awarded custody to the mother. The use of children as a bargaining chip is an aspect of marriage breakdown that is common amongst all communities, however, Antoinette Clarke, an agent in Peel Region for the Office of the Children's Lawyer, indicates that there are certain features that make the South Asian/Punjabi-Sikh experience unique due to the joint household and sharing of financial assets:

To think of one [case] right now, he is living with the parents – well, he says it's the parents home – but I think he partially owns it. But his parents have been able to have the house in their name so that's the way he has it so he can claim he doesn't have much in finances or whatever. Because [when] I think of the culture, the men's involvement with the children prior to the separation is minimal. So when the separation happens, they make all these demands that they really can't deal with. Or if they do make a demand, the reliance then, is on their own mothers, their parents, to help in terms of the caring. (Antoinette Clarke, Interview, 2011)

It would probably be difficult for a Canadian judge to understand and appreciate these culture-specific complications, and this may partly explain why specialist agents like Ms Clarke are involved to provide assistance in decision-making and case management. Among Punjabi-Sikhs themselves, female interview participants, like Isha, Rita and Sangeeta, said that when their marriages began to deteriorate they changed their mind about having children. Sangeeta mentioned that had she become a mother, it would have been significantly more difficult for her to leave her husband (Sangeeta, Interview, 2011). Paramjeet, accordingly, asked me whether any of the divorced women with children in my research were able to re-marry.¹¹⁶ In Paramjeet's experience, none of the divorced women with children she knew have been able to re-marry (Paramjeet 2016). This anecdotal evidence exposes yet another gendered dimension to Punjabi kinship and *izzat* that warrants further research. This brief chapter section also indicates that marriage breakdown cases that involve children are contested cases where, the intervention of the official law is almost certain if there is detection of any violence, abuse or harassment. The following section accordingly examines kinship values.

¹¹⁶ The number of divorced women with children only totals to one interviewee and 9 legal parties, however, there is no way to determine the current marital status of the legal parties.

9.2 Kinship values

The shame associated with marriage breakdown is a phenomenon that is not specific to Punjabi-Sikhs, however, its repeated presence in the narratives of disputants in this doctoral thesis warrant a closer analysis of the multifaceted concept of *izzat*. A largely positive cultural value, *izzat* contributes to honour, pride, status, morality, eminence, dignity and reputation amongst the kinship network (*biraderi, khandhan*) or larger ethnic minority community (Toor 2009, 243; Ballard 1982, 5). It is effectively accrued through the efforts of a joint family rather than individuals and the actions of each family member either contribute or detract to a sense of family and/or ethnic minority identity and pride.

The concept of *izzat* is continually navigated and utilised to govern morality and maintain cultural and social conformity, as discussed in Section 2.2.2 and 2.2.3. In Punjabi society and diaspora contexts, *izzat* and shame apply across various social categories of religion, caste and kinship; however, its interpretation and enactment is different according to these same categories (Chakravarti 2005, 309-310). There is a strong class bias to *izzat*, which can reify social structures of privileged versus poor or working class women and men, based on conduct, dress, education or domesticity.¹¹⁷ The purpose of this chapter section is to demonstrate that the navigational factor of *izzat* triggers a switch of forum within a particular sphere, and also, a switch between the unofficial and official spheres. This section begins by discussing the relationship between *izzat* and female sexual autonomy, and then considers the boundaries of respectability.

9.2.1 The governance of female sexual autonomy

Rita met her husband through mutual friends whilst she was in professional school in the US. They were from the same profession and caste, and dated long distance for 2 months before they got engaged and married one year later. In the excerpt below, Rita explains her ex-husband's reservations during the engagement period:

We got engaged in the Sikh way at the *gurdwara* in December, and then around April, he started asking me questions about my past. [...] One of the things that bothered him a lot was that the guy that I dated before him, he knew him because they went to school together.

[...] By April, he asked me more and more questions about my past and I was honest. [...] I answered all of his questions, but he had real issues with that, and so that's when the issues started. [...] If I didn't answer him, he would get really upset. I started to get worried after a few months of this going on. (Rita, Interview, 2015)

¹¹⁷ Discussions about *izzat* largely centre on anthropological literature on Punjabis that own land (i.e. Jats), therefore it is important to note the growing body of work on *dalit* communities, which indicate significantly different divorce and remarriage norms, attitudes and practices (Agnes 2001). For example, Grover (2011, 67) asserts that amongst "low-caste" women and men in New Delhi, divorce and remarriage are "foremost a practical necessity". Holden (2008) portrays the expediency of customary divorce for rural *dalit* women in Madhya Pradesh.

The notion of the tarnished woman is evoked in Rita's story due to her ex-husband's reaction to her dating history. Rita and her husband then met one week before the wedding to work things out. Though her mother-in-law was incredibly supportive, her husband could not let it go. It resulted in him calling off the wedding one day before, but then the parties made up and proceeded with the wedding. Rita explains, "There were already so many people at my house. The pressure was on; I just had to go through with it" (Rita 2015). Though she was hesitant to marry her husband, the pressure and shame of calling off the wedding was enough to make Rita acquiesce, especially in light of her parents' wavering support:

My dad said it was okay and he held my hand and said, "I am with you." My mom [rhetorically] said, "What, shall I just go and commit suicide (*mai ja kay dubh ja-vey hun*)?"

[...] So basically, she [mother] made a mistake, in parenting in which, she really apologised for afterwards. It was the worst combination of everything! If she had said, "No that's it, you are not getting married to him," she would have saved me from the whole thing. But I felt so guilty! (Rita, Interview, 2015)

In the Punjab or diaspora context, women make bargains with patriarchy that not only inform their rational and everyday choices, but also the unconscious aspects of their gendered subjectivity since they permeate the context of the early socialisation and their adult cultural milieu (Kandiyoti 1988, 285). Rita's mother's response to the cancelled wedding reflects the pressure of planning a wedding and the public spectacle created by a wedding cancelled one day before. But, from a kinship perspective a failed wedding or marriage reflects on a bride's parents and has the potential to impact on their status within the kinship network and community they belong to.

Another divorced woman poignantly explains Rita's mother's perspective through her own experience:

Shame was there more so for my mom because I think that idea that it's really a woman's role to keep the family together... People would say to me, "people are saying that you did not take responsibility to maintain your family (*Loki kain-dey tu ghar nahi vassaa sakh di*)." That word "responsibility" (*vassaa*), right? And they would say, "You cannot honour your household responsibilities (*Te tu ghar nahi vassia gia*)." So it was my responsibility, right?

And whose responsibility is it to teach me how to do that? It's my mother's. So my mother failed. I think that's why my mother felt that shame even more so than my father.

Even though I had this strong sense of self-worth, it was totally shattered at the divorce. [...] And, like I said, I still grieve it. I am not over it. And I don't know if I ever will be. (Paramjeet, Interview, 2016)

Paramjeet indicates that she continues to grieve her failed marriage, privately but also within her natal family. Her mother needed to clearly demarcate the boundaries of decorum so that Paramjeet was placed outside of them; this action was taken in order for Paramjeet's mother to protect her own *izzat* (Paramjeet 2016). Critically then, *all* family members are

responsible for *izzat* and feel the moral weight of this obligation. However, as Rita and Paramjeet recount, women are most often the primary enforcers of *izzat* as well as its symbolic representatives and captives (Chakravarti 2005, 309-310).

A generalisation that *izzat* and shame affect all Punjabi-Sikhs in equally devastating measures certainly takes this argument too far; the purpose of discussing this navigating factor is to demonstrate that for the cases analysed and interviews conducted, *izzat* was indeed an underlying feature that impacted on dispute resolution strategies.

Returning to Rita's wedding, though matters were resolved and the wedding proceeded, the disparaging comments continued unabated. She was called a "slut" and as a result, Rita changed dramatically over the course of her marriage: she stopped drinking alcohol, discarded pictures of her single life, cleaned up her social media profiles and kept a social and physical distance from men (Rita 2015). The shame that her husband instilled in Rita, was overpowering. Similar to the stories of Deepa, Isha,¹¹⁸ Neelam, and Sangeeta, Rita's sense of self-worth significantly decreased over the course of the marriage.

The psychological and emotional abuse these women endured within their marriages appears to indicate that their husbands and/or in-laws wanted to condition certain changes in the women. Moulding the woman into an ideal wife and daughter-in-law appeared to entail: enforcement of religious practice (Isha 2015, Gurbans 2013; Tina 2014), Punjabi language (Sangeeta 2011), decorum (Isha 2015, Tina 2014), alcohol consumption (Rita 2015), relations with men (Rita 2015), and cooking (Isha 2015). Whilst the intricacies of Punjabi kinship stand apart from dispute resolution forums and actors, I question to what extent this type of controlling behaviour could be considered a pernicious form of family mediation. It is, rather, evidence of various forms of domestic violence and the interviews confirmed that it was often perceived as such.

It was repeatedly stressed to Rita that she was unworthy, but despite the apparent psychological abuse Rita was committed to the marriage. She exclaimed, "During the marriage, I tried to get him to marriage counselling because I didn't want to be divorced. Honestly, I would have never left. If I wasn't going to kill myself, I would have never left!" (Rita 2015). In this statement, Rita repeatedly expresses in the negative that she did not believe in and/or wanted to get divorced. Embedded in her statement is the view that divorce was/is disreputable and she was not willing to budge until it almost cost her life.

¹¹⁸ "Izzat is like self-worth...I feel like I didn't have a lot of self-worth while I was married and now after taking the steps I have, I feel like I have more self worth. I feel I am more worthy and that I deserve more. Even though I have gone through this taboo in Indian culture, I am still worthy and have a lot to offer. [...] I went through a really tough time for five-and-a-half years of my life and this is what I am left with. A lot of women don't leave unhappy marriages; they stay in them. I am getting a second chance in life. It's good and I feel okay." (Isha, Interview, 2015)

In the case of *Burmi v Dhiman 2001*, it was found that the Respondent-Wife attempted to sue Burmi and his family members for tarnishing her *izzat* and financially punish them for casually disposing of the marriage. Dhiman's motion essentially monetised *izzat*, and on closer inspection, it appears this decision was perhaps intended to be treated as reparations for her expended virginity. It is stated in her affidavit that as a result of the divorce, "it will be assumed among the members of this [*Ramgarhia* caste] community that she is flawed in character" and that it will be "next to impossible to re-marry to the son of a family that lives by the traditional community values" (Dhiman 2001b, 7, at 13). Dhiman also brought forward similar motions in Punjab, however, this legal strategy likely failed, given the level of difficulty prosecuting transnational spouses who abandon their Indian spouses (Thandi 2013; Bajpai 2013). Dhiman, therefore, attempted to seek relief for claims that would be intelligible and prosecutable in an Indian court, however, these claims were not compatible with Ontario family law. Indeed, Dhiman's attempts to secure "justice" in Ontario family courts supports the central argument of this thesis that Punjabi-Sikhs approach official family law assuming that the reliefs they seek are justiciable issues. However, Dhiman was not successful and this was because the relief she sought did not fall within the parameters of the *FLA* or *Divorce Act* (Section 6.1.1).

As Rita, Paramjeet and Dhiman demonstrate:

Divorce is seen as a last resort, to be adopted only when other remedies fail. For a woman, remarriage is not an attractive proposition. It spells dishonour, both for herself and her family, and she is unlikely to be able to obtain a well-endowed groom. (Ballard 1982, 192)

Ballard's comments from the 1980s amongst South Asians in the UK about the shame associated with divorce continue to be relevant to the current fieldwork.¹¹⁹ The crux of this "dishonour" for women concerns the implication that a woman is no longer chaste. As demonstrated by the extreme discomfort and insecurity of Rita's ex-husband regarding her life before marriage, control of female sexuality is a critical aspect of patriarchal Punjabi kinship norms. The narratives of Rita, Paramjeet and Dhiman have discussed the patriarchal control around female sexual autonomy and the consequences of marriage breakdown within the unofficial sphere. These women (reluctantly) turned to official sphere forums to seek relief and/or legal dissolution of their marriages. In Rita's case, it was her only way out if she wanted to come out of the crisis alive. The cost, though, for both Rita and Dhiman, was to disclose to parents and close kin details about the marriage

¹¹⁹ Divorce continues to be a stigma in the UK context as well, as demonstrated by a recent annulment case concerning a physically challenged woman whose marriage was arranged to a severely disabled man. She implored the judge not to annul the marriage because "it would be 'culturally impossible' for her ever to form a relationship or have intercourse with any other man" (Ward 2013).

breakdown and the sexual matters that were the cause. As demonstrated in the fieldwork chapters, Rita, Dhiman, and their parents, resorted to a vast range of strategies, solutions and forums before the official law. Though unofficial forum usage continued, and her parents tried to get Rita to reconcile with her abusive husband, she had already resolved that the marriage was irretrievably broken, whereas Dhiman attempted to secure refugee status to avoid the social stigma of being labeled a divorcée back in Punjab.

9.2.2 At the boundaries of respectability

Though a Sikh marriage can be legally dissolved through the divorce law of the state, divorce nonetheless remains a social taboo for the majority of Sikhs in Punjab and amongst the diaspora (Johal 1998, 298; Mand 2008; Bajpai 2013). Many interview participants, like Deepa,¹²⁰ Isha and Kamaljit,¹²¹ shared Rita's negative view of divorce and this view was also present in the legal cases, such as *Burmi v Dhiman*, *Sidhu v Chahal*, amongst others.

As Amrita explained in Section 7.2.3, in the past when couples would face irreconcilable marital problems, the parties would resolve their problems within the framework of marriage and the family (Johal 1998, 298). The parties would remain married but lead independent and separate lives (Johal 1998, 298). However, drastic socio-economic changes have precipitated significant modifications in marriage practices and gender norms in Punjab and the diaspora (Bhachu 1985, 1991a; Bhopal 1999; Bradby 1999; Mand 2005, 2008; Mooney 2006; Thandi 2013). Amrita (Interview 2015) says, that transmigrants from India "still want to treat women the same way," however, "nowadays, the woman cannot take that treatment."

In an early Canadian study amongst Sikhs in British Columbia, marital disharmony and dissolution was believed by most respondents to be frequent yet highly undesirable (Ames & Inglis 1973, 44). Divorce continues to be largely observed as a social taboo due to the disgrace it would bring to a family (Johal 1998, 323). For example, in the case of *Sidhu v Chahal*, the university-aged parties requested an annulment from the family law court for a civil marriage that was mistakenly contracted. Sidhu stated:

¹²⁰ "I got tortured with the people. [...] Today, divorce is very common, but in those days, nobody asked me. People would just talk. [...] But when we would go out, people would look at me like I was an alien and every man would look at me with hunger. Every man saw me like I was a piece of meat. [...] That's why I ran from India." (Deepa, Interview, 2015)

¹²¹ "Another aspect is the stigma of being divorced. Some people do look at you and treat you differently, so that might get difficult moving forward. Though most of my family is modern, some of my extended family are pretty ignorant (*pindu*), and they will treat me differently because I am divorced. I think that will be hard." (Kamaljit, Interview, 2013)

It is very important to me that this marriage be annulled as I am afraid that other members of the community will find out and it would be very difficult for me to find a groom in our community, as I would be labelled as a divorced woman if my marriage was considered valid when I actually never got married. (Sidhu 2008, at 21)

Sidhu and Chahal also noted their parents were unaware of their civil marriage and intended to keep it that way. The argument that divorce is a social stigma, which hinders Sidhu's chances of marrying a suitable husband, indicates that even in the hybrid, multicultural and western Canadian context, a South Asian female intrinsically knows that divorce indicates unchastity and therefore defiles her *izzat* (Toor 2009, 243).

The notion of "family and cultural pressure" to remain in an abusive marriage explicitly appears in *Brar v Dhinsa*, *Brar v Brar* and *Takhar v Takhar* (Section 6.2). In the former case, Dhinsa submitted to the court that when she confronted Brar about his exorbitant spending, he would get angry and emotionally and physically assault her. Signaling a switch to the official sphere, the circumstances led Dhinsa to seek counseling for the abuse,

[...] and the only reason that I stayed in the marriage was because of family and cultural pressures. It would be a great embarrassment for people to find out what was truly happening to me. (Dhinsa 2007, at 7)

Given the kinship-orientation of Punjabi society, this was both parties' second marriage. The breakdown of their second marriage, and the pending criminal charges, consequently represented a further black mark against them and their families. Given that both parties were in their thirties when they married, there was increased pressure to reconcile because both Brar and Dhinsa's marriage prospects would be significantly lessened due to their marriage history and age. Similar to other female interview participants (Section 8.1), when Dhinsa appealed to Brar's parents about the abuse she endured, she reported that Brar would accuse her of various wrongdoings, which would cause his parents to blame her for the conflict (Dhinsa 2007, at 12). In fact, the breakdown in the marriage appears to be partly related to Brar's insistence that the parties should have cohabited with his parents as per traditional Punjabi-Sikh kinship norms (Dhinsa 2007, at 13). In this case, it is evident that kinship-oriented forums and actors were not successful at all; the official sphere was necessarily resorted to, in order to escape violence (police) and address trauma (counselling).

In conclusion, separation and divorce draws attention to the centrality of marriage for a woman's identity and she may consequently undertake complex negotiations in both the official and unofficial spheres to overcome the continuing stigma associated with living outside the "norm" of marital life (Mand 2008, 287-8). Predominant attitudes to marriage

and its breakdown are continually evolving, however, the lack of fair and gender-sensitive forums or resources within the community means that separating and divorced parties largely go without much-needed support and guidance (Section 7.2.3, 8.2). A major critique of Canadian multiculturalism is that the state's assignment of responsibility to the minority community for addressing disparity concerning "minorities within minorities" ultimately results in the perpetuation of such disparities (Shachar 2010, 118). This critique of multiculturalism is relevant because the gendered impacts of marriage breakdown are privatised within the unofficial sphere. When disputants choose to approach the official law, it appears to be to obtain some form of gender justice that disputants perhaps cannot achieve within the unofficial context of kinship. The official law plays an incredibly important role by alleviating, to some extent, the pressure of entrenched gender roles and dynamics. This section therefore contributes to the aims and objectives of this thesis because *izzat* is intrinsically bound with Punjabi kinship, which this thesis has proven has continued relevance in the Canadian context. Marriage breakdown is observed as a taboo subject and this chapter section explored the reasons why. The following section provides a further analysis of the various power dynamics that are enacted in the official law setting.

9.3 Legal navigation

This thesis is concerned with the culturally productive role of law, where marriage breakdown is observed as a dispute process of making and transforming meanings in which both the disputants and official law actors engage within an unequal power arrangement (Section 2.1). An examination of the micro-dynamics of the legal process can reveal how discrimination occurs, patriarchy manifests, and the power of law is realised (Conley & O'Barr 1998, xii; Silbey & Merry 1986). This chapter section engages with the official setting of the courthouse in order to consider three particular issues that engage with the issue of power: strategic behaviour, legal literacy and translation, and finally mistranslation of Punjabi custom.

9.3.1 Strategic behaviour in legal cases

Utilising various official law forums, namely the courts, lawyers and police (Section 8.1), strategic behaviour intends to present difficulties and complications for the other spouse/parent through the instrumental use of Ontario family law provisions (Section 2.2.3). This section addresses the gender contours of strategic behaviour of one or both legal parties, which pertains to one interview participant and 11 legal cases. Nirmal Singh, an official law actor, remarks:

The danger is that if you know too much law, you can make it worse. I think sometimes people know that if you go to Canada and your husband touches you once, you can get support for life, this-and-that. They have this misconception and they don't understand. They call the police and then the husband turns on them. (Nirmal Singh, Interview, 2015)

Nirmal Singh attempts to explain that an inconsistent superficial understanding of Canadian law can lead to an exacerbated situation for women. His remarks resonate with the remarks of a FLIC staff member that some South Asian men have the perception that Canada is a pro-woman country (Section 8.2).

Reforms made to Ontario family law legislation made significant strides to recognise spouses as equal regardless of gender or biological/socialised parental role (Section 5.3). Female disputants might attempt to secure entitlements by ascribing to more traditional notions of gender roles, like in the unsuccessful case of *Burmi v Dhiman*. What is remarkable about the fieldwork data, however, is that whilst some male disputants might perceive Ontario family law to favour females (Ravneet 2015), there are examples where male disputants utilise the gender-equal provisions of Ontario family law, as Nirmal indicates above, to harass female disputants (*Brar v Brar 2010*) or shirk financial responsibilities (*Cheema v Lail 2009; Bath v Bath 2010*).

In the case of *Brar v Brar 2010*, as a result of a physical assault, a peace bond was issued. Mr Brar served 14 days in jail and was put on probation. Regardless, Mr Brar continued to take actions that tested the terms of the peace bond and was found guilty of two separate breaches. In the interim period, Mr Brar refused to pay child support:

The wife testified that the husband withholds the child support intentionally to control and punish her and teach her who is the boss. The husband has continually refused to cooperate with the Family Responsibility Office in any way despite this Court's Support Deduction Orders. He is obsessed with control. (*Brar v Brar 2010*, at 24)

Mr Brar could only contact Mrs Brar through her counsel and he used this arrangement to over-burden the counsel, which was why Mrs Brar was self-represented in the trial case. Though the well-being of the children was the Respondent-Husband's stated concern, his (ab)use of the family law procedures suggests that he was punishing the Applicant and hence, also his children, by dragging them through endless litigation. The presiding justice remarked repeatedly about Mr Brar's conduct and obsession with control:

I have grave concerns about Mr. Brar's total lack of respect for the law and his continual breaches of court orders. I agree with the California Bar that Mr. Brar "has contempt for the law"¹²² (*Brar v Brar 2010*, at 35)

¹²² Conduct is another aspect, especially in the case of *Brar v Brar 2010* and *Brar v Dhinsa 2008*, where one party's actions within and outside of the court resulted in stringent judgments and disciplinary action against the legal party and/or his/her legal counsel.

