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Articles

“Bread for the Poor”: Access to Justice and the Rights of the Needy in India*

MARC GALANTER† & JAYANTH K. KRISHNAN‡

India is rightly acclaimed for achieving a flourishing constitutional order, presided over by an inventive and activist judiciary, aided by a proficient bar, supported by the state and cherished by the public. At the same time, the courts, and tribunals where ordinary Indians might go for remedy and protection, are beset with massive problems of delay, cost, and ineffectiveness. Potential users avoid the courts; in spite of a longstanding reputation for litigiousness, existing evidence suggests that Indians avail themselves of the courts at a low rate, and the rate appears to be falling.¹ Still, the courts remain grid-

* Parts I and II of this Article consist of a modified excerpt from Marc Galanter & Jayanth K. Krishnan, *Debated Informalism: Lok Adalats and Legal Rights in Modern India*, in *BEYOND COMMON KNOWLEDGE: EMPIRICAL APPROACHES TO THE RULE OF LAW*, at 104–16 (Erik G. Jensen & Thomas C. Heller eds., 2003).

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1. Although reliable data are scarce and the state of record keeping makes collecting them a daunting task, there are some bits to suggest that India is among the lowest in the world in per capita use of civil courts. Some years back, Professor Christian Wollschläger presented a comparison of the per capita rate of filing of civil cases in some thirty-five jurisdictions for the ten-year period between 1987 and 1996. Annual rates of filing in courts of first instance per 1000 persons ranged from 123 in Germany and 111 in Sweden at the high end to 2.6 in Nepal and 1.7 in Ethiopia at the bottom. Since no national figures are available for India, Professor Wollschläger included in his comparison figures on Maharashtra, one of India's most industrialized states, whose capital (Mumbai or Bombay) is India's financial center. Maharashtra ranked thirty-second of the thirty-five jurisdictions with an annual per capita rate of 3.5 filings per 1000 persons. Of course, it is true that Wollschläger looked only at a single state and one ten-year period, and there is a question as to how representative his finding is for

locked.² There is wide agreement that access to justice in India requires reforms that would enable ordinary people to invoke the remedies and protections of the law. In this study we focus on an innovative forum, introduced just twenty years ago, which has enjoyed substantial governmental and judicial support and is endorsed and promoted, indeed given pride of place by influential elites, as a promising avenue of access to jus-

India overall. But there is no reason to think that Maharashtra has less litigation than India as a whole, since the data point to a general correlation of court use with economic development. See Christian Wollschläger, *Exploring Global Landscapes of Litigation Rates*, in *SOZIOLOGIE DES RECHTS: Festschrift für Erhard Blankenburg zum 60. Geburtstag* (Jürgen Brand & Dieter Stempel eds., 1998). Also a recent Asian Development Bank (ADB) comparison of legal institutions in six Asian nations offers rough confirmation both of the absolute level of court use in India and its low comparative rank. Comparing India with China, Taiwan, Korea, Malaysia, and Japan, the ADB study found that in India, the rate of filing cases in the lower civil courts was 1209 per million [1.2 per thousand] population in 1995. This is about one-third as many cases as Wollschläger found, which probably reflects the differences between Maharashtra and India as a whole as well as in the acuity of the researchers. The Indian rate is only slightly higher than the Chinese, but the Chinese figure includes only commercial cases. And the Indian rate is far lower than that of the other countries in the comparison. Malaysia, the country whose legal institutions most resemble those of India had a civil litigation rate in 1990 of 17,850 cases per million [17.8 per thousand] population—roughly fifteen times that of India. India's placement at the bottom of this list is especially remarkable if we recall that Japan (3386.8 civil cases per million [3.4 per thousand of a population containing a much higher proportion of adults]) and Korea (14,713 civil cases per million [14.7 per thousand], excluding family cases) are famously "unlitigious" societies. Obviously, these comparisons are far from exact but, as rough as they are, they put into question the notion that the Indian courts are victims of an excessively litigious population. See KATHARINA PISTOR ET AL., *THE ROLE OF LAW AND LEGAL INSTITUTIONS IN ASIAN ECONOMIC DEVELOPMENT 1960-1995*, 246 *tbl.* 7.18 (1999). Also consider Robert Moog's work, which has examined litigation rates in Uttar Pradesh from 1951 to 1976. (In 1976 the state stopped issuing these statistics.) He found that per capita civil filings in all district level courts in Uttar Pradesh had fallen dramatically from the early days of Independence, when there were 1.63 per thousand persons in 1951, to 1976 when there were only 0.88 per thousand. See Robert Moog, *Indian Litigiousness and the Litigation Explosion*, 33 *ASIAN SURV.* 1136, 1138-39 *tbl.* 1 (1993). Going back even further, Oliver Mendelsohn observes that "[t]here is now less litigation in absolute terms than there was in the nineteenth century or first half of the . . . [twentieth] century and, therefore, far less relative to population." See Oliver Mendelsohn, *The Pathology of the Indian Legal System*, 15 *MOD. ASIAN STUD.* 823, 849 (1981). The continuation of this downward trend receives some confirmation from the ADB study which reported that in "1960 [there were] 610.4 court cases in civil matters per million people [0.6 per thousand] . . . but in 1995 there were only 507.9 [0.5 per thousand] civil cases."