Mr Brar strategically manipulated the wife's legal counsel, the Office of Family Responsibility, the police, and court orders.¹²³ The use of multiple official law forums made the life of Mrs Brar and the parties' children quite difficult. However, Mrs Brar's "organized, sincere, fair, logical and straightforward" evidence succeeded and the justice provided a scathing and detailed judgement that dis-entitled Mr Brar from equalisation, enforced support payments and instituted a permanent restraining order (*Brar v Brar 2010*, at 20).

The case of *Cheema v Lail 2009* provides a contrasting account to the subject of strategic behaviour. Upon marriage, Lail sponsored Cheema's immigration to Canada. After a few years of marriage and one child, Lail reported that the couple began to face marital issues following discussions about sponsoring Cheema's parents and niece to Canada. Lail eventually agreed to the sponsorship and co-signed the adoption papers. Soon after the arrival of Cheema's kin, the parties' marriage ended. It was alleged by Lail that Cheema's parents "started instigating the husband to leave the wife, and told him that they would get a better bride for him" (Lail 2004, 3, at 16).¹²⁴ The causes of marriage failure appear to involve physical violence, financial abuse, emotional blackmail and inter-family mediation and/or interference of both parties' parents. This indicates that a significant number of unofficial sphere forums were utilised before official law actors, namely the police and the courts, were involved.

The parties divorced, Lail maintained custody of their biological son, and Cheema maintained custody of his adopted niece and was ordered to pay child support. Directly after the divorce, Cheema returned to Punjab to re-marry and sponsored his new wife to Canada. It is possible that the strategic behaviour in this case is an example of a "convenience divorce and re-marriage" on the part of Cheema (Thandi 2013, 254). Since both parties were previously married once before, it is possible that Cheema divorced Lail and returned to Punjab to re-marry his first wife or another kin relation his parents had arranged. The breakdown conveniently occurred after Cheema obtained immigration status and used Lail to help sponsor his parents and niece.

Since the parties separated, an on-going issue was Cheema's failure to provide financial disclosure. The reason the parties were before the court was because Lail sought to enforce a pre-existing support order since Cheema stopped paying child support one month after his new wife arrived in Canada. In retaliation to Lail's legal application, Cheema

¹²³ I later learned through anonymous sources that Mr Brar's harassment continued unabated after the final judgment. Mr Brar routinely called the police to report that he was concerned for the safety of his children, which resulted in frequent disruptive visits by the police to Mrs Brar's home. The Office of the Children's Lawyer accordingly got involved to assess the situation and reported that Mr Brar was indeed manipulating access arrangements in order to harass Ms Brar.

¹²⁴ The level of connivance on the part of parents within transnational serial polygamy cases warrants further research.

counter-petitioned for child support for their adopted daughter. This legal motion appears to be legal strategising since it had been 3 years since the divorce. The court questioned Cheema about his decision to ask for child support at that particular juncture, and Cheema still had not disclosed all his finances. Meanwhile, Lail argued that the adoption was an immigration sham and she was never a mother to the niece (*Cheema v Lail 2009*, at 29). Such harmful though myopically strategic claims launched in family courts have wide-reaching implications, given recent changes to immigration and citizenship policies (Section 10.2). While the court ultimately held both parties accountable for the well-being of the two children, this case demonstrates legal strategising on the part of Cheema, because he was being held to account for not paying child support and lack of financial disclosure, and then requesting support for his adopted niece in a seemingly retaliatory manner. The court was privy to this legal strategising and acknowledged that it did appear that Lail was manipulated, but it was out of the court's jurisdiction to address the immigration abuse.

A similar case concerning strategic behaviour and child support is *Bath v Bath*. The Applicant-Wife sought sole custody, child support and contribution to extraordinary expenses for the parties' two children in addition to spousal support, equalisation and an order to set aside the transfer of the matrimonial home. The parties and their two children cohabited in a condominium that was initially purchased by Mr Bath with a loan from his sister-in-law. Whether or not this was true, the court was not able to determine due to the inadequate cross-examination led by Mrs Bath's counsel.¹²⁵

On the matters before the court, the Honourable Justice Spies repeatedly remarked on Mrs Bath's legal counsel's inadequate cross-examination and preparation for the trial (*Bath v Bath 2010*, at 13, 43, 46, 47, 48, 53, 54, 58, 60, 63, 73, 83, 98, 103, 121). While it is clear that the presiding justice understood that Mr Bath was untruthful in his financial disclosure, Justice Spies remarked that it was not his responsibility to do this analysis though he grudgingly provided a partial financial analysis in his final judgment. Mr Bath was a self-employed taxi driver, and though he provided financial documentation, Mrs Bath's legal counsel did her a significant disservice by not establishing the necessary evidence to prove that Mr Bath was under-reporting his income and/or overinflating various business expenses. Her attempt to cross-examine Mr Bath about his numerous loans to and from his siblings was equally deemed inadequate.

Mr Bath's strategic use of financial documentation was clearly visible to the court, as evidenced by Justice Spies' remarks, but he largely escaped correction because of counsel incompetence. This case demonstrates that whilst legal strategising is a typical aspect of

¹²⁵ It is postulated Mrs Bath's counsel was from Legal Aid, since Mrs Bath was receiving monthly social assistance.

family law cases, the competency of legal counsel can exacerbate the outcome. Though the justice provided Mrs Bath's counsel some limited assistance, his irritation is clear from the lengthy 135-paragraph judgment.

9.3.2 Legal literacy and translation

The linguistic complexities of engaging with legal language and official law actors can prove to be dizzying for transnational Punjabi-Sikh disputants attempting to access family justice (Basu 2015, 68; Ingram 1997, 215).¹²⁶ To some extent, official law actors appear to have similar difficulty addressing transmigrant Punjabi-Sikhs. Punjabi society is historically an oral legal tradition where custom was passed down through patrilineal descent, along with land (Section 4.1.2, 4.2.4), therefore, problems of not only English literacy but also legal literacy appear in the fieldwork amongst the transmigrant Punjabi-Sikh disputants. This section explores literacy and translation as fundamental issues that impact on the relative power of Punjabi-Sikh disputants.

The issue of literacy is highlighted in the case of *Kaur v Brar 2003* (Section 6.1.1). I had the rare opportunity to read the court transcript for this legal case in which S. Kaur was before the court attempting to explain to the Honourable Justice Dunn why he should grant her a divorce despite her disreputable history of multiple failed transnational marriages and her stated intention to contract another marriage to a man currently in Canada on an expired visitor's visa.

At the beginning of the hearing, Justice Dunn began by clarifying S. Kaur's understanding of English since her native language was Punjabi. Her legal counsel responded:

She can speak 90 per cent English, so she can speak English and if we have a problem it can be interpreted. (*Kaur v Brar 2003*, Transcript, 3, at 11-13)

The hearing proceeded and both counsel and Justice Dunn questioned S. Kaur about her complicated marriage history following her divorce from "B":

¹²⁶ Baldev Mutta commented that there are some socio-cultural barriers to literacy in the Canadian diaspora context amongst first-generation immigrants that potentially have significant legal impacts (Baldev Mutta, Interview, 2015). Similarly, Aruna Papp, a social worker who is also a Punjabi immigrant, states: "Many Indians can speak English, however, they may not comprehend English" (Aruna Papp, Interview, 2011). This was confirmed to me by Amrita, a highly-educated Punjabi-Sikh who moved to Canada after she was married. Though she studied English literature in India, it took her many months before she could understand English as it is spoken in Canada (Amrita, Interview, 2015).

Counsel: Can you tell the Court what happened to your life after your divorce with “B”, whatever relations you have?

S. Kaur: I’m – a Mr. Cheema contact me. His parents give him my phone number from India. He call me in Canada and contact me here and he landed here, and Mr Cheema and I went to India and we got married. He didn’t tell me before, when I went to his house and we are living there two or three weeks live over his house, and he register my marriage with his friend Mr Brar. I didn’t – I couldn’t tell my parents. My parents didn’t know who is that person, Mr Brar.¹²⁷

(*Kaur v Brar 2003*, Transcript, 7 at 4-14)

S. Kaur evidently struggles to explain in English that via shared kinship relations, Cheema contacted her when he arrived in Canada and the two parties surreptitiously cohabited for some time before she accompanied him (and his parents) to India where they continued cohabitation for 2-3 weeks. S. Kaur and Cheema were married according to Sikh rites; however, Cheema falsely registered the marriage between S. Kaur and Brar. S. Kaur indicates in this excerpt that her parents did not know about the marriage, which was meant to emphasise the baselessness of the sham marriage. Given that Ontario family law recognises common law marriage, it is unclear if the court understood S. Kaur’s implicit remark that she was serious in her intention to marry Cheema in order to legitimise their extra-marital relationship and unborn child.

Justice Dunn was unsurprisingly having trouble understanding S. Kaur and an interpreter was subsequently utilised. The justice, however, continued to have difficulty understanding S. Kaur’s testimony because the counsel’s style of questioning was somewhat muddled. This was perhaps because counsel was not a native English speaker either, and the manner in which he formed his questions reflected his native Punjabi language structure. The interpreter was also challenged to keep up with counsel’s lengthy style of questioning. The interpreter’s Punjabi accent was difficult for the justice to understand at multiple points during the hearing (*Kaur v Brar 2003*, Transcript, 11, at 14-31). Furthermore, the presiding justice was faced with a final challenge: implicitly embedded in the comments of both S. Kaur and her legal counsel was a distinction between marriage registration and marriage ceremony, under Hindu personal law (Section 4.2). This was an important feature to S. Kaur’s testimony, as she stressed in the transcript that while she was ritually married to Cheema, she was merely legally registered to Brar. However, it is not evident from the transcript that counsel explained this to the judge, or that the judge took notice of this important distinction in Indian family law.

¹²⁷ This excerpt is exactly what appears in the court transcript. I avoided tampering with the actual excerpt in order to capture the point I make in this section, about the access to justice implications of English language literacy in the courtroom. The jagged edges of S. Kaur’s English testimony preserve an authentic aspect of the legal process of literacy and translation.

The transcript of *Kaur v Brar* demonstrates that legal language is anything but direct and unmediated. The iterative process of interpretation and translation involved three actors: the legal party, legal counsel, and interpreter, whose native language was not English but rather Punjabi. Justice Dunn was able to decipher enough information from the testimony to arrive at the judgment to reject the divorce petition. The acts of interpretation and translation are erased in the legal judgment and it remains a question, to what extent the complications the presiding justice faced with respect to interpreting and translating S. Kaur's complicated and entwined marital and immigration history impacted on the final judgment. Yet by refusing her divorce petition he was at least stopping her from officially entering another suspect marriage. The *Kaur v Brar 2003* case demonstrates that S. Kaur contended with systems of patriarchy embedded within both Punjabi kinship structures as well as the Canadian legal system. Cheema romantically manipulated S. Kaur into agreeing to contract a sham marriage to facilitate the immigration of Brar. Meanwhile, the presiding justice listened to S. Kaur to the extent possible given the translation complications, and though he sympathised with S. Kaur, the justice denied S. Kaur a divorce, thus effectively shackling her to the sham marriage thereby further compromising her already dissipated personal and legal autonomy.

9.3.3 The (mis)translation of Punjabi custom

Legal translation is aptly explored in the court's treatment of an old Punjabi custom, called *chadar-andazi*, in the case of *Lalli v Lalli 2002* (Section 6.2.2). This section provides a commentary on the 2.5 days of trial time spent considering the custom's legality (*Lalli v Lalli 2002*, at 12).

Mr Dhillon testified that the *chadar-andazi* is an "old custom" which was performed in 1988, many years after the enactment of the Indian *Hindu Marriage Act (HMA)* of 1955 and therefore, "is not a valid marriage" (*Lalli v Lalli 2002*, at 22). Mr Dhillon testified that the approved form of marriage amongst Sikhs is the *anand karaj*, that registration of the marriage does not itself give the marriage validity, and, that a valid marriage must be performed according to religious marriage rites as stipulated in the *HMA*. The claim that the *chadar-andazi* is an invalid custom due to the enactment of the *HMA* was factually and legally incorrect, however. Mr Dhaliwal failed to consider that section *HMA*, section 5(iv) permits marriage according to custom.¹²⁸ The Respondent's counsel cross-examined Mr Dhaliwal with respect to *HMA*, section 7(1), that a Hindu marriage may be solemnised in

¹²⁸ Under s. 5(iv) of the *HMA*, a marriage may be solemnised between any two Hindus if "the parties are not within the degrees of prohibited relationship **unless the custom or usage governing each of them permits of a marriage between the two**" (emphasis added). Also see footnote 115 above on customary forms of marriages among *dalits*.

accordance with the customary rights and ceremonies of either party, to which Mr Dhaliwal affirmed that the *chadar-andazi* is a customary form of marriage.

Justice Stauth admitted he spent “considerable time” thinking about Mr Dhaliwal’s expert testimony:

I come to the conclusion that a *chadar-andazi* ceremony may be validated as a legal Hindu wedding pursuant to the Hindu Marriage Act, 1955 only if the ceremony of walking around the Holy Book by the husband and wife four times is incorporated into the proceedings. Otherwise, the placement of a piece of cloth on the head and a prayer being read may constitute a *chadar-andazi* ritual, but not a valid marriage as recognized by the Hindu Marriage Act, 1955. (*Lalli v Lalli 2002*, at 26)

Mr Dhaliwal’s testimony may have supported the Petitioner-Wife’s position, however, he was not diligent in his analysis of the continued relevance of customary law, as stipulated in the *HMA*. It was also apparently not made clear to the judge that the requirement of the “walking around the Holy Book” (the Sikh marriage rite, *anand karaj*) is an argument which appears to rely on a faulty interpretation of s. 7(2) of the Hindu Marriage Act, which precisely does not stipulate that such a ritual is a requirement in all cases (Section 4.2.2).

Expert witness Mr Gill contradicted Mr Dhaliwal’s testimony from what Justice Stauth called a “religious” perspective rather than a legal one. He explained the customary ritual:

Mr Gill: The lady’s brother or the father -- like, they take a piece of cloth, which is you can say a veil, just a piece of material. Then they say a ceremony -- like a prayer. It is called *ardas*. That is performed. That is considered to be a legal marriage, but it is never registered.

Counsel: When you say it’s a legal marriage, would it then be illegal for either party to go and get married to someone else?

Mr Gill: According to our religion it is illegal.

(*Lalli v Lalli 2002*, at 28)

Mr Gill testified that the *chadar-andazi* could be annulled, by announcing to the families of both individuals their decision to end the relationship. Justice Stauth, however, did not appear to accept Mr Gill’s testimony on the legal validity of this customary marriage practice:

I would conclude from a careful reading of Mr Gill’s testimony that his conclusions whether a party may legally contract another marriage after participating in a *chadar-andazi* ceremony and without going through the second stage of the ritual, i.e., a family announcement by the parties that they are ending their *chadar-andazi* status, is a religious concept. The Sikh religion would consider it contrary to the laws of its faith, but nowhere in his testimony does Mr. Gill give a purely legal opinion apart from a religious one. (*Lalli v Lalli 2002*, at 32)

An examination of the discussion on the legal validity of *chadar-andazi* demonstrates that, what the Punjabi-Sikh parties and their respective experts were attempting to make intelligible versus what the court understood, were not congruent. It appears that the justice’s understanding of legally valid marriages could not accommodate a customary and religious understanding of marriage.

Both witnesses tried to communicate that the *chadar-andazi* is a very old Punjabi customary form of marriage, but this appears to be completely absent from the justice's interpretation. He was looking for the witnesses to tell him whether the marriage was religious and therefore whether it fell within his limited understanding of the *HMA*. Had Mr Dhillon correctly stated that the *chadar-andazi* ceremony was valid according to section 5(iv) perhaps the justice would have eventually understood the custom correctly.

In the parties' attempts to (dis)prove that the custom had legal relevance, there was a fundamental misstep in the expert evidence, and this identifies the limit to the justice's understanding of what constitutes a valid marriage as per Hindu personal law. The fact that marriages in India do not need to be registered in order to be legal, perhaps, further contributed to this confusion (Section 9.3.2). This resulted in an inaccurate translation of the customary marriage in India into the official Canadian law context. The *chadar-andazi* example demonstrates that Punjabi customary law continues to be relevant in the Canadian diaspora context. The mis-translation of the Punjabi custom, however, demonstrates that the Canadian judge presiding in this case was restricted in his ability to comprehend non-western understandings of law, religion and custom, which significantly impacts a Punjabi-Sikh disputant's ability to obtain family justice, especially if this case were to be cited as an authority in any future cases.

The purpose of this chapter section was to explore strategic behaviour on the part of disputants, as well as acts of literacy, interpretation and translation that official actors and Punjabi-Sikh transmigrants undergo in the official context of family court. This chapter contributes to the aims and objectives of this doctoral thesis because it addresses the interaction that occurs between official law actors and disputants. This section also established that male disputants utilise the gender-equal provisions in Ontario family law to harass female disputants, as in the case of *Brar v Brar 2010*, and/or shirk financial responsibilities, in the cases of *Cheema v Lail 2009* and *Bath v Bath 2010*. It was also verified that the mediums of interpretation and translation are not invisible mediums, rather, they are active processes of constructing the legal subject (Basu 2015, 17; Hale 2002; Conley & O'Barr 1990); furthermore, these processes are evidently confusing for both official law actors as well as the legal parties themselves. The case of *Kaur v Brar 2009* considered the access to justice implications of English literacy, interpretation and translation, whereas the *Lalli v Lalli 2002* case pertinently discussed the (mis)reading of Punjabi custom due to its incompatibility with the presiding justice's understanding of the distinct categories of religion, law and culture.

9.4 Violence, mental health, control

Embedded within the phenomena of marriage and marriage breakdown, an equally important theme this doctoral thesis has repeatedly touched upon is the subject of gendered power. The present chapter section explores the interrelated subjects of control, violence and mental health in order to focus further attention on how the unofficial sphere of kinship collides with the official law's governance of gendered violence and marriage breakdown, through the abuse and actions of spouses and their kin.

On the subject of control, Gurjeet, married father of three grown-up children, aptly explains two central concepts that inform joint households:

I think these two words are very important: expectations and power. Very, very important, especially in our culture. So my parents arranged to have some girl come to Canada, and they thought that they were superior to her. It doesn't matter what kind of family she's from. [...] She came over here and they thought they were like gods and that she had to listen and obey them. It was the whole mentality: you are under our control, etc. I think that's where this whole cycle starts: the control and power. (Gurjeet, Interview, 2016)

Gurjeet and Prem lived with his parents in a joint household for almost a decade before they moved out on their own. Gurjeet's identification of control and power as the two key aspects of joint households resonates with many of the interview participants and legal parties' stories this thesis has already discussed (Section 7.2.1, 8.1, 8.2).

Sangeeta explained her experience living in a joint household in "Singhdale", Brampton:

One night, my brother-in-law said he was going to go out and get food for the family. I said that I would go with him because I wanted to get out of the house. I came back and my husband was very upset with me. He asked me where I went and I explained. He asked me why I went alone with him [brother-in-law], and I couldn't believe it. I ended up crying because he basically yelled at me in front of 10 people – his whole family, his sisters, their husbands and kids. I felt really insulted and I was pissed. His mom said that I should at least eat dinner and I said I didn't want to because I was upset. When I explained what happened, she asked me why I didn't just listen to him. I realised that I didn't have a leg to stand on in this house. [...] I loved my freedom and I didn't like to be told what to do or report what I did or who I was with. My parents never treated me that way and I wasn't used to it. [...] I tried to be the good wife, I really did. I tried to cook and clean the way he liked. I would be home waiting with a smile for him. I got tired of being this person. I started seeing a counsellor at the point when he said that I didn't fit in this house. (Sangeeta, Interview, 2011)

Sangeeta's desperate attempts to live up to her husband's expectations weighed heavily on her.¹²⁹ It is apparent that Sangeeta's husband had conservative views of male-female

¹²⁹ Despite living in a multi-member joint family, numerous female interview participants commented on feeling isolated and/or alone (Deepa 2015; Harinder 2013; Isha 2015; Neelam 2015; Sangeeta 2011; Sonni 2013; Tina 2014). Tina commented, "Those of us who don't fit into

relations within a joint household and his reaction to Sangeeta's action of going to get food for the family with her brother-in-law demonstrates mistrust. Sangeeta's mother-in-law's support for her son's humiliating display of control stereotypically illustrates the internalised patriarchal kinship norms that govern joint households.

Tina, a married mother of one child from Burlington, also lived in a joint household. After 3 years, she and her husband Veer moved out:

We got into a very heated argument and it culminated with me requesting my father-in-law to leave the house. I felt that he was forcing himself upon us and that he often uses religion to support his own selfish needs and wants. I was made to feel as if I was the black sheep of the family because I didn't do as I was told.