This discussion as well as much of the subsequent discussion on the Indian legal system in Parts I and II of the main text draw from a much longer study conducted by the authors. See generally Galanter & Krishnan, *supra* note *, at 96. What is presented in Parts I and II below is a modified excerpt from that article. For the full, 20,000 plus word historical discussion consult the article, although note, in that study the authors had not yet collected the original empirical data that are at the heart of this Article and will be presented in Parts III and IV.

2. The courts appear to be heavily used because there are relatively few courts in India. Most common law countries tend to have fewer judges than civil law countries. Consider the table in appendix A. Data we have collected suggests that India has only one-tenth to one-sixth the number of judges per capita that are found in the developed parts of the common law world. See also Bibek Debroy, *Losing a World Record*, *FAR E. ECON. REV.*, Feb. 14, 2002, at 23 (noting that there are "23 million pending court cases—20,000 in the Supreme Court, 3.2 million in the High Courts and 20 million in lower or subordinate courts").

tice. This forum is the Lok Adalat, literally “people’s court,” and as the name suggests it is promoted as having a different source and character than the courts of the state. In fact, the Lok Adalat is a creature of the state, but because of the pretension that it is not, it deserves examination under the rubric of an alternative, non-state justice system. We suspect that a number of the inhabitants of that category bear a similar ambivalent relationship to the state.

This Article will proceed in the following manner: Part I recounts the post-Independence movement to establish village-based courts as a key method of enlarging public access to justice. After discussing the setbacks this movement encountered, we contrast the top-down “public interest litigation” approach that emerged in the wake of the Emergency period (1975–1977). In Part II we focus on how, beginning in the 1980s, judges and politicians returned to the captivating idea of settling disputes in an indigenous, traditional manner at the grassroots level. During this time, the concept of the Lok Adalat started gaining significant momentum, and we discuss the reasons why so many supported expanding this alternative dispute institution throughout India. In Part III we present findings from our preliminary observations of several different types of Lok Adalats. We conclude that the claim that this forum offers participants speedy, fair, and deliberative justice needs serious reconsideration.