I think my in-laws blame me because Veer and I moved out of the house. Veer is the younger son in the family and I think the family always thought he would stay with my in-laws in order to take care of them as they age. The fact that we moved out gives the rest of the family the impression that we are no longer caring for his parents.

Even more so, it is a matter of family *izzat* – my father-in-law did not like that we moved out and that's what led to the confrontation. When I stood up to him, my father-in-law insulted my parents and me. So he tried to defame my parents and I in retaliation! That's what led to the request for him to leave.

[...] The following day, I received a call from my mother-in-law. She called to apologise and I think it's really unfortunate because she has been the one to suffer the most because my father-in-law does not realise how controlling he really is. (Tina, Interview, 2014)

The husband, but also the in-laws, may enforce the subordination of women within the joint household, as Sangeeta and Tina's experiences demonstrate. Since sons are expected to care for aging parents and maintain the joint household, it is critical to recognise that gendered control is equally significant for men (Arvinder 2013; Ravneet 2015) and is rooted in the patriarchal and hierarchical character of Punjabi kinship (Section 4.1.2).

9.4.1 Spousal abuse

The expression "spousal abuse" has traditionally been confined to married persons, but is also used to refer to conduct between divorced spouses (Payne & Payne 2011, 97). Spousal abuse manifests in various forms but all involve domination or the improper exercise of power or control over a spouse or divorced spouse, and this can involve physical, sexual, psychological or economic oppression (Payne & Payne 2011, 97).

The cases of *Brar v Brar 2010*, *Lalli v Lalli 2002*, and *Takhar v Takhar 2009* are strong examples of spousal abuse. The Petitioner-Wife sustained abuse during the marriage in the cases of *Lalli v Lalli 2002* and *Takhar v Takhar 2009*, as well as during the period of

this mold, or challenge the setup, are isolated. It's a way to control you and you are called 'opinionated' in order to discourage you from using your voice." (Tina, Interview, 2014). Isolation is also pronounced in the legal cases, amongst the transmigrant women in *Kaur v Brar 2003*, *Burmi v Dhiman 2001*, *Bath v Bath 2010* and *Lalli v Lalli 2002*.

separation in all 3 cases. Domination was established through acts of violence that were reinforced by subsequent threats, isolation, degradation, and/or economic control. In *Brar v Dhinsa 2008*, the criminal trial had yet to occur to convict the Applicant-Husband of assault, while in *Brar v Brar 2010* and *Takhar v Takhar 2009*, the Respondent-Husbands were already charged with assault. The Respondent-Husbands in both cases also appear to have alcohol and drug addictions.

In *Brar v Brar 2010* and *Takhar v Takhar 2009*, the Applicant-Wives sought unequal division of property and assets. In the case of *Brar v Brar*, the Applicant-Wife was judged to have met the high threshold that equalisation would be “unconscionable” given the conduct of the Respondent-Husband. In the *Takhar* case, there was not enough information on the Respondent-Husband’s finances and assets for the judge to make a final ruling. The Respondent-Husband Mr Takhar left the country after pleading guilty for two counts of assault. These criminal charges were in addition to coercing his wife into signing the amended spousal agreement and attempting to get her professionally sanctioned for medical malpractice.

The justice presiding over *Lalli v Lalli 2002* found the Respondent-Husband to be equally obsessed with control (Section 6.2.2). Mr Lalli coerced Mrs Lalli to sign a spousal agreement relinquishing her rights to his financial assets, however this contract was deemed to have limited validity because Mrs Lalli was not provided with independent legal advice (*Lalli v Lalli 2002*, at 57-58). Mrs Lalli was denied English language classes yet expected to work. She was also locked out of the matrimonial home and she and her son had been living in social housing as a result. The justice noted that Mr Lalli signed a 10-year sponsorship agreement, which required that the sponsor support the immigrant and her dependent in the case that she qualifies for public assistance (*Lalli v Lalli 2002*, at 50-51). The *Lalli* case demonstrates multiple levels of spousal abuse, where the improper exercise of power and control resulted in psychological and economic oppression alongside child neglect and social isolation.

A recurrent issue in all of the divorce cases is the high degree of financial mistrust and/or abuse, on the part of the dominant party in order to exclude or deprive the financially weaker party. As demonstrated in *Gill v Jhajj 2003*, spousal abuse is not confined to one gender. Payne & Payne (2011, 98) report:

In a random telephone survey of 26,000 Canadians conducted by Statistics Canada in 1999, 8 percent of women and 7 percent of men claimed to have been victims of violence from their spouses or partners at least once in the preceding five years.

Though Jhajj sought increased access for many months, he was not successful since Gill would agree in principle but subsequently obstruct access in practice. The eldest child wrote a letter to the court in which she expressed her sadness that she had not seen her

father in over eighteen months. Gill also denied Jhaji the right to sponsor his parents to Canada, and denied that she withdrew her support when he confronted her about it (Section 6.2.1). Finally, she attempted to remove his legal rights to the matrimonial home and rental income. As discussed in Section 6.2.1, Madam Justice Macdonald noted the various actions taken by Gill were strategic attempts to employ the law to punish Jhaji. She remarked that Gill was evidently not over the marriage breakdown and perhaps she and the children needed counseling, which was a cost the parties would equally bear. Justice Macdonald demonstrated equity and fairness in her rulings on this case; the judge's orders effectively reversed Gill's surreptitious legal maneuvers.

9.4.2 Mental health and addiction

A final aspect to this discussion about control and violence pertains to mental and physical health. Alcohol and drug addiction appeared in two legal cases, concerning the wealthy parties, *Brar v Brar 2010* and *Takhar v Takhar 2009*. In both of these legal cases, in addition to *Burmi v Dhiman 2008*, *Cheema v Lail 2009*, *Kaur v Brar 2003*, and *Lalli v Lalli 2002*, mental illness was also flagged up as an issue in the marriage breakdown. Whilst Mr Brar and Mr Takhar had bipolar disorder and paranoid delusions, respectively, S. Kaur was hospitalised for depression, and the other 3 cases involved the more general category of depression. In the Lalli case, the young child was diagnosed with depression due to parental neglect.

Interview participants provided insight on the impact of addiction and mental illness on marriage breakdown. Deepa was the only interview participant to discuss the impact of alcohol and drug abuse within her family.

My parents used to think my husband was very good. But now that I tell them that he is an alcoholic, they still respect him but they are not happy because they think their daughter's second marriage is also gone in the drain.

[...] Another thing that makes me so scared, among the few that know about my living situation (*je tore jere jan de*), how they will treat me [if I were to leave him]? I am so scared. I feel that whatever he is drugged with, or drunk, everybody knows he is my husband and I feel safe. Even though so many nights he abuses me, even though he's an alcoholic, my husband is so good during the daytime. As soon as the alcohol touches his tongue, he becomes a devil. I don't understand what is that personality. If you talk to him now, he is an angel. (Deepa, Interview, 2015)

Deepa's situation is stark because her husband is physically disabled and both her husband and teenage son are alcohol and drug addicts. Despite her best efforts to get her son medical care, counselling and tutoring, she has not been able to curb his addiction or correct his behaviour. Deepa felt powerless since the doctors advised that addiction could only be addressed if her son actually wanted to change.

Arvinder, Birpal and Naindeep discussed the impacts of severe mental illness within their families, which have caused significant hardship for their spouses. Naindeep remarked that because he grew up around mental illness, he didn't feel the impact of it as much as his

wife, Birpal did when she moved in. Now that Naindeep and Birpal have a child, it has made the living situation even more difficult. I asked the couple for their thoughts about mental health in the Punjabi-Sikh community and Birpal (a white *amrit-dhari* Sikh) commented:

So that is the biggest gap in our marriage probably, in terms of support, [is not] around conflict resolution in marriage, which of course would be wonderful and useful, but would be around the stigma and the rumour mill and the fear of actually talking about mental health and being able to be open about that. Not for me but for people who are actually experiencing that.

[...] And I think part of it, which is a shame (and mom still says this to me) is that the family is lucky that they have me because one of the fears of having someone who is from the [Punjabi-Sikh] community is that all of these health concerns would end up in the community and would result in shame. They are happy that I don't have those connections and they recognise that those cultural aspects, where people are talking about each other, because everybody in the Sikh community knows each other internationally whereas I come from a community that is not as cohesive. (Birpal, Interview, 2015)

Birpal explains that the shame and stigma that her mother-in-law perceives, makes getting help and accessing resources even more difficult for caregivers. The transnational nature of the Punjabi-Sikh community means that once a rumour is started, it has the potential to circulate around the world through the transnational kinship network. As a result, caregivers are left unsupported and the issue of mental health remains largely unaddressed. While Birpal and Naindeep's circumstances have nothing to do with marriage breakdown, Birpal's comments about addressing mental health are relevant since divorcé(e)s go through significant personal and inter-personal difficulty within the community, as the previous sections have demonstrated.

It is significant that a total of 13 disputants have experienced and/or have been subjected to mental health issues. Indeed, psychotherapist Paramjeet notes that most of her clients come to her for anxiety, depression and relationship issues. At the PCHS mental health group, Mr Mutta reports that there is a relative balance between men and women who come for support. The top issues the group addresses are depression, followed by mood disorders like anxiety and severe mental illnesses like schizophrenia and psychosis.

This chapter section has illustrated that the presence of control, violence and mental health issues frequently appear to trigger a switch from the unofficial sphere to the official sphere. The switch sometimes occurs because the police intervene, such as in cases of domestic violence, and at other times, because the living situation becomes so unbearable that the less powerful spouse is forced to make a change. In the latter case, resorting to the official sphere is not always seen as appropriate and indeed, kinship norms that protect the joint family can severely constrain the actions taken. The actions and reactions of the parties in these cases could be interpreted as attempts to secure or diminish the other party's *izzat*. In

Brar v Brar 2010, *Lalli v Lalli 2002* and *Takhar v Takhar 2009*, the husbands attempted to discipline their wives and it is possible to observe their actions as attempts to secure their own *izzat* or shame their wives. To a certain extent, the same could also be argued with respect to the wife's actions in *Gill v Jhajj 2003* and *Brar v Dhinsa 2008*. Each of the cases examined here demonstrated some degree of abuse, whether financial, emotional, psychological, physical or sexual. Either party depending on their ability to deprive or oppress the weaker party may inflict a form of abuse; however, the fieldwork demonstrates that overall, women are more susceptible to control and abuse. As the *Gill v Jhajj* and *Brar v Brar* cases indicate, dynamics between spouses evidently become visible to the courts, not only by the claims submitted, but also the parties' conduct and actions before, during and after the court proceedings, which also appears correlated to the why the parties ended up in court to begin with (immigration-related matters aside). It is my impression that Ontario family law justices are quite apt at addressing gendered power dynamics, though the role of counsel, interpretation, social services, to name a few mitigating factors, can still significantly detour the pursuit of family or gender justice. On the other hand, what this thesis has also demonstrated is that whilst gendered power dynamics are earnestly addressed, issues related to cultural accommodation and diversity are observed with utmost scrutiny and, in the cases this thesis examined, often incorrectly. Therefore, certain types of abuse and manipulation are clearly observed, whilst others skim the surface and never get addressed because immigration-related abuses are outside of the family court's remit.

Conclusion

Chapter 9 has provided an analysis of four particular factors identified through coding analysis as having a significant impact on marriage breakdown. The first phenomenon noted was the predominance of cases concerning children. Since child law is outside the remit of this doctoral thesis on marriage and marriage breakdown, this chapter provided only some brief preliminary comments on that specific issue. The second chapter section considered the prevalence of kinship values, namely *izzat*, and its intrinsic relationship to governing sexual conduct and respectability. This section has provided a much-needed analysis to the recurring concept of *izzat*. It was important to address *izzat* in this context because of its strong influence on numerous disputants, but also, *izzat* overlaps with a number of kinship norms and practices this thesis has discussed throughout Chapters 6, 7, 8 and 9 and therefore impacts on the dispute strategies of disputants. The third factor this chapter examined was the navigation of the legal system, which addressed strategic behaviour, interpretation and translation issues in the official law context. It was demonstrated that unequal power dynamics are at play in numerous ways, amongst

disputants, and between disputants and official law actors. “Legal pluralism,” asserts Merry (1992, 362) may be observed in situations in which “the talk of litigants differs from that of the court, undermining the capacity of litigants to speak effectively in court and to prevail in their cases” (Conley & O’Barr 1990, 1985). Indeed, the purpose of this section was to demonstrate that some official law actors demonstrate skilful adjudication of various issues, however, others struggled to comprehend the issues, let alone to address the complexity of the matter before the court with sufficient competence. This chapter also demonstrates that the judge’s job is sometimes not made easier by counsel, who may lack the skills and aptitude to adequately represent their clients. Legal literacy is an important aspect that needs to be considered in why official law actors struggle, and why Punjabi-Sikhs may not be able to communicate their justiciable issues to the Canadian courts. Finally, this chapter addressed control, violence and mental health in marriage breakdown. It was confirmed that the official sphere encompasses incredibly significant forums and actors who can assist Punjabi-Sikh disputants in desperate circumstances of marriage breakdown. Often, the official law intervenes due to safety and harm concerns, and at other times, the official law is resorted to as the one and only means to stop the violence. Overall, there is a very diverse and diffuse picture, which now needs to be further analysed in the final concluding chapter.

Chapter 10

Conclusion

The institution of marriage and its breakdown amongst Punjabi-Sikhs in Ontario, Canada has been the site of study for this doctoral thesis. There were two central objectives for this legal ethnography: one, this thesis set out to investigate the official sphere and determine whether there is a mismatch between kinship-oriented Punjabi-Sikhs and the liberal, secular and individual framework of Ontario family law and its actors. Two, it was an objective to assess the kinship-oriented unofficial sphere and discern the patterns, effectiveness and gender dynamics of dispute resolution forums and actors.

This qualitative multi-method legal ethnography established that official law actors adjudicate the legally regulated aspects of marriage and marriage breakdown, however, this framework does not always correspond to the issues that Punjabi-Sikhs approach the official law for adjudication with. A fundamental issue therefore concerns what is considered a justiciable issue, and this thesis exposed the disjunction between the liberal, secular and individual-focused family law legislation and official law actors versus the multiple framework kinship-orientation of transmigrant Punjabi-Sikhs.

Within the unofficial sphere, this doctoral thesis demonstrated that disputants resort to a variety of kinship and Sikhi-focused forums and actors before, in parallel and after family law proceedings. It is confirmed that official law institutions therefore "cannot be said to have a monopoly of any kind on the various forms of coercion or effective inducement" (Moore 1973, 721). Sometimes to their detriment, disputants relied on, resorted to, and were accountable to their kin, notions of family *izzat*, shame, the five beloved ones (*panj pyare*), and principles of Sikh ethics, for example, which significantly impacted which particular dispute resolution forum or strategy the parties employed within and between the official and unofficial spheres. It was confirmed that the patriarchal structure of Punjabi kinship largely governs marriage and marriage breakdown, but remarkably, Gursikhs were able to oppose, undermine and dismantle entrenched gender dynamics within the context of the Punjabi-Sikh diaspora community. Indeed, the multiple framework approach of Punjabi-Sikh disputants meant that the official sphere and unofficial sphere were utilised simultaneously to address marriage breakdown.

Finally, this doctoral thesis established that while Ontario family law is the legal jurisdiction for resolving justiciable issues, Punjabi-Sikhs do not immediately observe state law as a central "justice" dispensing mechanism (Menski 2006, 193). Navigational factors were identified as triggering an interchange in dispute strategising. While some factors,

such as the presence of children or physical violence entailed legal intervention to secure individual human rights or the best interests of the child, other factors involved the instrumental use of the law to punish or manipulate the other spouse. Further still, this thesis demonstrated that literacy and translation issues expose the complex undermining factors that make justice questionable for transmigrant ethnic minorities.

The interaction within and between the official and unofficial spheres, and the navigating factors that mediate the use of each sphere, have therefore provided a dynamic conceptual schematic that encompasses the multiple framework approach that Punjabi-Sikhs utilise in practice. The Canadian system permits, to some extent, self-regulation of family problems, but in many cases harvested for this research, the state authorities were of necessity involved, and it is in those cases that the research hypothesis, that the Canadian framework struggles with accommodating and accounting for Punjabi-Sikh marriage and marriage breakdown issues, has been most strongly confirmed.

It is evident that navigation between the unofficial and official spheres was an unequal process of collaboration between the state law and other forms of unofficial laws and legal postulates. Some examples that demonstrate this hierarchical arrangement include parties who sought official recognition to legitimate arranged marriage (*Bath v Bath 2010*), annul a civil marriage because the parties mistakenly believed it was equivalent to the Sikh form of engagement (*roka*) (*Sidhu v Chahal 2010*), recognise the custom of widow re-marriage (*chadar-andazi*) (*Lalli v Lalli 2002*), and sue for damages to personal and family honour (*izzat*) (*Burmi v Dhiman 2001*). These examples support a concept of law consisting of norms, and that instances of competing norms receive varying degrees of official recognition. It is significant that each one of these parties was compelled to go to the official law, as a result of financial interest or status-related matters.

A multi-sided account of legal change in society that considers the multiple non-western understandings of law that transform through the processes of immigration, settlement, integration and citizenship was the catalyst for this doctoral thesis. The identification and analysis of the diverse forums and actors located in the unofficial and official spheres that Punjabi-Sikhs employ when their marriages breakdown contributes to further theorising with respect to the realities of cross-cultural dispute processing in western legal jurisdictions. In an attempt to enlarge the concept of "justice" then, this thesis embarked on a journey to illuminate some of the complex relations between the official family law context and the unofficial Punjabi-Sikh community and family context.

The interviews completed with Punjabi-Sikhs explored how Punjabi-Sikhs address marital breakdown "in the shadow of the law" (Mnookin & Kornhauser 1979), in the unofficial and private setting of the family or community. A variety of strategies, forums and actors were employed, from inward-focused and religiously guided strategies, to the

reliance on kinship networks, community-oriented approaches, and finally, secular approaches like counselling (Felstiner 1974, 695). While this thesis is in no way quantitatively significant, this legal ethnography helps to establish an understanding of "indigenous law" (Section 2.1.2).

The following section provides first a summary for each chapter. Subsequent sections then discuss the research outcomes in a more comprehensively analytical manner and outline the wider scope of this thesis as well as its limitations.

10.1 Chapter review

The first chapter provided the thesis aims, research questions, hypothesis and main argument. The first aim of this doctoral thesis was to analyse official law judgments to determine whether official law actors were able to address issues pertaining to marriage breakdown amongst Punjabi-Sikhs. Second, I aimed to compile and assess the forums, actors and dispute resolution strategies that Punjabi-Sikhs utilised within and between the official and unofficial spheres. The final aim of this thesis was to challenge the concept of "access" to "justice" in order to catalyse research interest in multicultural accommodation in Ontario family law. The reader was introduced to the subjects of this doctoral dissertation, Punjabi-Sikhs and it was proposed that this thesis contributes mainly to the dearth of empirical research available on ethnic minorities and access to justice in western legal jurisdictions. Specific to the family law context, it was established that further research on ethnic minorities and family justice is needed since it is within the realm of family that both the state as well as religious and cultural institutions and systems provide guidelines with respect to marriage, separation and parent-child relationships. It was a central contention of this legal ethnography of marriage and marriage breakdown amongst Punjabi-Sikhs in Ontario, Canada, that a disjunction exists between official law actors and Punjabi-Sikh disputants. Chapter One established that the concept of access to justice must be problematised in order to solve the puzzle of multicultural accommodation in the realm of family law by presenting an outline of the complexities of access to family justice for ethnic minorities in Ontario.

The first contribution of Chapter two was to build the necessary theoretical foundations in order to support a study of marriage breakdown within and outside of the official law context. It was established that legal pluralism offers a theoretical approach that permits this multi-focal analysis, focusing on "law as process" and dispute settlement studies. The second contribution of this chapter provided much-needed theorising on how to go about conducting empirical research on access to family justice for ethnic minorities in western legal jurisdictions. The legal, national and cultural context of marriage breakdown

amongst Punjabi-Sikhs was the foundation for the three-part conceptual schematic of official sphere, unofficial sphere and navigating factors. It was contended that the proposed conceptual schematic propels new ways of thinking about access to family justice in the multicultural Canadian context.

Chapter 3 outlined the multi-methodological approach adopted in order to carry out a multi-focal analysis of marriage breakdown in the official and unofficial spheres. It provided an overview of the fieldwork data and frames this thesis as a legal ethnography within and outside of the courthouse that consists of legal casework, coding, critical discourse analysis and semi-structured interviewing. The chapter also engaged with the ethics and challenges of conducting research on a highly sensitive topic amongst an under-studied ethnic minority group.

Chapter 4 was an essential building block for this doctoral thesis as it provided the reader with an understanding of the Punjab context, where a uniform adoption of official law has not transpired or developed and rather people utilise and navigate multiple frameworks when they are presented with a justiciable family law issue. The legal pluralist analysis presented in this chapter permitted a discussion of various social structures and their interaction with religions, customs, customary laws and official laws. Organised into three sections, the chapter first examined the Punjab context, providing an understanding of key concepts. The second section addressed marriage breakdown in the wider Indian socio-legal context, and discussed Hindu personal law concerning marriage and divorce, as well as the more specific element of Punjabi customary laws. The final section demonstrated the established history of transmigration amongst Punjabi-Sikhs to Canada, and confirmed that the entwined concepts of kinship and custom are transported by marriage migrants to the global diaspora context. Chapter 4 also provided an understanding of and insights into why Punjabi and Indian norms, practices and concepts have continued relevance in the diaspora context, specifically the Canadian diaspora context. Furthermore, the chapter prepared the reader for the fieldwork analysis because it laid the groundwork for understanding why a disconnect may exist between transmigrant Punjabi-Sikhs and the relief they seek in Ontario family law courts, versus official law actors who may struggle to adequately comprehend and/or resolve the issues brought forward by transmigrant Punjabi-Sikhs.