I. EARLIER “ACCESS TO JUSTICE” INITIATIVES

A. *NYAYA PANCHAYATS*: A FAILED ATTEMPT TO RECONSTITUTE JUSTICE ALONG “INDIGENOUS” LINES

The Lok Adalat movement is a recent arrival on the “Access to Justice” scene. A movement to restore an indigenous legal system flourished briefly in the years just after Indian Independence.³ Gandhians and socialists within the ruling Indian National Congress viewed the legal system inherited from the British as unsuitable to a reconstructed India, in which faction and conflict bred by colonial oppression would be replaced by harmony and conciliation. They proposed the displacement of modern courts by restored traditional *panchayats*—a proposal that met with the nearly unanimous disdain of lawyers and judges and the vitriolic scorn of Dr. B.R. Ambedkar, chair of the Constitution’s Drafting Committee, who sidetracked the push for *panchayats* into a non-justiciable Directive Principle.⁴ As part of the Panchayati Raj [local self-government] policy of

3. Marc Galanter, *The Aborted Restoration of “Indigenous” Law in India*, in *LAW AND SOCIETY IN MODERN INDIA* 38–39 (Rajeer Dhavan ed., 1989) [hereinafter Galanter, *Aborted Restoration*].

4. *Id.* at 40 n.16. Article 40 states that: “The State shall take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as

the late 1950s, judicial, or *nyaya panchayats* were established with jurisdiction over specific categories of petty cases.⁵

Although these *nyaya panchayats* derived sentimental and symbolic support from appeal to the virtues of the indigenous system, they were quite different from traditional *panchayats*. They applied statutory law rather than indigenous norms; they made decisions by majority rule rather than unanimity; their membership was chosen by popular election from territorial constituencies rather than consisting of the leading men of a caste.⁶ Indeed the focus on the "village" *panchayat* represented an attempt to recreate an idealized version of traditional society that emphasized democratic fellowship and ignored the caste basis of that society and its justice institutions.⁷

Like their traditional counterparts, these official *nyaya panchayats* encountered severe problems of establishing their independence of personal ties with the parties, enforcing their decrees, and acting expeditiously.⁸ They never attracted significant support from the villagers in whose name they were established. Their caseloads declined steadily while those of the courts continued to rise. In Uttar Pradesh, civil filings in the *nyaya panchayats* fell from 82,321 in 1960 to 22,912 in 1970—just over four cases per *nyaya panchayat*.⁹ During the same period, civil filings in the Subordinate Courts rose from 74,958 to 86,749.¹⁰ One indicator of their demise is found in the experience of a researcher in Uttar

units of self-government." For a classic work on the appeal of "traditional" institutions, see LLOYD I. RUDOLPH & SUSANNE HOEBER RUDOLPH, *THE MODERNITY OF TRADITION: POLITICAL DEVELOPMENT IN INDIA* (1967).

5. Upendra Baxi & Marc Galanter, *Panchayat Justice: An Indian Experiment in Legal Access*, in 3 *ACCESS TO JUSTICE: EMERGING ISSUES AND PERSPECTIVES* (Mauro Cappelletti & Bryant Garth eds., 1978); see also DR. R. KUSHAWAHA, *WORKING OF NYAYA PANCHAYATS IN INDIA: A CASE STUDY OF VARANASI DISTRICT* (Dr. L.M. Singhri ed., 1977).

6. KUSHAWAHA, *supra* note 5, at 31–63.

7. Reviewing the literature on *panchayats*, Robert Hayden concludes that there was no such thing as a "village" *panchayat*, but only caste *panchayats* that, if sufficiently powerful locally, might decide matters involving members of other castes as well. See ROBERT HAYDEN, *DISPUTES AND ARGUMENTS AMONGST NOMADS* 83–109 (1999); see also LOUIS DUMONT, *HOMO HIERARCHICUS: THE CASTE SYSTEM AND ITS IMPLICATIONS* 170–172 (1970) (noting that "we conclude that on the eve of British conquest, and excepting exceptional cases, there was no village *panchayat* as a permanent institution distinct from caste *panchayats*. There was a *panchayat* of the dominant caste of the village, and there were meetings of *ad hoc* arbitrators or judges, of a temporary nature.").

8. Catherine S. Meschievitz & Marc Galanter, *In Search of Nyaya Panchayats: The Politics of a Moribund Institution*, in 2 *THE POLITICS OF INFORMAL JUSTICE: COMPARATIVE STUDIES* 47–77 (Richard L. Abel ed., 1982).