A brief study of the so-called Sharia law debates in Ontario served as a suitable introduction to Chapter 5, since it captured the family law tensions concerning the gendered regulation of the public and private spheres of life in a post-secular society. The first section established that Punjabi-Sikh kinship is and remains relevant in the Canadian context by reviewing the nation-building project of Canada and its inherently racist and sexist regulation of over one century of South Asian migration. The second section provided the reader with a pertinent context of the western, liberal and secular framework that guides

Canadian public and private law through the examination of two particular aspects of the Canadian *Charter*, the protection of religious freedom and the value of multiculturalism. The chapter also established that public law values have an impact on private family law and thereby have a direct impact on the objectives of Ontario family law in securing the human rights of individuals who seek the protection of the courts and the official state law. The chapter then proceeded to examine specifically the legal treatment and regulation of marriage and its breakdown. It was argued that Ontario family law is constrained by its individual, secular and liberal conceptualisation of family and marriage, which is challenged by the realities of accommodating an increasingly super-diverse and multicultural society. Finally, the chapter tied the discussion back to multicultural accommodation in cases of marriage breakdown. Chapter 5 contributed to the doctoral thesis objectives because it provided deeper contextualisation to understand why Punjabi-Sikh disputants and official law actors may not comprehend each other.

Chapter 6 is the first of four fieldwork chapters. The chapter concentrated on the official sphere in order to decipher how Canadian family law actors seek to address issues pertaining to marriage and marriage breakdown. Family law judgments and case proceedings were utilised. Two central hypotheses were considered in Chapter 6: one, that Punjabi-Sikhs approach the official law assuming that the relief they seek are justiciable issues, and two, that official family law actors struggle to adequately comprehend and/or resolve such issues. The chapter was organised into three sections, one, marriage breakdown, which examined divorce and void/voidable marriages; two, property and wealth, focusing on equalisation and spousal support; and three, marriage, which analysed civil marriage, arranged marriage, serial polygamy and the custom of *chadar-andazi*. Engaging with the central arguments of this thesis, Chapter 6 established that there are indeed important power dynamics that must be recognised between official law actors and disputants, which impact on whether family law courts can be considered “justice” dispensing institutions. Perhaps in a post-secular society where the liberal individual is the foremost concern for the state, family law courts may be best conceptualised as one version of dispute resolution that provides judgments on the legally regulated aspects of marriage and marriage breakdown. The family law courts appear to be mainly concerned with individual human rights as well as the economic implications of marriage breakdown, personal autonomy and security as well as the best interests of the child. Aside from these central pillars of current Canadian family law legislation, the matters that Punjabi-Sikhs bring before the courts are largely considered to be outside of its remit.

Whilst the official law context is a fundamentally important aspect to this doctoral dissertation, it is however not the only site for a deeper analysis of marriage breakdown. Chapter 7 provided a dynamic analysis of marriage and marriage breakdown within the

context of kinship and Sikhi-centred values and precepts in the Canadian context. This particular chapter was required in order to consider how Punjabi-Sikhs engage with dispute resolution forums within the unofficial sphere, where disputants engage with kinship and Sikh forums and actors “on their own terms” rather than according to the norms and values of the official sphere (Ballard 1984). The chapter was sub-divided into two major sections. The first section examined marriage norms and practices through the themes of western, Punjabi and Sikhi-centred values and precepts and then examined areas of overlap. The second section addressed marriage breakdown and focused on managing new family relationships, living arrangements, and reconciling marriage breakdown. It was affirmed that the entwined concepts of kinship and custom predominantly regulate the gendered norms and practices of marriage breakdown for Punjabi-Sikhs in Canada; however, the dynamic interaction of western, Punjabi and Sikh norms and values also produces some notable shifts. It was demonstrated that Gursikhs remarkably adapted marriage practices, and individually overcame cultural prejudices against marriage breakdown. Therefore, it was demonstrated that Sikh principles and precepts may be effectively utilised by disputants to oppose, undermine and dismantle gender discriminatory norms and dynamics within their own cultural context. However, the analysis also clarified that kinship remains a governing factor in marriage and marriage breakdown, where often the abuse of patriarchal privileges and presumptions was the underlying cause for the marriage breakdown. It was demonstrated that the complex interaction between western, Punjabi and Sikh norms and practices produces a diaspora-specific Canadian experience of marriage breakdown amongst Punjabi-Sikhs.

Chapter 8 extended the analysis provided in Chapter 7, by mapping out the various forums and actors that exist within and between the official and unofficial spheres. Utilising Nvivo, this chapter’s purpose was to analyse the legal cases and interviews in order to delineate which forums and/or actors disputants resorted to before, in parallel, and/or after family court proceedings. This chapter empirically demonstrated that Punjabi-Sikhs employ a multiple framework approach. It established which forums and actors were utilised before, in parallel and after legal proceedings. Finally, the chapter considered whether these various forums belonged in the official or unofficial spheres. The main purpose of Chapter 7 was to understand the nature of dispute strategising through an analysis of unofficial and official forums and actors disputants utilised. This chapter therefore provided a fundamental component of the main thesis argument by demonstrating that disputants indeed resort to various forums within and between the official and unofficial spheres, and that the outcome of a particular forum has the potential to impact on the concurrent or subsequent forum employed. It was demonstrated that kinship actors remain important throughout the marriage breakdown, whereas kinship forums are preventatively utilised

before family law proceedings, and may then be then utilised in a retaliatory fashion when legal proceedings are initiated. The local accessibility of kin relations appears to be an important aspect to their continued role and effectiveness. With respect to official sphere forums, counselling was predominantly utilised by interview participants and much less so amongst legal parties.

The final component of the conceptual schematic, called navigating factors, were considered in the last fieldwork chapter. Chapter 9 contributed to the thesis aim of discerning patterns in dispute resolution strategising and also to better understand what kinds of disputes may need official intervention. These factors were identified through Nvivo as significant, and would trigger the intervention of official law in order to provide the officially perceived best possible protection of individual human rights. Four distinct factors were analysed in this chapter: children, kinship values, the navigation of the legal system, and finally, control, violence and mental health. The brief analysis of children indicated that marriage breakdown cases involving children appear to implicate official law intervention, when state authorities detected violence, abuse or harassment. There also appear to be gendered-related kinship dynamics that contour child-related cases. A critical analysis of *izzat* in the second chapter section established that complex negotiations are undertaken in both the unofficial and official spheres to overcome the gendered social stigma associated with divorce. With respect to the legal navigation section, it was argued that disputant strategic behaviour, as well as literacy, interpretation and translation have a remarkable impact on official legal proceedings. This section established that male disputants utilise the gender-equal provisions in Ontario family law to harass female disputants and/or shirk financial responsibilities. Furthermore, the mediums of interpretation and translation are not invisible mediums; rather, they are active processes of constructing the legal subject. Finally, the section addressing control, violence and mental health explicated the necessary intervention of the official law in cases of physical harm and violence, and at other times, the autonomous switch to the official sphere due to the entrenched gender norms and unbearable situations surrounding marriage breakdown. In the latter case, resorting to the official sphere is not always seen as appropriate and indeed, kinship norms that protect the joint family can severely constrain the actions taken.

The following chapter section addresses the key empirical findings on the phenomenon of marriage and marriage breakdown amongst Punjabi-Sikhs.

10.2 Key empirical findings

The legal cases demonstrate the complexities of marriage breakdown for first generation immigrants, which are comprised of Punjabi-Sikhs who have permanent residency, and those who travel to Canada as marriage migrants. In contrast, Canadian-born Punjabi-Sikhs as well as those who have lived in Canada for the majority of their lives predominantly characterise the interview participants. This important distinction in the fieldwork data produced surprisingly diverse research findings specifically on questions of forum usage, legal literacy, and Sikhi-focused approaches, as the fieldwork chapters demonstrated.

10.2.1 Marriage migration

The distinction between legal parties and interview participants also produced different kinds of marriage migration patterns. For example, amongst the legal cases, it is clear that almost all legal parties were born outside Canada, particularly Punjab, and a majority of these parties then returned to Punjab to marry and subsequently sponsor their new spouse's immigration to Canada. I believe this is related to the relatively new diaspora community that characterises the GTA, since most Indians there settled predominantly after 1986.¹³⁰ The analysis of legal cases demonstrated that marriage and migration are intrinsically interwoven, distinctly gendered and oftentimes difficult to understand for outsiders. The role of women within these transnational kinship networks is central and must be contextualised by the disparate patriarchal practices that are produced and reproduced through the acts of immigration and settlement. In some cases, transmigration seems to strengthen patriarchal authority, as women may find themselves having to "bargain with patriarchy" in order to maintain access to various economic and social resources (Walton-Roberts 2005, 175).

Meanwhile, amongst the 15 interview participants who married abroad, there were 8 participants who had marriages in Punjab, and 7 participants who married spouses from the US, UK and France. It is clear that 6 of the 8 interview participants who married spouses from Punjab, versus 2 of the 7 participants who married spouses from western countries, were over the age of 40. Therefore, all 10 (8 married, 2 divorced) participants over the age of 40 married abroad; meanwhile, only 5 participants (1 married, 4 divorced) under 40 married abroad. The corresponding married versus divorced participants in each group is striking; whilst those over 40 are predominantly currently married, the participants under

¹³⁰ To put the Indian diaspora into context, more than one-half of Toronto's immigrants (which are now more than one million people) landed in Canada after 1985 (StatsCan 2005, 3). Over the period 1985 to 2001, the number of immigrants living in Toronto increased by almost 800,000 or 65% (StatsCan 2005, 1).

40 are predominantly divorced. Nirmal and Amrita, a retired couple in their 60s who married transnationally, commented that amongst their generation it is an expectation that you are “married for life” (Nirmal and Amrita, Interview, 2015). Meanwhile, amongst the Canadian-born under 40-year-old participants, transnational marriages appear to be less successful. Signifying the evolving patterns of transnationalism amongst Punjabi-Sikhs, this analysis of marriage migrants indicates that the GTA diaspora community is presently better placed for developing local roots that would provide Punjabi-Sikhs looking to marry with local matrimonial options within the community.

10.2.2 The centrality of marriage

As discussed in Chapter 6, it is noteworthy that many of the legal cases involved the contraction of serial marriages to Punjabi-Sikhs from India. This phenomenon is related to the kinship norms and practices of Punjabi-Sikhs. Though marriage plays a subordinate role within the Punjabi joint household and corporate family structure (Hershman 1981, Chaudhary 1999, Das 1993), marriage plays a rather predominant role within wider diaspora community norms and relations (Mand 2008; Jhutti 1998). The arrangement of marriages is a critical activity for families because it concerns the future well-being of their children, but also at stake is the family’s *izzat* in the community, and quite possibly, the continuity of the community itself (Williams 2010, 112). The marriage of one’s children is therefore observed as an important, almost religious duty for parents (Thandi 2013, 237). It follows, then, that all separated and divorced Punjabi-Sikhs indicated their intention to re-marry (rather than remain single), and furthermore, 3 participants had already re-married. Amongst the sub-set of re-married participants, Deepa was unhappy in her abusive marriage, however, she vehemently stated she would/could not leave her husband because she had to look after her son. Her remarks appear to be related to the fact that this was Deepa’s second marriage, and also, Deepa is a marriage migrant who has no natal family relations in Canada that she could turn to for support. Deepa’s remarks resonate with the comments several divorced female participants made about avoiding pregnancy when their marriages began to break down because, as Sangeeta stated, she would never leave the marriage if there were children involved (Section 9.1).

On the subject of legal parties who serially married in Punjab, it is significant that Canadian immigration policies were amended in 2012 to counter supposed marriage fraud. The sponsored spouse or partner is now required to live with the primary applicant spouse for 2 years from the day they obtain permanent residence in Canada (CIC 2009). There is an exception for sponsored spouses or partners who suffer abuse or neglect at the hands of the sponsor or a person related to the sponsor, whether or not the abusive party lives in the same household during the conditional period (CIC 2009). Also very pertinent to the cases

examined in this fieldwork, CIC further introduced a measure that prohibits sponsored spouses from sponsoring a new spouse for 5 years following the date they become a permanent resident (CIC 2012b). These recent amendments appear consistent with Thandi's (2013) research on failed transnational marriages, which predominantly involve grooms from countries like Canada where immigration rules allow family sponsorship after marriage (see also Bajpai 2013). Given the desperation of many Punjab-based parents to arrange a marriage abroad, marriage strategies prevalent in Punjab can be highly risky and open to abuse and scam (Thandi 2013, 256).

10.2.3 Family class immigration

Family sponsorship is clearly an important strategy for community-building historically employed by Punjabi-Sikhs, as demonstrated by disputants and their families, in order to reconstitute the corporate family in one place (Walton-Roberts 2003, 244). The apparent desperation of many Punjabis to immigrate to western countries like Canada, however, has meant that, on the one side, unscrupulous Punjabi-Sikhs abroad who wish to financially benefit from fraudulent marriages take advantage of this desperation, as well as fraudulent immigration consultants who claim to assist Punjabi-Sikhs obtain approval for immigration sponsorship (Thandi 2013). In 2009, the previous Minister of CIC, Jason Kenney, specifically addressed the rejection of visa applications with the Chief Minister of Punjab with respect to counterfeit documents and crooked immigration consultants (CIC 2010a). The Minister was also working with Punjab officials to address marriages of convenience (CIC 2010b). Furthermore, Thandi (2013, 257) reports that in spite of attempts to make marriage registration of transnational marriages completed in Punjab compulsory, "the current legislation offers little effective legal protection in cases of marital abuse or breakdown."

10.2.4 Caste preference and marriage practices

Caste preferences play an important role in the arrangement of marriages amongst Punjabi-Sikhs. In her research about transnationalisation of marriage amongst *Jat* Sikhs in Canada, Mooney (2006, 390) reports that Indian-born *Jat* immigrants comprised approximately two-thirds of the Sikh population in 1991 (see also Basran & Bolaria 2003, 8). The immigration of Indians to Canada has indeed traditionally exhibited a distinctive geography and social composition (Walton-Roberts 2003). The migration of *Jat* Sikhs from the Doaba region in northwest India has been a major element linking the two countries for over a century (Walton-Roberts 2003, 248). The emphasis on the *Jat* caste affiliation is reflective of their numerical and political dominance, both in Punjab as well as its Canadian diaspora communities. Since caste has no counterpart in the multicultural Canadian context, it is

primarily relegated to the private realm of family and community affairs (Ames & Inglis 1973, 36).

Sikhs generally recognise caste practices to be “wrong” in the Canadian public setting and thus avoid discussing it, preferring instead to project the ideological castelessness of Sikhi (Ames & Inglis 1973, 36). But, as the fieldwork has demonstrated, caste endogamy continues to operate at least as a regulator of marriage. Caste preferences that adhere to strict rules of village and *gotra* exogamy (Cole 2004 106; Netting 2006, 135; Ballard 1990, 229-230) appear to be relevant in both legal cases and interviews. Legal cases, such as *Lalli v Lalli 2002*, *Takhar v Takhar 2009* and *Burmi v Dhiman 2001*, discuss caste and class as essential aspects of the arranged marriage, and in the first two cases, even though it was the second marriage for all parties concerned. Meanwhile, in the latter case, the Burmi family travelled to India in order to arrange their son’s marriage to a *Ramgarhian* caste affiliated woman. While the Lalli case demonstrated a traditional approach to arranged marriage through the kinship network, in the latter two cases the marriages were impersonally arranged through a newspaper listing, so the parties did not benefit from traditional kinship intermediaries and there was no other safeguard to mitigate premature marriage breakdown. Among the interview participants, this doctoral thesis established in Section 7.1 that caste preferences continue to be an important factor, though significant changes are occurring among the Gursikh and under 40-year-old Punjabi-Sikhs with respect to marriage practices. While the concept of arranged marriage is itself evolving with new technologies, it remains an important method central to Punjabi-Sikh marriage practices in Punjab and the Canadian diaspora.

10.2.5 Gursikh attitudes in the GTA

A final dimension concerning the subjects of study was discussed in Chapter 8. The Gursikh (which includes *amrit-dharis*) participants, both women and men, discussed their ethics and worldview as fundamentally based on Gurbani, which assisted them to transcend marriage and marriage breakdown norms and practices. This research finding is worthy of attention when compared to Mahmood and Brady’s (2000, 36) study of Canadian and American *amrit-dhari* women’s narratives of gender equality and self-respect, which were found to stand in contradistinction to the narratives of men and older women. The 16-year gap between this doctoral thesis and Mahmood and Brady’s study indicates that important developments within the Gursikh community of the GTA should not go unnoticed. Local events that I attended or participated in, such as the “When Lions Roar” spoken word event, the Toronto Sikh Retreat, and Sikh Feminist Research Institute conferences, are examples of community-specific forums where the imbricated category of gender is today actively

discussed alongside Punjabi and Sikh contemporary and historical issues.¹³¹ These GTA-specific events have allowed Canadian-born Punjabi-Sikhs to develop the capability to contest the underlying configurations of power, regimes of knowledge, symbolic meanings and values, aesthetics, and subjectivities through which gender relations are highly produced, sustained or transformed.

10.3 Assessing the research contribution: Ethnic minorities and access to family justice

While the boundaries between official and unofficial spheres are and remain far from distinct, this doctoral thesis has demonstrated that conceptualising forums and actors as belonging within or between these two spheres, and more or less skilfully navigating them, helps to consider a wider range of dispute processes that ethnic minorities engage with in order to resolve marriage breakdown issues. The four navigating factors identified in Chapter 9 made clear that when an individual's human rights are compromised, the intervention of the law is often certain and is officially required, as particularly in the case of children or physical violence state mechanisms of protection are triggered. In other instances of kinship norms like *izzat*, the official law may not intervene however, entrenched gender norms and dynamics that assign disproportional blame on women precipitate legal action and resorting to official sphere forums like counselling.

But as Macdonald (2003, 7) clearly articulates, though access to justice is frequently discussed as a goal amongst official law actors involving what lawyers, courts, Parliaments and the executive offer to citizens, in reality, access to justice is a process of creating an environment where individual citizens are empowered to claim justice for themselves. Therefore, while this doctoral thesis has established some empirical qualitative findings on dispute forums, actors and strategising, what remains largely unaddressed is how to precipitate the conditions under which ethnic minorities are empowered to develop unofficial sphere forums that are more gender-sensitive, effective and accessible. It is my opinion that such a development would be indicative of a strong multicultural state that can empower the "minorities within minorities" to claim kinship-centred and Sikhi-focused

¹³¹ Also, Canadian-born Punjabi-Sikhs, such as YouTube sensations Lilly Singh (aka. "Super Woman") and Jasmeet Singh (aka. "JusReign"), as well as hip-hop artist and author Kanwer Singh (aka. "Humble the Poet"), are important current-day figures for young and adult Punjabi-Sikhs in the GTA community (and amongst a substantial global social media audience) who demonstrate heterogeneous embodiments of what it means to be Punjabi-Sikh, and more importantly, they provide comedic and/or thought-provoking ways of questioning and engaging with Punjabi-Sikh norms, practices and beliefs. Indeed, these performers do not cater solely to other Punjabi-Sikhs, but rather a diverse range of people, including Canadian-born ethnic minorities and first-generation immigrants.

spaces and forums for themselves. The Gursikhs who participated in this research provided a small glimpse of the possibilities, though at the individual level. Indeed, more programming and support is needed in order to make real strides towards the kind of access to justice Macdonald envisioned.

What is apparent from the analysis provided from the conceptual framework of official sphere, unofficial sphere and navigating factors is that the pervasiveness of patriarchal norms is reflected in law, variously defined (Section 2.1), as well as the GTA diaspora community and the wider Canadian society. Whilst this research is about women and men, it is clear that this thesis overwhelmingly concerns the gendered impacts as predominantly experienced by women. This was partly a result of the gender imbalance in interview participants, but also, it is a reflection of the disproportionate burden women bear in the context of family and kinship. For example, in the Punjab context, the construction of customary law was characterised by reinterpretation in the colonial period, in order to establish patrilineal kinship as normative and this entrenchment effectively erased alternative practices on the basis of caste/tribe, local or family customary practices, and thus transformed sexuality and entitlement (Basu 2015, 121; Malhotra 2002, 2010). Correspondingly, Ontario family law has made great strides to level the playing field between spouses and parents; however, it continues to play a paternalistic role when addressing the gendered dynamics of multicultural accommodation in family law. For a complex host of historical, political, and institutional reasons, “family law has become crucial for minority religions in maintaining their definition of membership” (Shachar 2010, 121). However, as demonstrated in Section 5.4, it is also in the realm of family law

[...] in which women have been historically and traditionally been placed at a disadvantage by both states and religious communities, in part because the recognition of female members plays a crucial role in “reproducing the collective”—both literally and figuratively. (Shachar 2010, 121)

With respect to multicultural accommodation in the realm of family law, the ethnic minority woman has become the battleground (Volpp 2001, 1181). Indeed, the problematic juxtaposition of “multiculturalism versus feminism” is not new to the Canadian context (Section 5.4). Claims of multicultural accommodation further complicate this juxtaposition, where difference is recognised but only to decry its existence and imply the superiority of the white mainstream norms (Lawrence 2001, 113; Fournier 2002). Indeed, Lawrence (2001, 111-112) poignantly demonstrates the dichotomous nature of cultural defence, since the legal system often produces “distorted and questionable versions” of non-mainstream cultures whereby “Judges seem unwilling to grasp the true complexity of cultural phenomena, whether in ‘Other’ cultures or their own.” This apt description of cultural defence is a powerful medium through which to situate the original contribution this

doctoral thesis attempted to make to the field of access to justice in multicultural western legal jurisdictions.

Limitations of this thesis

As stated in the previous section, one limitation of this doctoral thesis is that an unequal number of women and men participated in the interviews. More representation from men would have significantly contributed to uncovering further gender dynamics and the role of violence and control from the male perspective. It also would have helped to illuminate the inter- and intra-generational power dynamics between men. Another limitation was that I did not have an equal number of participants in each marital status category. As I discuss in Section 3.4, both the gender imbalance and the marital status imbalance are related to the difficulties I encountered in obtaining interviews in the first place. In reflection of the kinship and gender norms of the Punjabi-Sikh community, access to men was obtained primarily through women, thus married men were accessible to me through their wives, but divorced men remained largely inaccessible. All interviews I obtained with divorced men were thus facilitated through a mutual acquaintance. I found it irksome that gradually increasing access coincided with changes to my marital status from single, to engaged and then married (though this could also be related to my persistence with the research or serendipity). Finally, due to the fraught nature of marriage breakdown for many of the interview participants, it was not possible to interview both ex-spouses. This would have been a fascinating way to explore marriage breakdown, though perhaps such a model would have necessarily involved less participants and a deeper analysis of their experiences.

I also questioned at various points in the analysis whether it would have helped the analysis to concentrate on one specific subset of Punjabi-Sikhs, whether *amrit-dhari*, Gursikh, or non-practicing, or otherwise. However, in reading Mahmood & Brady's (2000) ethnography on *amrit-dhari* women, I feel that this doctoral research project significantly benefitted from the diversity of Punjabi-Sikhs represented. It provides a welcome and diverse range of responses, experiences and added depth and complexity to the fieldwork analysis.

Another limitation to this doctoral thesis is that the analysis presented is the result of utilising qualitative data analysis software, which greatly improved my effectiveness and ability to assess the large amount of data gathered. However, I learned to use Nvivo without any formal training and I feel that the analysis could have been elevated a higher level had I had a better command of the software.

10.4 Significance of research in a wider context

This doctoral thesis contributes to the fields of legal pluralism and dispute settlement studies by providing an ethnographic study of a non-western transnational diaspora community in a western legal jurisdiction. By employing “law as process”, I was able to construct an innovative conceptual framework that straddles the multicultural Canadian context, and the Punjabi-Sikh kinship-oriented transnational context. The element of navigating factors significantly contributed the viability of this conceptual model and effectively mediated between what first appears to be separate spheres, but in reality are dynamically interacting semi-autonomous social fields. I therefore believe this doctoral thesis contributes an innovative conceptual framework to studying legal pluralism in western legal jurisdictions which could be applied to other ethnic minority communities, particularly other South Asian communities.

This thesis may inaccurately be labelled a study of legal consciousness, and whilst this literature was significant for the topic, this thesis cannot be classified as legal consciousness as I did not have the economic or institutional resources to undertake the broad and deep nature of legal consciousness empirical research. Rather, I situate this doctoral research project as a legal ethnography of “law as process”.

10.5 Areas for future research

The American literature on legal consciousness, a contemporary subset of “law as process” literature, has been a source of inspiration for this doctoral research project. I endeavoured to conduct a similar ethnographic approach as Merry (1990), by visiting the courthouse, observing cases, noting the discursive moments of power, and interacting with laypeople and official law actors inside the courthouse in order to deeply engage with legal process and transformation (Basu 2015). However, this ideal was shattered the minute I entered the Brampton courthouse, as family law cases are held in-camera, I needed official sanction for access, and even understanding how the courthouse worked was a trial-by-error process. It was indeed beyond the scope and budget of this doctoral thesis to conduct an ethnographic study of legal consciousness (Silbey 2005), however, I hope that this doctoral thesis might be the beginnings of a future project.

The Indian diaspora community of the GTA is a relatively new community, having settled predominantly since the 1980s and 1990s (CIC 2005, 8). My own family relocated from Calgary, Alberta to Toronto, Ontario in 1988 and settled in a small town on the east side of Toronto whilst it appeared the majority of new Punjabi-Sikh immigrants settled on the west side of Toronto, in Brampton and Mississauga. Interview participants frequently mentioned Brampton, an ethnic enclave community located on the northwest corner of the

GTA.¹³² In fact, a Statistics Canada (2011) report states that ethnic enclave areas are most closely associated with individuals of South Asian and Chinese ethnicity, and that recent immigrants and family-class sponsored immigrants are disproportionately drawn to these areas. Ethnic enclaves were initially formed because the area offered more affordable housing. The report also stated that Sikhs and Hindus, which are more “ethno-culturally specific” religions, are more inclined to settle in ethnic enclaves compared to Muslims and Buddhists, which are “religions that attract believers from many cultures” (StatsCan 2011). An area for further research would be to consider more specifically the marriage breakdown experiences of Punjabi-Sikhs in the ethnic enclave communities of Brampton and Mississauga, in order to more clearly discern the community control aspects of cultural norms and practices. It would also be a fruitful site to further explore official and unofficial sphere forum usage and levels of English and legal literacy.

Another area for further research would be to apply the conceptual model of this doctoral thesis across national contexts, comparing and contrasting marriage and marriage breakdown amongst Punjabi-Sikhs in Canada, the UK and US. Such a project would permit a deeper analysis of the new transnational marriage migration and marriage breakdown prevalent amongst western-born Punjabi-Sikhs (Qureshi 2015). A related study could focus on the Punjab versus Canadian experiences of marriage and marriage breakdown, delving further into the stark differences in access to justice forums and actors available in each jurisdiction.

¹³² StatsCan defines ethnic enclave as places where at least 70 per cent of the population belongs to a “visible minority group” which, by definition, would then have relatively few white residents (StatsCan 2011).

Appendix A

List of legal case documentation

Bath v Bath 2010

- Bath, A. (2009a) *Form 17A: Case Conference Brief - General*: Superior Court of Justice Family Court Branch, 393 University Ave, Toronto FS08-341355-0000).
- Bath, B. (2008) *Form 10A: Reply by applicant*: Superior Court of Justice, 393 University Ave, ON FS-08-34135-000).
- Bath, B. (2009b) *Form 14A: Affidavit (general)*: Superior Court of Justice, 393 University Avenue, Toronto, ON FS-08-341355-0000).

Brar v Dhinsa 2008

- Brar, N. (2007) *Form 8: Application (General)*: Superior Court of Justice FS-07-060051-00).
- Dhinsa, M. (2007) *Form 10: Answer* FS-07-060051-00).

Brar v Brar 2010

- Brar, H. (2009) *Form 14A: Affidavit (General)*: Superior Court of Justice 31471/09).
- Dhaliwal Brar, S. *Form 8: Application (General)*: Superior Court of Justice.
- Dhaliwal Brar, S. *Form 14: Notice of Motion*: Superior Court of Justice.
- Dhaliwal Brar, S. (2009) *Form 14A: Affidavit (General)*: Superior Court of Justice 31471/09).

Burmi v Dhiman 2001

- Burmi, H. (2001) *Affidavit*, Superior Court of Justice 99-FP-252726).
- Dhiman, V. *Schedule "B"*: Superior Court of Justice 99-FP-252726).
- Dhiman, V. (1998) *Marriage Certificate*.
- Dhiman, V. (2001a) *Affidavit*: Superior Court of Justice 99-FP-252726).
- Dhiman, V. (2001b) *Affidavit*: Superior Court of Justice 99-FP-252726).
- Dhiman, V. (2001c) *Family Law Case Management Motion Form*: Ontario Court (General Division) 99-FP-252726).
- Pilowsky, J. (2000) *Medical Report for V Dhiman*: Pilowsky Consultants Exhibit B).
- Puri, D. (2001) *Affidavit* 99-FP-252726).

Cheema v Lail 2009

- Cheema, R. (2004a) *Form 14A: Affidavit (General)*: Ontario Superior Court of Justice FS-04-050229-00).
- Cheema, R. (2004b) *Reply and Answer to Counterpetition*: Ontario Superior Court of Justice FS-04-050229-00).
- Cheema, R. (2006a) *Form 14: Notice of Motion*: Ontario Superior Court of Justice FS-04-050229-00).
- Cheema, R. (2006b) *Form 14A: Affidavit (general)*: Ontario Superior Court of Justice FS-04-050229-00).
- Cheema, R. (2006c) *Form 25A: Divorce Order*: Ontario Superior Court of Justice FS-04-050229-00).
- Cheema, R. (2009) *Form 14A: Affidavit (general)*: Ontario Supreme Court of Justice FS-04-050229-00).
- Lail, N. (2004) *Answer and Counterpetition*: Ontario Superior Court of Justice FS-04-050229-00).
- Lail, N. (2009) *Form 14A: Affidavit (General)*: Superior Court of Justice Family Court Branch FS-04-050229-00).

Garcha v Garcha 2010

Garcha, K. (2009a) *Form 8: Application (General) (Amended)*: Superior Court of Justice FS-09-66718-00).

Garcha, K. (2009b) *Form 14A: Affidavit (General)*: Superior Court of Justice FS-09-66718-00).

Virk, J. (2009) *Form 14A: Affidavit (General)*: Superior Court of Justice FS-09-66718-00).

Gill v Jhaji 2003

Gill, G. (2002) *Pre-trial Conference Memorandum*: Ontario Superior Court of Justice 99-FP-249598FIS).

Summers, P. (2003) *Family Law Case Management Motions Form*: Ontario Superior Court of Justice 99-FP-2495989FIS).

Trenholme, M. (2003) *Opening Trial Statement of the Petitioner(Wife)*: Ontario Superior Court of Justice 99-FB-249598FIS).

Grewal v Kaur 2011

Grewal, S. (2008) *Form 10: Answer*: Superior Court of Justice FS-08-0783-00).

Kaur v Brar 2003

Anonymous (2002) *Transcript: Motions before the Honourable Mr. Justice Dunn*: Superior Court of Justice.

Kalsi, G. *Affidavit*: Ontario Court (General Division) D 43661/01).

Kaur, S. *Affidavit of S Kaur Supporting the Motion for Judgement*: Ontario Superior Court of Justice D 43661/01).

Kaur, S. (2002) *Affidavit*: Ontario Superior Court of Justice D 43661/01).

Kaur, S. (2009) *Reply Factum of the Respondent*: Superior Court of Justice FS-08-0783-00).

Kaur, S. (2010) *Respondent's Supplementary Memo of Arguments*: Superior Court of Justice Family Court Branch FS-08-0783-00).

Lalli v Lalli 2002

Lalli, G. (2005) *Form 36: Affidavit for Divorce*: Ontario Superior Court of Justice FS-04-051230-00).

Lalli, M. (1997) *Schedule D: Marriage Registration*: Office of the Registrar of Marriages (Tehaildar), Patiala.

Lalli, M. (2003a) *Form 25: Order (General)*: Ontario Court of Justice 416/00).

Lalli, M. (2003b) *Form 25: Order (General)*: Ontario Court of Justice 416/00).

Lalli, M. (2004) *Form 8: Application (divorce)*: Ontario Superior Court of Justice FS-04-051230-00).

Sidhu v Chahal 2010

Chahal, S. (2008) *Form 10: Answer*: Family Court of the Superior Court of Justice FS-08-2162-00).

Sidhu, K. (2008) *Form 14A: Affidavit (General)*: Family Court of the Superior Court of Justice.

Takhar v Takhar 2009

Takhar, B. *Form 14A: Affidavit (General)*: Superior Court of Justice Family Court Branch 40559/07).

Takhar, B. (2008) *Form 8: Amended, Amended Application (General)*: Superior Court of Justice.

Reference List

- (CIC), Citizenship and Immigration Canada, Statistics, S.R.a. (2005) Recent immigrants in metropolitan areas: Toronto. Ottawa: Citizenship and Immigration Canada.
- (CIC), Citizenship and Immigration Canada (2007) Immigration & citizenship: Immigrate - Family sponsorship. Ottawa: Government of Canada. Available at: <http://www.cic.gc.ca/english/immigrate/sponsor/> (Accessed: 8 April 2015 2015).
- (CIC), Citizenship and Immigration Canada (2009) Immigration & citizenship: Immigrate - Fraud - Marriage fraud. Ottawa: Government of Canada. Available at: <http://www.cic.gc.ca/english/information/protection/fraud/marriage.asp> (Accessed: 8 April 2015 2015).
- (CIC), Citizenship and Immigration Canada (2010a) 'Government of Canada welcoming growing number of Indian visitors, students and immigrants [Archived]', CIC, 9 September 2010. Available at: http://news.gc.ca/web/article-en.do?m=/index&nid=558499&_ga=1.239821315.1429220143.1428543797 (Accessed: 2015/03/04/22:50:06).
- (CIC), Citizenship and Immigration Canada (2010b) 'Minister Kenney hosts Vancouver town hall on marriages of convenience [Archived]', Government of Canada, 14 October 2010. Available at: <http://news.gc.ca/web/article-en.do?mthd=advSrch&crtr.mnthndVI=2&crtr.dpt1D=6664&nid=566269&crtr.tp1D=&crtr.kw=punjab&crtr.yrStrtVI=2004&crtr.dyStrtVI=1&crtr.mnthStrtVI=1&crtr.page=2&crtr.yrndVI=2015&crtr.dyndVI=27> (Accessed: 2015/03/04/22:52:44).
- (CIC), Citizenship and Immigration Canada, Evaluation, R.a. (2012a) Spouses and partners: Findings from the longitudinal immigration database (IMBD): Citizenship & Immigration Canada.
- (CIC), Citizenship and Immigration Canada (2012b) "'The jig is up on marriage fraud,' says Minister Kenney", CIC, 26 October 2012. Available at: http://news.gc.ca/web/article-en.do?nid=703499&_ga=1.34400999.792981682.1425066702 (Accessed: 2015/03/04/22:42:40).
- (CIC), Citizenship and Immigration Canada (2016) 'Parallel lives' or 'super-diversity'? An exploration of ethno-cultural enclaves in Montreal, Toronto, and Vancouver, in 2011', Research, Available: Government of Canada (Accessed 26 Sep 2016).
- (LCO), Law Commission of Ontario (2013) Increasing access to family justice through comprehensive entry points and inclusivity, Toronto: Law Commission of Ontario.
- (MAG), Ministry of the Attorney General (2013) Family Law: Divorce and Separation - Child Support - Spousal Support. Ontario: Ministry of the Attorney General. Available at: <http://www.attorneygeneral.jus.gov.on.ca/english/family/divorce/support/spousal.asp> (Accessed: 7 April 2015 2015).
- (StatsCan), Statistics Canada (2007) The South Asian Community in Canada. Statistics Canada: Statistics Canada. Available at: <http://www.statcan.gc.ca/pub/89-621-x/89-621-x2007006-eng.htm> (Accessed: 4 March 2015 2015).
- (StatsCan), Statistics Canada, Canada, S. (2008a) Canada's Ethnocultural Mosaic, 2006 Census. Ottawa: Minister of Industry (97-562-X).
- (StatsCan), Statistics Canada (2008b) Ethnic origin and visible minorities: Statistics Canada. Available at: <http://www12.statcan.ca/census-recensement/2006/rt-td/eth-eng.cfm> (Accessed: 7/12/2010 2010).

- (StatsCan), Statistics Canada (2011) 'Population by mother tongue and age groups (total), 2011 counts, for Canada, provinces and territories'. Available at: <http://www12.statcan.gc.ca/census-recensement/2011/dp-pd/hltfst/lang/Pages/highlight.cfm?TabID=1&Lang=E&Asc=1&PRCode=01&OrderBy=999&View=1&tableID=401&queryID=1&Age=1> (Accessed: 4 April 2015).
- Abbott, E. (2010) *A History of Marriage*. Toronto: Penguin Group (Canada).
- Abella, R. S. H. (1981a) 'Economic adjustment on marriage breakdown: Support', *Family Law Review*, 4(1), pp. 1-10.
- Abella, R. S. H. (1981b) 'Family Law in Ontario: Changing Assumptions', *Ottawa L. Rev.*, 13, pp. 1.
- Abu-Lughod, L. (1991) 'Writing against culture', in Fox, R.G. (ed.) *Recapturing anthropology : working in the present*. Santa Fe, N.M.: School of American Research Press : Distributed by the University of Washington Press, pp. 137-54.
- Abu-Lughod, L. (2013a) *Do Muslim women need saving?* Cambridge, Massachusetts: Harvard University Press, p. 324.
- Abu-Lughod, L. (2013b) *Do Muslim women need saving?:* Harvard University Press.
- Agarwal, B. (1994) *A field of one's own: Gender and land rights in South Asia*. Cambridge University Press.
- Agnes, F. (1999) *Law and Gender Inequality: The politics of women's rights in India*. Law in India Series New Delhi: Oxford University Press.
- Agnes, F. (2001) *Law and Gender Inequality: The Politics of Women's Rights in India*. Oxford University Press.
- Agnew, V. (2003) *Gender, home, and nation: A century of writings by South Asian women in Canada*. Toronto: York Centre for Feminist Research.
- Alaggia, R., Regehr, C. and Rishchynski, G. (2009) 'Intimate partner violence and immigration laws in Canada: How far have we come?', *International Journal of Law and Psychiatry*, 32(6), pp. 335-341.
- Allott, A. N. (1970) *New essays in African law*. Butterworths.
- Allott, A. N. (1994) 'Methods of legal research into customary law', in Dundes, A.D.R.a.A. (ed.) *Folk Law*: Garland.
- Allott, A. N. and Woodman, G. R. (1985) *People's law and state law: the Bellagio papers*. Walter de Gruyter.
- Ames, M. M. and Inglis, J. (1973) 'Conflict and Change in British Columbia Sikh Family Life', *BC Studies*, (20), pp. 15-49.
- Anitha, S. (2011) 'Legislating gender inequalities: the nature and patterns of domestic violence experienced by South Asian women with insecure immigration status in the United Kingdom', *Violence Against Women*, pp. 1077801211424571.
- Appadurai, A. (1991) 'Global Ethnoscapes: Notes and Queries for a Transnational Anthropology', in Fox, R.G. (ed.) *Interventions: Anthropologies of the Present*. Santa Fe: School of American Research, pp. 191-210.
- Arat-Koc, S. (1999) 'Gender and race in "non-discriminatory" immigration policies in Canada: 1960s to present', in Robertson, E.D.a.A. (ed.) *Scratching the surface: Canadian anti-racist feminist thought*. Toronto: Women's Press, pp. 207 – 233.
- Asad, T. (1983) 'Anthropological conceptions of religion: reflections on Geertz', *Man*, pp. 237-259.
- Asad, T. (2009) 'Free Speech, blasphemy, and secular criticism', *Is Critique Secular? Blasphemy, Injury, and Free Speech*. Berkeley: Townsend Center for the Humanities, UC Berkeley, pp. 20-63.
- Aubert, V. (1963) 'Competition and dissensus: two types of conflict and of conflict resolution', *Journal of Conflict Resolution*, pp. 26-42.
- Austin, J. (1832) 'Province of Jurisprudence Defined, The', *Jurist QJ Juris. & Legis.*, 3, pp.

105.