9. Baxi & Galanter, *supra* note 5, at 369 tbl.1.

10. *Id.* at 371 tbl.2. See also KUSHAWAHA, *supra* note 5, at 99 (noting that in his study of Varansi district in Uttar Pradesh, "during the eleven years (1960–70) only 10,449 cases were instituted before 289 Nyaya Panchayat in the whole of the district. This works out at an average of 4 cases per Nyaya Panchayat per year.").

Pradesh in the 1970s, frustrated by the rarity of *nyaya panchayat* sessions, whose villager hosts graciously offered to convene one to facilitate her research.¹¹

In little more than a decade, *nyaya panchayats* were moribund.¹² It is not clear whether they withered away because they lacked the qualities of the traditional indigenous tribunals or because they displayed them all too well. We believe that it was most likely because they represented an unappetizing combination of the formality of official law with the political malleability of village tribunals. As Catherine Meschivitz summed it up, “the N[yaya] P[anchayat] is thus a body of men . . . that handles disputes without regard to applicable rules and yet appears to villagers as formal and incomprehensible.”¹³

Nevertheless, the *panchayat* idea continued to exert a powerful attraction on legal intellectuals.¹⁴ The 1973 report of the Expert Committee on Legal Aid, chaired by (and consisting of) Justice Krishna Iyer, a report that viewed itself as a radical critique of Indian legal arrangements, speaks glowingly of *nyaya panchayats* as part of a larger scheme of legal aid and access to the courts.¹⁵ *Panchayats* are endorsed as a method of incorporating lay participation into the administration of justice.¹⁶ But it is clear that the justice in mind is “legal justice,” the law of the land, and not that of the villagers or their spiritual advisors.¹⁷ *Panchayats* are commended as inexpensive, accessible, expeditious, and suitable to preside

11. Meschivitz & Galanter, *supra* note 8, at 55.

12. *Id.* at 68–70.

13. *Id.* at 66. For a recent study that reviews how *Nyaya Panchayats* functioned in the years following Independence in Rajasthan, Uttar Pradesh, and Karnataka, see S.N. MATHUR, *NYAYA PANCHAYATS AS INSTRUMENTS OF JUSTICE* 43–77 (1997) (concluding that although *Nyaya Panchayats* had moments of promise, and at times even brought important legal services to those at the local levels, ultimately they were plagued by inconsistent rulings, inept administrators, a weak infrastructure, delay, and a lack of full accountability to the public).

14. The attraction long antedates independent India. For an account of the love affair of reformers with *panchayats*, see CATHERINE S. MESCHIVITZ, *PANCHAYAT JUSTICE: STATE-SPONSORED INFORMAL COURTS IN 19TH AND 20TH CENTURY INDIA* 18–21 (Disputes Processing Research Program, Institute for Legal Studies, University of Wisconsin Madison Law School, Working Paper 8:1, 1987).

15. GOVERNMENT OF INDIA, MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS, DEPARTMENT OF LEGAL AFFAIRS, REPORT OF THE EXPERT COMMITTEE ON LEGAL AID—PROCESSUAL JUSTICE TO THE PEOPLE (1973) [hereinafter REPORT OF THE EXPERT COMMITTEE].

16. *Id.* at 137–45; see also D.A. Desai, *Alternative Dispute Resolution Mechanism: Role of Legal Profession, Dispute Commissions and Family Courts and Nyaya Panchayats—Participatory Justice, in ROLE OF LAW AND JUDICIARY IN TRANSFORMATION OF SOCIETY: INDIA-GDR EXPERIMENTS* 80 (D.A. Desai ed., 1984) (“*Nyaya Panchayats* offer a forum for participatory justice. Local village groups fully aware of local problems, local solutions and local environment would tend to resolve the dispute in the spirit of give and take, fairplay and equity.”).

17. REPORT OF THE EXPERT COMMITTEE, *supra* note 15, at 145.

over conciliatory proceedings.¹⁸ The *panches* envisioned by the report are not village notables but superannuated judges and retired advocates.