- Axel, B. K. (2002) 'The diasporic imaginary', *Public Culture*, 14(2), pp. 411-428.
- Baines, B. (2009) 'Must feminists identify as secular citizens? Lessons from Ontario', in McClain, L.C. & Grossman, J.L. (eds.) *Gender Equality: Dimensions of women's equal citizenship*. Cambridge, NY: Cambridge University Press, pp. 42.
- Bakht, N. (2005) *Arbitration, religion and family law: Private justice on the backs of women: National Association of Women and the Law*.
- Bakht, N. (2006) 'Were Muslim barbarians really knocking on the gates of Ontario?: The religious arbitration controversy - Another perspective', *Ottawa Law Review*, 40th Anniversary Edition, 67, pp. 67-82.
- Ballantyne, T. (2006) *Between colonialism and diaspora: Sikh cultural formations in an imperial world*. Durham: Duke University Press.
- Ballard, R. (ed.) (1982) *South Asian Families*. London: Routledge and Kegan Paul.
- Ballard, R. (1990) 'Migration and kinship: The differential effect of marriage rules on the processes of Punjabi migration to Britain', in Clarke, C.G., Peach, C. & Vertovec, S. (eds.) *South Asians Overseas: Migration and Ethnicity*. Cambridge: Cambridge University Press, pp. 219-250.
- Ballard, R. (1994) *Desh Pradesh: South Asian Experience in Britain*. C. Hurst.
- Ballard, R. (1999) 'Panth, Kismet, Dharm te Qaum: Four Dimensions of Punjabi Religion', in Singh, P. & Thandi, S. (eds.) *Punjabi Identity in a Global Context*. 1st ed. New Delhi: Oxford University Press, pp. 7-37.
- Ballard, R. (2001) *The impact of kinship on the economic dynamics of transnational networks: reflections on some South Asian developments*. University of Oxford. Transnational Communities Programme.
- Ballard, R. (2004) 'Riste and Ristedari: The significance of marriage in the dynamics of transnational kinship', pp. 1-27, Centre for Applied South Asian Studies (CASAS). Centre for Applied South Asian Studies (CASAS), Available: Centre for Applied South Asian Studies (CASAS).
- Ballard, R. (2008) 'Inside and Outside: Contrasting perspectives on the dynamics of kinship and marriage in contemporary South Asian transnational networks', in Grillo, R. (ed.) *The Family in Question: Immigrant and ethnic minorities in multicultural Europe*. Amsterdam: Amsterdam University Press, pp. 37-70.
- Ballard, R. (2011) 'Honour killings or just plain homicide?', in Holden, L. (ed.) *Cultural Expertise and Litigation: Patterns, conflicts, narratives*. Oxon: Routledge, pp. 123-147.
- Bannerji, H. (2000) *Dark Side of the Nation: Essays on multiculturalism, nationalism and gender*. Toronto: Canadian Scholars Press.
- Bano, S. (2007) 'Muslim Family Justice and Human Rights: The Experience of British Muslim Women', *Journal of Comparative Law*, 2.
- Barrier, N. G. and Dusenbery, V. A. (1989) *The Sikh Diaspora*, Columbia, South Asia Books.
- Basch, L., Schiller, N. G. and Blanc, C. S. (1994) 'Nations Unbound: Transnational Projects', *Postcolonial Predicaments, and Deterritorialized Nation-states* (Gordon and Breach, Amsterdam).
- Basran, G. S. (1993) 'Indo-Canadian Families Historical constraints and contemporary contradictions', *Journal of Comparative Family Studies*, 24(3), pp. 339-352.
- Basran, G. S. and Bolaria, B. S. (2003) *Sikhs in Canada: Migration, Race, Class and Gender*. New Delhi: Oxford University Press, p. 222.
- Basu, S. (2015) *The trouble with marriage: feminists confront law and violence in India*. Univ of California Press.
- Baxi, U. (1986) 'People's law in India - the Hindu society', in Chiba, M. (ed.) *Asian*

- indigenous law: In interaction with received law: Taylor & Francis, pp. 216-266.
- Baxi, U. (2004) 'Rule of Law in India: Theory and practice', in Peerenboom, R. (ed.) *Asian Discourses of Rule of Law: Theories and implementation of rule of law in twelve Asian countries, France and India*. London and New York: Routledge, pp. 324-345.
- Bayly, S. (2001) *Caste Society And Politics India Eighteenth Century Modern Age*. The New Cambridge History of India 3 edn. Cambridge: Cambridge University Press.
- Benhabib, S. (2004) *The rights of others aliens, residents and citizens*. Cambridge %3B New York: Cambridge University Press.
- Bentham, J. 1782. *The Limits of Jurisprudence Defined, opus posthumum*. New York: Columbia University Press.
- Berger, B. (2007) 'Law's Religion: Rendering Culture', *Osgoode Hall Law Journal*, 45(2), pp. 277-314.
- Berger, B. (2008) 'The Cultural Limits of Legal Tolerance', *Canadian Journal of Law and Jurisprudence*, 21(2), pp. 245-277.
- Bhachu, P. (1985a) *Twice Migrants: East African Sikh Settlers in Britain*. Tavistock Publications.
- Bhachu, P. (1985b) *Twice Migrants: East African Sikh Settlers in Britain*. Routledge.
- Bhachu, P. (1988) 'Apni marzi kardhi. Home and work: Sikh women in Britain', *Enterprising Women: Ethnicity, Economy and Gender Relations*, pp. 76-103.
- Bhachu, P. (1991a) 'Culture, ethnicity and class among Punjabi Sikh women in 1990s Britain', *Journal of Ethnic and Migration Studies*, 17(3), pp. 401-412.
- Bhachu, P. (1991b) 'Ethnicity constructed and reconstructed: The role of Sikh women in cultural elaboration and educational decision-making in Britain', *Gender & Education*, 3(1), pp. 45-56.
- Bhattacharyya, M. (1987) 'Divorce and Indian Women - A socio-economic analysis of the problem', *Journal of the Asiatic Society*, 29(3), pp. 27-38.
- Bhatti, R. and Dusenbery, V. A. (2001) *A Punjabi Sikh community in Australia: from Indian sojourners to Australian citizens*. Woolgoolga Neighbourhood Centre.
- Bhopal, K. (1997) 'South Asian women within households: Dowries, degradation and despair', *Women's Studies International Forum*, 20(4), pp. 483-492.
- Bhopal, K. (1999) 'South Asian Women and Arranged Marriages in East London', in Rohit Barot, H.B.a.S.F. (ed.) *Rethinking Ethnicity and Gender* London: Macmillan Press, pp. 117 – 134.
- Boyd, M. (2004) *Dispute Resolution in Family Law: Protecting choice, promoting inclusion*, Toronto: Ministry of the Attorney General, Ontario. Available at: <http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/boyd/> (Accessed: 6 April 2015).
- Boyd, M. (2007) 'Religion-Based Alternative Dispute Resolution: A Challenge to Multiculturalism', *Belonging: Diversity and Shared Citizenship in Canada*, ed. Keith Banting, Thomas J. Courchene and F. Leslie Seidle. Montreal: Institute for Research on Public Policy.
- Boyd, S. B. (1994) '(Re) Placing the State: Family, Law and Oppression', *Canadian journal of law and society*, 9(01), pp. 39-73.
- Boyd, S. B. (2000) 'Impact of the Charter of Rights and Freedoms on Canadian Family Law, The', *Can. J. Fam. L.*, 17, pp. 293.
- Bradby, H. (1999) 'Negotiating Marriage: Young Punjabi women's assessment of their individual and family interests', in Bradley, H., Fenton, S. & Barot, R. (eds.) *Ethnicity, Gender and Social Change*. London: MacMillan Press, pp. 152 - 166.
- Brah, Avtar. "Cartographies of diaspora." *London and New York: Routledge* (1996).
- Brah, A. (2005) 'Locality, globality and gendered refractions', *Punjab Studies Journal*,

- 12(1), pp. 153-165.
- Brampton (2013) National Household Survey Bulletin #1: Immigration, citizenship, place of birth, language, ethnic origin, visible minorities, religion, and aboriginal peoples, Brampton: City of Brampton.
- Brampton (2015) Brampton at a glance. Brampton, Ontario: Economic Development, City of Brampton (Accessed: 4 April 2015 2015).
- Brown, W. (2009) 'Introduction', *Is Critique Secular? Blasphemy, injury, and free speech*. Berkeley: Townsend Center for the Humanities, UC Berkeley, pp. 7-19.
- Bryman, A. and Burgess, R. G. (1994) 'Reflections on qualitative data analysis', *Analyzing qualitative data*, pp. 216-226.
- Bryman, A. and Burgess, R. G. (2002) *Analyzing Qualitative Data*. Taylor & Francis.
- Buchignani, N. (1989) 'Contemporary research on people of Indian origin in Canada', *Sociological Bulletin*, 38(1), pp. 71-93.
- Buchignani, N., Indra, D. and Srivastava, R. (1985) *Continuous Journey: A social history of South Asians in Canada, 1905-1947*. Toronto: McClelland and Stewart.
- Bunting, A. 2004. *Mediating Cultures, Arbitrating Family Disputes – the proposed “Sharia Tribunals” in Ontario*. Toronto: York University.
- Burgess, R. G. (1984) *In the Field: An introduction to field research*. New York: Routledge.
- Butler, J. (2002) 'Is kinship always already heterosexual?', *Differences: A Journal of Feminist Cultural Studies*, 13(1), pp. 14-44.
- Cain, M. (1979) 'General-practice lawyer and the client - Towards a radical conception', *International Journal of the Sociology of Law*, 7(4), pp. 331-354.
- Calavita, K. (2006) 'Gender, migration, and law: Crossing borders and bridging disciplines', *International Migration Review*, 40(1), pp. 104-132.
- Castles, S. and Miller, M. 1999. *The Age of Migration*, (2009). New York: Guilford Press.
- Chakravarti, U. (2005) 'From Fathers to Husbands: Of Love, Death and Marriage in North India', in Welchman, L. & Hossain, S. (eds.) *Honour: Crimes, Paradigms and Violence Against Women*. London: Zed Books, pp. 308-331.
- Chant, S. and Radcliffe, S. 1992. *Migration and Development: the Importance of Gender* in Chant, S.(ed.) *Gender and Migration in Developing Countries*. Belhaven Press, London.
- Charsley, K. (2005) 'Unhappy husbands: Masculinity and migration in transnational Pakistani marriages', *Journal of the Royal Anthropological Institute*, 11(1), pp. 85-105.
- Charsley, K. 2013a. *Transnational marriage: New perspectives from Europe and beyond*. Routledge.
- Charsley, K. and Benson, M. (2012) 'Marriages of Convenience, and Inconvenient Marriages: regulating spousal migration to Britain', *Journal of Immigration, Asylum and Nationality Law*, 26(1), pp. 10-26.
- Charsley, K. and Liversage, A. (2015) 'Silenced Husbands: Muslim Marriage Migration and Masculinity', *Men and Masculinities*.
- Charsley, K. and Shaw, A. (2006a) 'South Asian transnational marriages in comparative perspective', *Global Networks*, 6(4), pp. 331-344.
- Charsley, K. and Shaw, A. (2006b) 'South Asian transnational marriages in comparative perspective', *Global Networks*, 6(4), pp. 331-344.
- Charsley, K. A. H. (2013b) *Transnational Pakistani Connections: Marrying 'Back Home'*. Routledge.
- Chaudhary, M. A. (1999) *Justice in Practice: Legal ethnography of a Pakistani Punjabi village*. Karachi: Oxford University Press.
- Chiba, M. (1986a) *Asian indigenous law: In interaction with received law*. Taylor &

- Francis.
- Chiba, M. (1986b) 'Introduction', in Chiba, M. (ed.) *Asian Indigenous Law: In interaction with received law*. London: KPI Limited, pp. 1 - 11.
- Chiba, M. (1989) *Legal Pluralism: Toward a general theory through Japanese legal culture*. Tokyo: Tokai University Press.
- Choudhary, J. (1988) *Divorce in Indian Society: A sociological study of marriage disruption and role adjustment*. Jaipur, India: Printwell Publishers.
- Chunn, D. E., Boyd, S. and Lessard, H. (2011) *Reaction and resistance: Feminism, law, and social change*. UBC Press.
- Chunn, D. E., Boyd, S. B. and Lessard, H. (2007) 'Feminism, law and social change: An overview', *Reaction and resistance: feminism, law, and social change*, pp. 1-28.
- Claxton, N. 2004. "To Fish as Formerly": The Douglas Treaties and the Saanich Reef Net Fisheries. University of Victoria, available online (accessed Aug. 13, 2014): [http://web.uvic.ca/igov/research/pdfs/To% 20Fish% 20as% 20Formerly. pdf](http://web.uvic.ca/igov/research/pdfs/To%20Fish%20as%20Formerly.pdf).
- Clifford, J. (1997) *Routes: Travel and translation in the late twentieth century*. Harvard University Press.
- Cohen, J., Howard, M. and Nussbaum, M. C. (eds.) (1999) *Is Multiculturalism Bad for Women? Susan Moller Okin with respondents*. Princeton, New Jersey: Princeton University Press.
- Cohn, B. S. (1959) 'Some Notes on Law and Change in North India', *Economic Development and Cultural Change*, 8(1), pp. 79-93, Available: The University of Chicago Press.
- Cohn, B. S. and Guha, R. (1987) *An anthropologist among the historians and other essays*. Oxford University Press Delhi.
- Cole, W. O. (2004) *Understanding Sikhism*. Dunedin Academic Press.
- Conley, J. M. and O'barr, W. M. (1990) *Rules versus relationships: The ethnography of legal discourse*. University of Chicago Press.
- Conley, J. M. and O'barr, W. M. (1998) 'Just Words: Law', *Language, and Power* (Chicago: Univ. of Chicago Pr., 1998), 2.
- Cotterrell, R. (2004) 'Law in Culture', *Ratio Juris*, 17(1), pp. 1-14.
- Currie, A. 'Riding the Third Wave – Notes on the Future of Access to Justice'. *Expanding Horizons: Rethinking access to justice in Canada*, 2000. Ottawa: Department of Justice Canada, 37-40.
- Currie, A. (2006) 'A national survey of the civil justice problems of low-and moderate-income Canadians: incidence and patterns', *International Journal of the Legal Profession*, 13(3), pp. 217-242.
- Currie, A. (2009) *The Legal Problems of Everyday Life: The nature, extent and consequences of justiciable problems experienced by Canadians*, Ottawa: Department of Justice Canada (rr07-lar1e. Available at: http://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr07_la1-rr07_aj1/rr07_la1.pdf.
- D'Cruz, P. and Bharat, S. (2001) 'Beyond Joint and Nuclear: The Indian Family Revisited', *Journal of Comparative Family Studies*, 32(2), pp. 167-194.
- Das Gupta, T. (1994) 'Political economy of gender, race, and class: Looking at South Asian immigrant women in Canada', *Canadian Ethnic Studies*, 26(1), pp. 59.
- Das, V. (1993) 'Masks and Faces: An Essay on Punjabi Kinship', in Uberoi, P. (ed.) *Family, Kinship and Marriage in India* Oxford in India Readings in Sociology and Social Anthropology. New Delhi: Oxford University Press, pp. 198-224.
- Das, V. (1995) 'National honor and practical kinship: Unwanted women and children', *Conceiving the new world order: The global politics of reproduction*, 212433.
- Dauvergne, C. (2008) *Making People Illegal: What globalization means for migration and law*. Cambridge: Cambridge University Press.

- de Hart, B. 2006. Introduction: The marriage of convenience in European immigration law. HeinOnline.
- de Sousa Santos, B. (1987) 'Law: a map of misreading. Toward a postmodern conception of law', *Journal of Law and Society*, pp. 279-302.
- DeGreeve, J., McDonald, I., Mitchell, M. and Taylor, L. (2010) 'Diversity, culture and contrasts: Canada's legal kaleidoscope - Joint study institute, Montreal, QC, June 20-23, 2010: An overview', *Canadian Law Library Review*, 35(3/4), pp. 114-118.
- Desai, S. A. (ed.) (1998) *Mulla Principles of Hindu Law*. 17th edn. New Delhi: Butterworths.
- Desai, S. T. (ed.) (1994) *Mulla's Principles of Hindu Law*. 16th edn. Bombay: N.M. Tripathi.
- Dictionary (2014) "'shame'", in *Collins English Dictionary – Complete and Unabridged* [Online]. Version. Available at: <http://www.thefreedictionary.com/shame>.
- Diwan, P. (1982) *Modern Hindu Law: Codified and Uncodified*. 5th edn. Allahabad: Allahabad Law Agency Law Publishers.
- Diwan, P. (1983) *Family Law (Law of marriage and divorce in India)*. 1st edn. New Delhi, Bangalore, Jalandhar: Sterling Publishers Private Limited.
- Diwan, P. (1984) *Customary law of Punjab and Haryana*. Chandigarh: Publication Bureau, Panjab University.
- Drury, B. (1991) 'Sikh girls and the maintenance of an ethnic culture', *Journal of Ethnic and Migration Studies*, 17(3), pp. 387-399.
- Dua, E. (2000) 'The Hindu Woman's Question', *Canadian Woman's Studies*, 20(2), pp. 108-116.
- Dundes, A. (1993) *Folklore matters*. Univ. of Tennessee Press.
- Dunn, K. and Kaplan, P. J. (2009) 'The ironies of helping: Social interventions and executable subjects', *Law & Society Review*, 43(2), pp. 337-368.
- Dusenbury, V. A. (1997) 'The Poetics and Politics of Recognition: Diasporan Sikhs in pluralist polities', *American Ethnologist*, 24(4), pp. 738-762.
- Ebtehaj, F. (2006) 'Introduction: Regulating relationships?', in Ebtehaj, F., Lindley, B. & Richards, M. (eds.) *Kinship matters* Cambridge Socio-Legal Group. Oxford; Portland, Or.: Hart Publishing, pp. 1-18.
- Ehrlich, E. (1936) *Fundamental Principles of the Sociology of Law*. Translated by: Moll, W.L. New York: Arno Press.
- Engel, D. and Munger, F. (2003) *Rights of Inclusion*. Chicago Series in Law and Society Chicago: University of Chicago Press.
- Engel, D. M. (1984) 'The oven bird's song: Insiders, outsiders, and personal injuries in an American community', *Law and Society Review*, pp. 551-582.
- Engel, D. M. (1993) 'Origin myths: Narratives of authority, resistance, disability, and law', *Law and Society Review*, pp. 785-826.
- Engel, D. M. (1999) 'Making connections: Law and society researchers and their subjects', *Law and Society Review*, pp. 3-16.
- Ewick, P. and Silbey, S. (1991 - 1992) 'Conformity, Contestation, and Resistance: An account of legal consciousness', *New England Law Review*, 26, pp. 731 - 749.
- Ewick, P. and Silbey, S. (1998) *The Common Place of Law: Stories from everyday life*. Chicago Series in Law and Society Chicago: University of Chicago Press.
- Ewick, P. and Silbey, S. (1999) 'Common Knowledge and Ideological Critique: The significance of knowing that the 'haves' come out ahead', *Law & Society Review*, 33, pp. 1025 - 1042.
- Fairclough, N. (2005) 'Critical Discourse Analysis in Transdisciplinary Research', in Wodak, R. & Chilton, P. (eds.) *A New Agenda in (Critical) Discourse Analysis: Theory, methodology, and interdisciplinarity*. Philadelphia: J. Benjamins

- Publishing Company, pp. 53 - 70.
- Feldman, S. (2010) 'Shame and honour: The violence of gendered norms under conditions of global crisis', *Women's Studies International Forum*, 33(4), pp. 305-315.
- Felstiner, W. L. (1974) 'Influences of social organization on dispute processing', *Law and Society Review*, pp. 63-94.
- Felstiner, W. L., Abel, R. L. and Sarat, A. (1980) 'The Emergence and Transformation of Disputes: Naming, Blaming, Claiming', *Law and society review*, pp. 631-654.
- Ferguson, R. (1996) 'Untold Stories of the Law', in Brooks, P. & Gewirtz, P. (eds.) *Law's Stories: Narrative and rhetoric in the law*. New Haven: Yale University Press, pp. 84 - 98.
- Finch, J. (1989) *Family obligations and social change*. Cambridge: Polity Press.
- Fineman, M. A. (2013) 'Societal factors affecting the creation of legal rules for distribution of property at divorce', in Fineman, M.A. & Thomadsen, N.S. (eds.) *At the Boundaries of Law (RLE Feminist Theory): Feminism and Legal Theory*. New York and London: Routledge, pp. 265-280.
- Fitzpatrick, P. (1980) *Law and State in Papua New Guinea*. Academic Press.
- Foblets, M.-C. and Alidadi, K. (eds.) (2013) *Summary Report on the RELIGARE Project*. Leuven: University of Leuven.
- Fodden, S. (1999) 'Chapter 1', *Family Law*. Toronto: Irwin Law, pp. 22-26.
- Fournier, P. (2001) 'The Erasure of Islamic Difference in Canadian and American Family Law Adjudication', *Journal of Law & Policy*, 10, pp. 51-95
- Fournier, P. (2002) 'The Ghettoization of Difference in Canada: 'Rape by Culture' and the danger of a 'cultural defence' in criminal law trials', *Manitoba Law Journal*, 29(1), pp. 81 - 120.
- Fournier, P. (2006) 'In the (Canadian) Shadow of Islamic Law: Translating *mahr* as a bargaining endowment', *Osgoode Hall Law Journal*, 44(4).
- Fournier, P. (2010a) *Muslim Marriage in Western Courts: Lost in transplantation. Cultural Diversity and Law* Surrey, England: Ashgate Publishing Limited.
- Fournier, P. (2010b) 'Flirting with God in Western secular courts: Mahr in the West', *International Journal of Law, Policy and Family*, 24(1), pp. 67-94.
- Galanter, M. (1963) 'Law and caste in modern India', *Asian Survey*, pp. 544-559.
- Galanter, M. (1968) 'The Displacement of Traditional Law in Modern India*', *Journal of Social Issues*, 24(4), pp. 65-90.
- Galanter, M. (1981) 'Justice in Many Rooms: Courts, private ordering and indigenous law', *Journal of Legal Pluralism*, 19(1), pp. 1 - 47.
- Galanter, M. and Krishnan, J. (2001) 'Personal law systems and religious conflict', *Religion and personal law in secular India: A call to judgment*, pp. 270.
- Galanter, M. and Krishnan, J. K. (2004) "'Bread for the poor": Access to justice and the rights of the needy in India', *Hastings Law Journal*, 55, pp. 789-834.
- Gardner, K. (2006) 'The transnational work of kinship and caring: Bengali-British marriages in historical perspective', *Global Networks*, 6(4), pp. 373-387.
- Gardner, K. and Grillo, R. (2002) 'Transnational households and ritual: an overview', *Global networks*, 2(3), pp. 179-190.
- Geertz, C. (1973) *The interpretation of cultures: Selected essays*. Basic books.
- Genn, H. G. and Beinart, S. (1999) *Paths to Justice: What People Do and Think about Going to Law*. Oxford, UK: Hart Publishing.
- Gilmartin, D. (1981) 'Kinship, women, and politics in twentieth-century Punjab', in Minault, G. (ed.) *The Extended Family: Women and political participation in India and Pakistan*. Columbia, Missouri: South Asia Books, pp. 151-173.
- Goundry, S. A., Peters, Y. and Currie, R. (1998) *Family Mediation in Canada:*

- Implications for women's equality, Ottawa, Canada: National Association of Women and the Law (NAWL)SW21-30/1998E).
- Gray, G. (2002) 'A socio-legal ethnography of the right to refuse dangerous work', *Studies in Law, Politics, and Society*, 24, pp. 133-169.
- Grewal, I. and Kaplan, C. (2003) 'Warrior Marks: Global Womanism's Neo-Colonial Discourse in a Multicultural Context', *Multiculturalism, Postcoloniality, and Transnational Media*, pp. 256-278.
- Grewal, J. S. (1998) *The Sikhs of Punjab*. Revised edn.: Cambridge Histories Online, Cambridge University Press.
- Grewal, S. (2013) 'Brampton townhouse development divides community', *Toronto Star* (online edn). Available at: https://www.thestar.com/news/gta/2013/03/15/brampton_townhouse_development_divides_community.html (Accessed: 2 Oct 2016).
- Griffiths, A. (2002) 'Doing ethnography: living law, life histories, and narratives from Botswana', *Practicing Ethnography in Law*: Springer, pp. 160-181.
- Griffiths, J. (1986) 'What is Legal Pluralism?', *Journal of Legal Pluralism*, 24(1), pp. 1 - 56.
- Grillo, R. (2008a) 'Preface', in Grillo, R. (ed.) *The Family in Question: Immigrant and Ethnic Minorities in Multicultural Europe*. Amsterdam: Amsterdam University Press, pp. 9-14.
- Grillo, R. (2008b) 'The Family in Dispute: Insiders and outsiders', in Grillo, R. (ed.) *The Family in Question: Immigrant and Ethnic Minorities in Multicultural Europe* IMISCOE Research. Amsterdam: Amsterdam University Press, pp. 15-36.
- Grover, S. (2011) 'Purani aur nai shaadi: Separation, Divorce, and Remarriage in the Lives of the Urban Poor in New Delhi', *Asian Journal of Women's Studies*, 17(1), pp. 67-99.
- Guru, S. (2009) 'Obstacles and Oppourtunities – South Asian women in Britain', *The Sociological Review*, 57(2), pp. 285-305.
- Hale, S. (2002) 'How faithfully do court interpreters render the style of non-English speaking witnesses' testimonies? A data-based study of Spanish—English bilingual proceedings', *Discourse Studies*, 4(1), pp. 25-47.
- Hammersley, M. and Atkinson, P. (1995) *Ethnography: Principles in practice*. 2 edn. London: Routledge.
- Handa, A. (2003) *Of Silk Saris and Mini-Skirts: South Asian girls walk the tightrope of culture*. Toronto: Women's Press.
- Hart, H. L. 1961. *The concept of law*. Oxford: Clarendon Press.
- Hawley, M. (2013) 'Introduction Sikh Diaspora: Theory, Agency, and Experience', *Sikh Diaspora*: Brill, pp. 1-9.
- Hershman, P. (1981) *Punjabi kinship and marriage*. 1 edn. Delhi: Hindustan Publishing Corporation, p. xii, 277.
- Herzig, P. (2010) 'Communal networks and gender: placing identities among South Asians in Kenya', *South Asian Diaspora*, 2(2), pp. 165-184.
- Hirsch, S. F. (1998) *Pronouncing and persevering: Gender and the discourses of disputing in an African Islamic court*. University of Chicago Press.
- Holden, L. (2008) *Hindu divorce: A legal anthropology*. Cambridge Univ Press.
- Holden, L. (2013) 'Introduction', *The Journal of Legal Pluralism and Unofficial Law*, 45(1), pp. 1-4.
- Holden, L. S. (2003) 'Custom and Law Practices in Central India Some Case Studies', *South Asia Research*, 23(2), pp. 115-134.
- Hooker, M. B. (1975) *Legal pluralism: an introduction to colonial and neo-colonial laws*. Clarendon Press.

- Houle, R. (2012) *Immigrant Languages in Canada*, Ottawa: Statistics Canada (98-314-X2011003). Available at: http://www12.statcan.gc.ca/census-recensement/2011/as-sa/98-314-x/98-314-x2011003_2-eng.cfm (Accessed: 2014/12/12/).
- Ibbetson, D. (1883) 'The Races, Castes, and Tribes of the People', Report on the census of the Panjáb taken on the 17th of February 1881. Calcutta: Superintendent of Govt. Printing, pp. 172-190.
- Inden, R. B. (1990) *Imagining india*. Indiana University Press.
- Ingram, S. (1997) "The Task of the Translator": Walter Benjamin's Essay in English, a Forschungsbericht', *TTR: traduction, terminologie, rédaction*, 10(2), pp. 207-233.
- Jakobsh, D. R. (ed.) (2010) *Sikhism and Women: History, texts and experience*. New Delhi: Oxford University Press.
- Jhutti, J. (1998) *A Study of Changes in Marriage Practices among the Sikhs of Britain*. DPhil, University of Oxford, Oxford.
- Juergensmeyer, M. (2009) 'Introduction: Religion and social rebellion', *Religious rebels in the Punjab: The Ad Dharm challenge to caste: Navayana*, pp. 1-7.
- Kandiyoti, D. (1988) 'Bargaining with Patriarchy', *Gender and Society*, 2(3), pp. 274-290.
- Kang, N. (2006) 'Women activists in Indian diaspora: Making interventions and challenging impediments', *South Asia Research*, 26(2), pp. 145-164.
- Kaplan, C. and Grewal, I. (1999) 'Transnational feminist cultural studies: Beyond the Marxism/poststructuralism/feminism divides', in Kaplan, C., Alarco, N. & Moallem, M. (eds.) *Between Woman and Nation: Nationalisms, transnational feminisms, and the state*. Durham: Duke University Press, pp. 349-364.
- Keung, N. (2008) *Sikh pride fills Brampton Streets*. Toronto: The Toronto Star. Available at: <http://www.thestar.com/News/GTA/article/416538> (Accessed: 7/12/2010 2010).
- Kleinmans, M.-M. and Macdonald, R. A. (1997) 'What is a Critical Legal Pluralism?*', *Canadian journal of law and society*, 12(02), pp. 25-46.
- Kofman, E. (2004) 'Gendered global migrations', *International Feminist Journal of Politics*, 6(4), pp. 643-665.
- Kokal, K. (2013) 'Hope for justice: Importance of informal justice systems', *Economic & Political Weekly*, XLVIII(45 & 46), pp. 22-23.
- Kokal, K. (2014) 'To lead or to follow? Supreme court and community 'justice'', *Economic & Political Weekly*, XLIX(50), pp. 19-21.
- Kotiswaran, P. (2008) 'Born unto Brothels—Toward a Legal Ethnography of Sex Work in an Indian Red-Light Area', *Law & social inquiry*, 33(3), pp. 579-629.
- Krishnan, J. K., Kavadi, S. N., Girach, A., Khupkar, D., Kokal, K., Mazumdar, S., Nupur, Panday, G., Sen, A., Sodhi, A. and Shukla, B. T. (2014) 'Grappling at the Grassroots: Access to justice in India's lower tier', *Harvard Human Rights Journal*, 27, pp. 501-539.
- Kutty, F. (2011) 'The Myth and Reality of "Shari'a" Courts in Canada: A delayed opportunity for the indigenization of Islamic legal rulings', *University of St. Thomas Law Journal*, 7, pp. 57.
- Kymlicka, W. (1989) *Liberalism, community, and culture*. Oxford: Clarendon Press.
- Kymlicka, W. (1991) 'Liberalism and the Politicization of Ethnicity', *Canadian Journal of Law and Jurisprudence*, 4(2), pp. 239-256.
- Kymlicka, W. (1995) *Multicultural Citizenship: A liberal theory of minority rights*. Oxford political theory. Oxford: Clarendon.
- Kymlicka, W. (1999) 'Liberal Complacencies', in Joshua Cohen, M.H.a.M.C.N. (ed.) *Is Multiculturalism Bad for Women? Susan Moller Okin with Respondents*. Princeton, New Jersey: Princeton University Press, pp. 31-34.
- Kymlicka, W. and Norman, W. (2000) 'Citizenship in culturally diverse societies: Issues, contexts, concepts', in Kymlicka, W. & Norman, W. (eds.) *Citizenship in Diverse*

- Societies. Online ed: Oxford Scholarship Online, pp. 1-42.
- L'Heureux-Dube, C. (1997) 'Making equality work in family law', *Can. J. Fam. L.*, 14, pp. 103.
- Lawrence, S. N. (2001) 'Cultural (in) sensitivity: the dangers of a simplistic approach to culture in the courtroom', *Can. J. Women & L.*, 13, pp. 107.
- Leonard, K. (1996) 'Nation and Migration: The Politics of Space in the South Asian Diaspora', *Journal of the Royal Anthropological Institute*, 2(3), pp. 578-580.
- Levi, R. and Valverde, M. (2008) 'Studying law by association: Bruno Latour goes to the Conseil d'Etat', *Law & Social Inquiry*, 33(3), pp. 805-825.
- Levitt, P. and Jaworsky, B. N. (2007) 'Transnational migration studies: Past developments and future trends', *Annu. Rev. Sociol.*, 33, pp. 129-156.
- Levitt, P. and Schiller, N. G. (2004) 'Conceptualizing Simultaneity: A Transnational Social Field Perspective on Society1', *International migration review*, 38(3), pp. 1002-1039.
- Lila, A.-L. (2010) 'Against Universals: The dialectics of (women's) human rights and human capabilities', in Molina, J.M. & Swearer, D.K. (eds.) *Rethinking the human*. Center for the Study of World Religions, Harvard Divinity School: Harvard University Press, pp. 69-94.
- Macdonald, R. 'Justice is a Noun, but Access isn't a Verb'. *Expanding Horizons: Rethinking access to justice in Canada, 2000/03/31/*. Ottawa: Department of Justice Canada, 45-47.
- Macdonald, R. 'Access to Justice in 2003 -- Scope, Scale, Ambitions'. *Symposium on Access to Justice, 2003*. Toronto: Law Society of Upper Canada, 1-7.
- Mack, K. (1995) 'Alternative Dispute Resolution and Access to Justice for Women', *Adelaide Law Review*, 17, pp. 123 - 146.
- Mahmood, C. and Brady, S. (2000) *The Guru's Gift: An ethnography exploring gender equality within North American Sikh women*. Toronto: Mayfield Publishing Company.
- Maini, D. S. (1995) 'The Sikh world view', *The Sikh Review*, 43(493), pp. 40-44.
- Malhotra, A. (2002) *Gender, Caste, and Religious Identities: Restructuring Class in Colonial Punjab*. Oxford University Press.
- Malhotra, A. (2010) 'Shameful Continuities: The Practice of Female Infanticide in Colonial Punjab', in Jakobsh, D. (ed.) *Sikhism and Women: History, Texts, and Experience*. New Delhi: Oxford University Press, pp. 83-114.
- Malik, M. (2012) *Minority legal orders in the UK: Minorities, pluralism and the law*. London: British Academy.
- Malinowski, B. (1926) *Crime and Custom in Savage Society*. London: Routledge Press.
- Mand, K. (2002) 'Place, gender and power in transnational Sikh marriages', *Global Networks*, 2(3), pp. 233-248.
- Mand, K. (2004) *Gendered places, transnational lives: Sikh women in Tanzania, Britain and Indian Punjab*. DPhil, University of Sussex.
- Mand, K. (2006) 'Gender, ethnicity and social relations in the narratives of elderly Sikh men and women', *Ethnic and racial studies*, 29(6), pp. 1057-1071.
- Mand, K. (2008) 'Marriage and Migration through the Life Course: Experiences of widowhood, separation and divorce amongst transnational Sikh women', in Uberoi, R.P.a.P. (ed.) *Women and Migration in Asia Volume 5: Marriage, migration and gender*. New Delhi: Sage Publications, pp. 286-302.
- Mandair, A.-p. S. (2002) 'Sikh', in Dobrin, A. (ed.) *Religious Ethics: A sourcebook*. Hempstead, NY: Hofstra University, pp. 246-259.
- Mandair, A.-P. S. (2009) *Religion and the Specter of the West: Sikhism, India, Postcoloniality, and the Politics of Translation*. *Insurrections: Critical Studies in*

- Religion, Politics, and Culture New York: Columbia University Press.
- Manji, A. S. (1999) 'Imagining Women's' Legal World': Towards a Feminist Theory of Legal Pluralism in Africa', *Social & Legal Studies*, 8(4), pp. 435-455.
- Marshall, A. and Batten, S. (2003) 'Ethical issues in cross-cultural research', *Connections*, 2003, pp. 139-151.
- Maskiell, M. (1990) 'Gender, kinship and rural work in colonial Punjab', *Journal of Women's History*, 2(1), pp. 35-72.
- Mason, J. (2002) 'Qualitative Interviewing: Asking, listening and interpreting', in May, T. (ed.) *Qualitative Research in Action*. London: Sage Publications, pp. 224 - 241.
- Mather, L. and Yngvesson, B. (1980a) 'Language, audience, and the transformation of disputes', *Law and Society Review*, pp. 775-821.
- Mather, L. and Yngvesson, B. (1980b) 'Language, audience, and the transformation of disputes', *Law and Society Review*, pp. 775-821.
- Mattoo, D. (2014) 'Barbaric Cultural Practices Act: A response', *Exhausted from racism*. Available at: <http://exhaustedfromracism.tumblr.com/post/102045767177/barbaric-cultural-practices-act-a-response> 2015].
- McLeod, W. H. (1986) *Punjabis in New Zealand: A History of Punjabi Migration, 1890-1940*. Guru Nanak Dev University.
- Menski, W. (1987) 'Legal pluralism in the Hindu marriage', in Burghart, R. (ed.) *Hinduism in Great Britain: The perpetuation of religion in an alien cultural milieu*. London: Tavistock, pp. 180-200.
- Menski, W. (1988) 'English family law and ethnic law in Britain', *Kerala Law Times*, 1(1), pp. 56-66.
- Menski, W. (1999) 'South Asian women in Britain, Family Integration and the Primary Purpose Rule', in Barot, R., Bradley, H. & Fenton, S. (eds.) *Ethnicity, Gender and Social Change*. London: MacMillan Press, pp. 81 - 98.
- Menski, W. (2002) 'Hindu Law as a "Religious" System', in Huxley, A. (ed.) *Religion, Law and Tradition: Comparative studies in religious law*. UK: Routledge Curzon, pp. 108-126.
- Menski, W. (2003) *Hindu Law: Beyond tradition and modernity*. New Delhi: Oxford University Press.
- Menski, W. (2013) 'Governance and governability in South Asian family laws and in diaspora', *The Journal of Legal Pluralism and Unofficial Law*, 45(1), pp. 42-57.
- Menski, W. 2015. *Relative authority in a new age of chaos*.
- Menski, W. and Cambridge Books, O. (2006) *Comparative law in a global context: the legal systems of Asia and Africa*. Cambridge: Cambridge University Press.
- Merali, N. (2007) *Understandings of spousal sponsorship in South Asian international arranged marriages [Policy Brief]*, Edmonton, Alberta: University of Alberta. Available at: http://canada.metropolis.net/pdfs/merali_family_sponsorship_brief_aug2007_e.pdf (Accessed: 08 August 2016).
- Merali, N. (2009) 'Experiences of South Asian brides entering Canada after recent changes to family sponsorship policies', *Violence Against Women*, 15(3), pp. 321-339.
- Merry, S. E. (1988) 'Legal Pluralism', *Law & Society Review*, 22(5), pp. 869 - 896.
- Merry, S. E. (1990) *Getting Justice and Getting Even: Legal consciousness among working-class Americans*. Chicago Series in Law and Society Chicago: University of Chicago Press.
- Merry, S. E. (1992) 'Culture, Power and the Discourse of Law', *New York Law School Law Review*, 37(1 and 2), pp. 209 - 225.
- Merry, S. E. (1993) 'Mending walls and building fences: Constructing the private

- neighborhood', *The Journal of Legal Pluralism and Unofficial Law*, 25(33), pp. 71-90.
- Merry, S. E. (2006) *Human Rights and Gender Violence: Translating international law into local justice*. Chicago Series in Law and Society Chicago and London: The University of Chicago Press.
- Merry, S. E. (2009) *Gender Violence: A cultural perspective*. West Sussex (UK): Wiley-Blackwell.
- Mezey, N., Miller, T., Sarat, A. and Simon, J. (2003) *Cultural Analysis, Cultural Studies, and the Law: Moving Beyond Legal Realism*. Duke University Press.
- Milan, A., Canada, S. (2013) *Marital Status: Overview, 2011*. Ottawa: Minister of Industry (91-209-X).
- Minault, G. (1981) 'Introduction: The extended family as metaphor and the expansion of women's realm', in Minault, G. (ed.) *The Extended Family: Women and political participation in India and Pakistan*. Columbia, Missouri: South Asia Books, pp. 3-18.
- Minow, M. (2002) 'About women, about culture: About them, about us', in Richard A., S., Martha Minow, Hazel Rose Markus (ed.) *Engaging Cultural Differences: The Multicultural Challenge in Liberal Democracies*. New York: Russell Sage Foundation, pp. 252-268.
- Minow, M. and Shanley, M. L. (1996) 'Relational rights and responsibilities: Revisioning the family in liberal political theory and law', *Hypatia*, 11(1), pp. 4-29.
- Mnookin, R. H. and Kornhauser, L. (1979) 'Bargaining in the shadow of the law: The case of divorce', *The Yale Law Journal*, 88(5), pp. 950-997.
- Modood, T. (2006) 'British Muslims and the politics of multiculturalism', *Multiculturalism, Muslims and citizenship: a European approach*, pp. 37-56.
- Mongia, R. V. (2003) 'Race, Nationality, Mobility: A History of the Passport mongia', in Burton, A. (ed.) *After the Imperial Turn: Thinking with and Through the Nation*: Duke University Press, pp. 196-212.
- Moore, S. F. (1973) 'Law and Social Change: The Semi-Autonomous Social Field as an Appropriate Subject of Study', *Law & Society Review*, 7(4), pp. 719-746.
- Moore, S. F. 1978. *Law as social process*. London: Routledge & Kegan Paul.
- Moore, S. F. (1986) *Social facts and fabrications: "Customary" law on Kilimanjaro, 1880-1980*. The Lewis Henry Morgan Lectures/1981 Cambridge: Cambridge University Press.
- Mossman, M. J. (1992) 'Family in the Work of Madame Justice Wilson, The', *Dalhousie Law Journal*, 15(1), pp. 115-196.
- Mossman, M. J. (1994) 'GENDER EQUALITY, FAMILY LAW AND ACCESS TO JUSTICE', *International Journal of Law, Policy and the Family*, 8(3), pp. 357-373.
- Mossman, M. J. (2003-2004) 'Conversations about Families in Canadian Courts and Legislatures: Are There Lessons for the United States', *Hofstra Law Review*, 32(1), pp. 171-200.
- Mossman, M. J. and MacLean, M. (1986) 'Family law and social welfare: Toward a new equality', *Can. J. Fam. L.*, 5, pp. 79.
- Nader, L. and Todd, H. F. (1978) *The Disputing process: law in ten societies*. New York: Columbia University Press.
- Nayar, K. E. (2004) *The Sikh Diaspora in Vancouver: Three generations and tradition, modernity, and multiculturalism*. Toronto: University of Toronto Press.
- Netting, N. S. (2006) 'Two-lives, one partner: Indo-Canadian youth between love and arranged marriages', *Journal of Comparative Family Studies*, 37(1), pp. 129-146.
- Ng, R. (1993) 'Sexism, racism and Canadian nationalism', *Returning the gaze: Essays on racism, feminism and politics*, pp. 182-96.

- O'Barr, W. M. and Conley, J. M. (1985) 'Litigant satisfaction versus legal adequacy in small claims court narratives', *Law and Society Review*, pp. 661-701.
- Oberoi, H. (1994) *The Construction of Religious Boundaries*. Chicago: University of Chicago Press.
- Okin, S. M. (1999) *Is Multiculturalism Bad for Women?*: Princeton University Press.
- Palriwala, R. and Uberoi, P. (eds.) (2008) *Marriage, Migration and Gender*. London: Sage Publications.
- Parashar, A. (1992) *Women and Family Law Reform in India: Uniform Civil Code and gender equality*. New Delhi: Sage Publications India Pvt Ltd.
- Parashar, A. (2013) 'Religious Personal Laws as Non-State Laws: Implications for gender justice', *The Journal of Legal Pluralism and Unofficial Law*, 45(1), pp. 5-23.
- Parekh, B. (2006) *Rethinking Multiculturalism: Second Edition*. Palgrave Macmillan.
- Payne, J. D. and Payne, M. (2011) *Canadian Family Law*. 4th ed. edn. Toronto: Irwin Law.
- Paynter, J. 'Canada-Indian diplomatic relations'. *Genuine Mutual Interest: Proceedings of the plenary session of the silver jubilee conference of the Shastri Indo-Canadian Institute*, New Delhi: Shastri Institute, 39-48.
- Pearl, D. and Menski, W. (1998b) *Muslim Family Law*. 3 edn. London: Sweet & Maxwell.
- Pedraza, S. (1991) 'Women and migration: The social consequences of gender', *Annual review of sociology*, pp. 303-325.
- Pettigrew, J. (1972) 'Some notes on the social system of the Sikh Jats', *Journal of Ethnic and Migration Studies*, 1(5), pp. 354-363.
- Pettigrew, J. (1975) *Robber Noblemen: A study of the political system of the Sikh Jats*. London: Routledge & Keagan Paul.
- PewResearch (2012) *The Global Religious Landscape: A report on the size and distribution of the world's major religious groups as of 2010*, Washington, D.C.: Pew Research Center. Available at: <http://www.pewforum.org/2012/12/18/global-religious-landscape-other/> (Accessed: 2015/03/04/22:59:01).
- Phillips, A. (2003) 'When culture means gender: Issues of cultural defence in the English courts', *The Modern Law Review*, 66(4), pp. 510-531.
- Piper, N. (2006) 'Gendering the Politics of Migration1', *International Migration Review*, 40(1), pp. 133-164.
- Plattner, M. (1998) 'Liberalism and Democracy: Can't Have One Without the Other', *Foreign Affairs*(March/April 1998), Features, Available: Council on Foreign Relations (Accessed 4 April 2015).
- Pospisil, L. J. (1971) 'Anthropology of Law a Comparative Theory [by] Leopold Pospisil'.
- Pries, L. (2005) 'Configurations of geographic and societal spaces: a sociological proposal between 'methodological nationalism' and the 'spaces of flows'', *Global Networks*, 5(2), pp. 167-190.
- Punch, M. (1994) 'Politics and Ethics in Qualitative Research', in Denzin, N.K. & Lincoln, Y.S. (eds.) *Handbook on Qualitative Research*. 2 ed. Thousand Oaks, CA: Sage Publications, pp. 83-98.
- Purewal, N. K. (2010) *Son preference: Sex selection, gender and culture in South Asia*. Berg.
- Purewal, N. K. and Kalra, V. S. 'Women's 'popular' practices as critique: Vernacular religion in Indian and Pakistani Punjab'. *Women's Studies International Forum: Elsevier*, 383-389.
- Qureshi, K. (2015) 'Beyond Code-Switching: Young Punjabi Sikhs in Britain', *Young Sikhs in a Global World: Negotiating Traditions, Identities and Authorities*, pp. 191.
- Qureshi, K., Charsley, K. and Shaw, A. (2014) 'Marital instability among British

- Pakistanis: transnationality, conjugalities and Islam', *Ethnic and Racial Studies*, 37(2), pp. 261-279.
- Rajput, P. (2004) *A Situational Analysis of Women in Punjab*, New Delhi: National Commission for Women.
- Rao, N. (2007) 'Custom and the courts: ensuring women's rights to land, Jharkhand, India', *Development and change*, 38(2), pp. 299-319.
- Ralston, H. (1999) 'Canadian immigration policy in the twentieth century: its impact on South Asian women', *Canadian Woman's Studies*, 19(3), pp. 33-37.
- Ralston, H. (2000) 'Redefinition of South Asian Women', in Driedger, L. & Halli, S.S. (eds.) *Race and Racism: Canada's challenge*. Montreal: McGill/Queen's University Press, pp. 204 - 234.
- Raz, J. (1993) 'Multiculturalism: A liberal perspective', in Stout, N.J.H.H.H.D. (ed.) *Rect in een multiculturele samenleving*. Zwolle: Tjeenk Willink, pp. 127.
- Raz, J. (1998) 'Multiculturalism', *Ratio Juris*, 11(3), pp. 193-205.
- Razack, S. (1993) 'Storytelling for Social Change', in Bannerji, H. (ed.) *Returning the Gaze: Essays on racism, feminism and politics*. Toronto: Sister Vision Press, pp. 83 - 100.
- Razack, S. (2008a) *Casting Out: The eviction of Muslims from Western law and politics*. Toronto: University of Toronto Press.
- Razack, S. (2008b) 'Between a Rock and a Hard Place: Canadian Muslim women's responses to faith-based arbitration', in Mehdi, R., Petersen, H., Sand, E.R. & Woodman, G.R. (eds.) *Law and Religion in Multicultural Societies*. Copenhagen: DJØF Publishing, pp. 83-94.
- Razack, S. H. (2007) 'The 'Sharia law debate' in Ontario: The modernity/premodernity distinction in legal efforts to protect women from culture', *Feminist legal studies*, 15(3), pp. 3-32.
- Renteln, A. D. (1992) 'Justification of the Cultural Defense as Partial Excuse, A', *S. Cal. Rev. L. & Women's Stud.*, 2, pp. 437.
- Renteln, A. D. (2002) 'In defense of culture in the courtroom', in Richard A., S., Martha Minow , Hazel Rose Markus (ed.) *Engaging Cultural Differences : The Multicultural Challenge in Liberal Democracies*. New York: Russell Sage Foundation, pp. 194-215.
- Renteln, A. D. (2004) *The cultural defense*. Oxford University Press.
- Renteln, A. D. (2005) 'The Use and Abuse of the Cultural Defense', *Canadian journal of law and society*, 20(01), pp. 47-67.
- Roberts, S. and Comaroff, J. L. 1981. *Rules and Processes. The Cultural Logic of Dispute in the African Context*. Chicago: University of Chicago Press.
- Rosaldo, M. Z. (1974) 'Woman, culture, and society: A theoretical overview', *Woman, culture and society*, pp. 17-42.
- Rosenburg, M. 'Preface'. *Expanding Horizons: Rethinking access to justice in Canada*, 2000. Ottawa: Department of Justice Canada, i-ii.
- Roy, A. (2014) 'The doctor and the saint', in Anand, S. (ed.) *Annihilation of Caste: The annotated critical edition B.R. Ambedkar*. New York: Verso, pp. 17-179.
- Rudolph, L. and Rudolph, S. (1967) *The Modernity of Tradition: Political development in India*. Chicago: University of Chicago Press.
- Said, E. (1978) *Orientalism: Western conceptions of the orient*. New York: Vintage Books, p. 394.
- Said, E. (1979) 'Orientalism. 1978', New York: Vintage, 1994.
- Sandhu, K. S. (1970) 'Sikh immigration into Malaya during the period of British rule', *Studies in the social history of China and South-East Asia*, pp. 335-354.
- Sanket, Planning Commission, G.o.I.P. (2004) *Human Development Report 2004: Punjab*.

- Chandigarh, India: The Government of Punjab.
- Sarat, A. (1981) 'Book Review: Access to Justice by Mauro Cappelletti; Bryant Garth; John Weisner; Klaus-Friedrich Koch, 1978', *Harvard Law Review*, 94(8).
- Sarat, A. and Felstiner, W. L. (1986) 'Law and strategy in the divorce lawyer's office', *Law and Society Review*, pp. 93-134.
- Sarat, A. and Felstiner, W. L. (1988) 'Law and social relations: vocabularies of motive in lawyer/client interaction', *Law and Society Review*, pp. 737-769.
- Sarkar Shastri, G. C. (1933) *A Treatise on Hindu Law*. 7th edn. Calcutta: B. Banerjee & Co.
- Schiller, N. G., Basch, L. and Blanc, C. S. (1995) 'From immigrant to transmigrant: Theorizing transnational migration', *Anthropological quarterly*, pp. 48-63.
- Seron, C. (2016) 'The Two Faces of Law and Inequality: From Critique to the Promise of Situated, Pragmatic Policy', *Law & Society Review*, 50(1), pp. 9-33.
- Sethi, R. M. (2009) 'Gender and reform in Punjab', in Chowdhry, P. (ed.) *Gender discrimination in land ownership: Land reforms in India*. New Delhi: Sage Publications India Pvt Ltd, pp. 229-243.
- Shachar, A. (1998) 'Group Identity and Women's Rights in Family Law: The perils of multicultural accommodation', *The Journal of Political Philosophy*, 6(3).
- Shachar, A. (2000) 'Should Church and State be joined at the altar? Women's rights and the multicultural dilemma', in *Citizenship in Diverse Societies*. pp. 25 [Online]. Version.
- Shachar, A. (2005) 'Religion, State, and the Problem of Gender: New Modes of Citizenship and Governance in Diverse Societies', *McGill LJ*, 50, pp. 49.
- Shachar, A. (2010) 'State, Religion, and the Family: The new dilemmas of multicultural accommodation', in Ahdar, R. & Aroney, N. (eds.) *Shari'a in the West*: Oxford University Press, pp. 115-133.
- Shah, P. (2005) *Legal pluralism in conflict: coping with cultural diversity in law*. London; Portland, Or.: Glass House Press.
- Shah, P. (ed.) (2007) *Law and Ethnic Plurality: Socio-legal perspectives*. Leiden: Martinus Nijhoff Publishers.
- Shah, P. (2009) 'Transforming to accommodate? Reflections on the shari'a debate in Britain', in Grillo, R., Ballard, R., Ferrari, A., Hoekema, A., Maussen, M. & Shah, P. (eds.) *Legal practice and cultural diversity*. Aldershot: Ashgate, pp. 73-92.
- Shah, P. (2010a) 'Inconvenient marriages, or what happens with ethnic minorities marry trans-jurisdictionally according to their self-chosen norms', *Queen Mary University of London, School of Law Legal Studies Research Paper*, 47, pp. 17-32.
- Shah, P. (2010b) 'A reflection on the Shari'a Debate in Britain', *Queen Mary University of London, School of Law Legal Studies Research Paper*, 71, pp. 71-98.
- Shah, P. (2012) 'In pursuit of the pagans: Muslim law in the English context', *RELIGARE (Religious Diversity and Secular Models in Europe - Innovative approaches to law and policy)*, pp. 17, religareproject.eu, Available: RELIGARE.
- Shah, P. (2013) 'Asking about reasonable accommodation in England', *International Journal of Discrimination and the Law*, pp. 1-30.
- Shah-Kazemi, S. N. (2001) *Untying the Knot: Muslim Women, Divorce and the Shariah*. Nuffield Foundation.
- Sharafi, M. (2008) 'Justice in many rooms since Galanter: de-romanticizing legal pluralism through the cultural defense', *Law and Contemporary Problems*, 71(2), pp. 139-146.
- Shariff, F. (2013) 'Harmony ideology revisited: spatial geographies of hegemony and disputing strategies amongst the Santal', *The Journal of Legal Pluralism and Unofficial Law*, 45(1), pp. 124-143.

- Sharma, K. P. (2006) *Indian Women: Marriage, divorce and adjustment*. New Delhi: Classical Publishing Company.
- Sharma, U. (1999) *Dowry in North India: its consequences for women*.
- Sheel, R. (2008) 'Marriage, money and gender: A case study of the migrant Indian community in Canada', *Women and migration in Asia*, 5, pp. 215-234.
- Silbey, S. S. (1992) 'Making a place for cultural analyses of law', *Law & Social Inquiry*, 17(1), pp. 39-48.
- Silbey, S. S. (2005) 'After legal consciousness', *Annu. Rev. Law Soc. Sci.*, 1, pp. 323-368.
- Silbey, S. S. (2008) 'Legal consciousness', *New Oxford Companion to Law*.
- Silbey, S. S. and Merry, S. E. (1986) 'Mediator settlement strategies', *Law & Policy*, 8(1), pp. 7-32.
- Singh, G. (2006) *Sikhs in Britain : the making of a community*. London %3B New York: Zed Books.
- Singh, K. B. K. (2004) *Deserted & Divorced Women in Contemporary Society*. New Delhi: National Publishing House.
- Singh, N.-G. K. (2010) 'Why did I not Light the Fire? The Refeminization of Ritual in Sikhism', in Jakobsh, D.R. (ed.) *Sikhism and Women; History, Texts, and Experience*. India: Oxford University Press, New Delhi, pp. 205-233.
- Singh, P. (2004a) 'Sikh Identity in the Light of History: A Dynamic Perspective', in Barrier, P.S.a.N.G. (ed.) *Sikhism and History*. New Delhi: Oxford University Press, pp. 77-110.
- Singh, P. (2008) *Federalism, nationalism and development: India and the Punjab economy*. Routledge contemporary South Asia series London, New York: Routledge, p. 223.
- Singh, S. J. (2016) *The life of the puratan janamsakhi: Tracing the earliest memories of Guru Nanak*. PhD, Columbia University.
- Smith, M. G. (1974) *The plural society in the British West Indies*. Univ of California Press.
- Smith, M. P. (2005) 'Transnational urbanism revisited', *Journal of Ethnic and Migration Studies*, 31(2), pp. 235-244.
- Som, R. (1994) 'Jawaharlal Nehru and the Hindu Code: A Victory of Symbol over Substance?', *Modern Asian Studies*, 28(01), pp. 165-194.
- Song, S. 2014. Multiculturalism. In: Zalta, E.N. (ed.) *The Stanford Encyclopedia of Philosophy*. Spring 2014 ed.
- Sossin, L. (2010) *Listening to Ontarians*, Toronto: Law Society of Upper Canada. Available at: http://www.lsuc.on.ca/media/may3110_oclnreport_final.pdf (Accessed: 2014/12/12/).
- Subramanian, N. (2010) 'Making family and nation: Hindu marriage law in early postcolonial India', *The Journal of Asian Studies*, pp. 771-798.
- Subramanian, N. (2014) *Nation and Family: Personal Law, Cultural Pluralism, and Gendered Citizenship in India*. Stanford University Press.
- Superior Court of Justice, O. S. (2008) *News and Publications: Publications - Family Law Strategic Plan: Superior Court of Justice, Ontario*. Available at: <http://www.ontariocourts.ca/scj/news/publications/strategic/> (Accessed: 11 April 2015 2015).
- Tamanaha, B. Z., Sage, C. and Woolcock, M. (2012) *Legal pluralism and development*. Cambridge: Cambridge University Press.
- Tatla, D. S. (2005) *The Sikh diaspora: The search for statehood*. Routledge.
- Taylor, C. (1994) 'The Politics of Recognition', in Gutmann, A. (ed.) *Multiculturalism: Examining the Politics of Recognition*. Princeton: Princeton University Press, pp. 25-73.

- Thandi, S. S. (2013) "'Shady Character, Hidden Designs, and Masked Faces': Reflections on 'Vilayti' Sikh marriages and discourses of abuse', in Hawley, M. (ed.) *Sikh Diaspora: Theory, Agency, and Experience: Vol. 144 Numen Book Series*. Leiden: BRILL, pp. 233-259.
- Thobani, S. (2000) 'Nationalizing Canadians: Bordering immigrant women in the late twentieth century', *Canadian Journal of Women and the Law*, 12(279), pp. 279 - 312.
- Thobani, S. (2007) *Exalted subjects: Studies in the making of race and nation in Canada*. Toronto: University of Toronto Press.
- Toor, S. (2009) 'British Asian Girls, Crime and', *Youth Justice*, 9(3), pp. 239-253.
- Tran, K., Kaddatz, J. and Allard, P. (2005) *South Asians in Canada: Unity through diversity: Statistics Canada 11-008*.
- Trubek, D. M. (2014) 'Law and Development: 40 Years after Scholars in Self Estrangement-A Preliminary Review', *Univ. of Wisconsin Legal Studies Research Paper*, (1255).
- Twining, W. (2004) 'Diffusion of law: a global perspective', *The Journal of Legal Pluralism and Unofficial Law*, 36(49), pp. 1-45.
- Uberoi, P. (1998) 'The diaspora comes home: Disciplining desire in DDLJ', *Contributions to Indian sociology*, 32(2), pp. 305-336.
- Umphrey, M. M. (1999) 'The Dialogics of Legal Meaning: Spectacular Trials, the Unwritten Law, and Narratives of Criminal Responsibility', *Law & Society Review*, 33(2), pp. 393-423.
- van Dijk, T. (1993) 'Principles of Critical Discourse Analysis', *Discourse and Society*, 4(2), pp. 249 - 283.
- Van Dijk, T. A. (1993) 'Principles of critical discourse analysis', *Discourse & society*, 4(2), pp. 249-283.
- Van Praagh, S. (1993) 'Bringing the Charter home', *McGill Law Journal*, 38(1), pp. 233-250.
- Vatuk, S. (2013) 'The "women's court" in India: an alternative dispute resolution body for women in distress', *The Journal of Legal Pluralism and Unofficial Law*, 45(1), pp. 76-103.
- Veal, A. J. 2005. *Business research methods: A managerial approach*. Pearson Education Australia/Addison Wesley.
- Vertovec, S. (2007) 'Super-diversity and its Implications', *Ethnic and Racial Studies*, 30(6), pp. 1024-1054.
- Virdi, P. K. (2013) 'Barriers to Canadian justice: immigrant Sikh women and izzat', *South Asian Diaspora*, 5(1), pp. 107-122.
- Volpp, L. (1996) 'Talking" culture": Gender, race, nation, and the politics of multiculturalism', *Columbia Law Review*, 96(6), pp. 1573-1617.
- Volpp, L. (2001) 'Feminism versus multiculturalism', *Columbia Law Review*, 101(1181), pp. 1181-1218.
- Volpp, L. (2007) 'The culture of citizenship', *Theoretical Inquiries in Law*, 8(2), pp. 571-602.
- von Benda-Beckmann, F. (1979) 'The Pluralistic Situation', *Property in Social Continuity: Springer*, pp. 113-136.
- von Benda-Beckmann, F. (2002) 'Who's afraid of legal pluralism?', *The Journal of Legal Pluralism and Unofficial Law*, 34(47), pp. 37-82.
- von Benda-Beckmann, K. (1981) 'Forum shopping and shopping forums: Dispute processing in a Minangkabau village in West Sumatra', *The Journal of Legal Pluralism and Unofficial Law*, 13(19), pp. 117-159.
- Walton-Roberts, M. (2003) 'Transnational Geographies: Indian immigration to Canada',

- Canadian Geographer, 47(3), pp. 235-250.
- Walton-Roberts, M. (2008) 'Weak ties, immigrant women and neoliberal states: Moving beyond the public/private binary', *Geoforum*, 39(1), pp. 499-510.
- Walton-Roberts, M. (2013) 'South Asian diasporas in Canada', *South Asian Diaspora*, 5(1), pp. 1-5.
- Walton-Roberts, M. and Chilvers, S. (2014) 'Introduction: Deconstructing the (re)construction of South Asian identities in Canada', *Diaspora: A journal of transnational studies*, 17(2), pp. 121-129.
- Walton-Roberts, M. and Pratt, G. (2005) 'Mobile Modernities: A South Asian family negotiates immigration, gender and class in Canada', *Gender, Place and Culture*, 12(2), pp. 173-195.
- Werbner, P. (1993) 'The Sikh Diaspora: Migration and the experience beyond Punjab by N. Gerald Barrier; Verne A Dusenbery', *American Ethnologist*, 20(2), pp. 417-418.
- Werbner, P. (2004) 'Theorising Complex Diasporas: Purity and Hybridity in the South Asian Public Sphere in Britain', *Journal of Ethnic and Migration Studies*, 30(5), pp. 895-911.
- Wiegers, W. (2011) 'Child-centred advocacy and the invisibility of women in poverty discourse and social policy', in Dorothy E. Chunn, S.B., Hester Lessard (ed.) *Reaction and Resistance: Feminism, Law, and Social Change*: UBC Press, pp. 229-261.
- Williams, L. (2010) 'Transnational Marriage within South Asian Communities', *Global Marriage: Cross border marriage in global context*. London: Palgrave MacMillan, pp. 99 – 119.
- Wilson, B. H., Blocksom, P., Bourque, S., Dumont, D., Hagen, J., McIvor, S., Robertson, J. Q. C. and Sparks, C. H. (1993) *Touchstones for Change: Equality, Diversity and Accountability*, Ottawa, Ontario: The Canadian Bar Association.
- Wood, J. R. (1978) 'East Indians and Canada's new immigration policy', *Canadian Public Policy/Analyse de Politiques*, pp. 547-567.
- Woodman, G. R. (1998) 'Ideological combat and social observation: recent debate about legal pluralism', *The Journal of Legal Pluralism and Unofficial Law*, 30(42), pp. 21-59.
- Wray, H. (2006) 'An ideal husband? Marriages of convenience, moral gate-keeping and immigration to the UK', *European Journal of Migration and Law*, 8(3-4), pp. 303-320.
- Wray, H. (2009) 'Moulding the migrant family', *Legal Studies*, 29(4), pp. 592-618.
- Wray, H. (2011) *Regulating marriage migration into the UK: A stranger in the home*. Ashgate Publishing, Ltd.
- Wray, H., Agoston, A. and Hutton, J. (2014) 'A family resemblance? The regulation of marriage migration in Europe', *European Journal of Migration and Law*, 16(2), pp. 209-247.
- Yelaja, P. and Benzie, R. (2005) 'McGinty: No Sharia Law - Move Stuns Sharia Foes, Supporters', *Toronto Star*, 12 September 2005, p. 1.
- Yngvesson, B. (1985) 'Re-examining continuing relations and the law', *Wis. L. Rev.*, pp. 623.
- Young, C. and Boyd, S. B. (2007) 'Challenging Heteronormativity? Reaction and resistance to the legal recognition of same sex partnerships', *Reaction and Resistance to the Legal Recognition of Same Sex Partnerships*.