The follow-up report of the Bhagwati Committee, charged with proposing concrete measures to secure access to justice for the poor, endorses a system of “law and justice at the panchayat level with a conciliatory methodology.”¹⁹ The argument was that *panchayats* would remove many of the defects of the British system of administration of justice, since they would be manned by people with knowledge of local customs and habits, attitudes and values, familiar with the ways of living and thought of the parties before them.²⁰ Yet again the proposed *panchayats* do not depart from established notions of law. There was to be a presiding judge having knowledge of law, and the lay members were to receive rudimentary legal training.²¹ There would be no lawyers and the tribunal would proceed informally, its decisions subject to review by the district court.²² What is proposed is an informal, conciliatory, non-adversarial small claims court with some lay participation. This follow-up report—written by distinguished activist judges dedicated to enlarging access to justice—thus registered the appeal of the locally based “indigenous” forum under the guidance of an educated and beneficent outsider.

The catalyst in the formation of the Lok Adalat template was an influential 1976 article by Upendra Baxi, then India’s most prominent legal academic, well connected to activist circles within the judiciary. Baxi described a “Lok Adalat” run by Harivallabh Parikh, a charismatic Gandhian social worker in a tribal area of Gujarat.²³ This forum was independent of the official law, both institutionally and normatively, although it bore no evident connection to traditional tribal institutions. As in the Krishna Iyer and Bhagwati reports, the imagery of indigenous justice was combined with celebration of conciliation and local responsiveness under the leadership of an educated outsider. These visions of paternalistic indigenous justice, published during the 1975–1977 Emergency, provided the basis for future developments. The end of Emergency Rule and the return to democracy in 1977 brought great ferment in

18. *Id.* at 139.

19. See P.N. BHAGWATI, REPORT ON NATIONAL JURIDICARE: EQUAL JUSTICE-SOCIAL JUSTICE 33–34 (Ministry of Law, Justice & Company Affairs, 1976).

20. *Id.* at 34–40.

21. *Id.* at 36–41.

22. *Id.* at 39.

23. Upendra Baxi, *From Takrar to Karar: The Lok Adalat at Rangpur—A Preliminary Study*, 10 J. OF CONST. AND PARLIAMENTARY STUD. 52 (1976). Baxi reports that the term “Lok Adalat” was used by participants in Rangpur (correspondence with Baxi, Mar. 13, 2002). His article may well be the source of its wider and official use.

the Indian legal world and inspired hope that institutions and organizations could be fashioned to protect the rights of the powerless.²⁴

B. PUBLIC INTEREST LITIGATION: "ACCESS" THROUGH THE TOP

In the early 1980s a small number of judges and lawyers, seeking ways to actualize the Constitution's promises of justice—promises that were so starkly unrealized in practice—embarked on a series of unprecedented and electrifying initiatives. These included relaxation of requirements of standing, appointment of investigative commissions, appointment of lawyers as representatives of client groups, and a so-called "epistolary jurisdiction" in which judges took the initiative to respond proactively to grievances brought to their attention by third parties, letters, or newspaper accounts.²⁵ Public interest litigation, or social action litigation, as these initiatives are now called, sought to use judicial power to protect excluded and powerless groups (such as prisoners, migrant laborers, and the environmentally susceptible) and to secure entitlements that were going unredeemed.²⁶

24. See generally Upendra Baxi, *Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India*, in JUDGES AND THE JUDICIAL POWER 289 (Rajeev Dhavan et al. eds., 1985); Smitu Kothari, *Social Movements and the Redefinition of Democracy*, in INDIA BRIEFING 141–51 (Philip Oldenburg ed., 1993) (noting that following the Emergency there was an enthusiasm among civil rights and public interest organizations that democracy could be ensured by the rule of law).

25. See Carl Baar, *Social Action Litigation in India: The Operation and Limitations of the World's Most Active Judiciary*, 19 POL'Y STUD. J. 140, 142, 147 (1990); P.N. Bhagwati, *Judicial Activism and Public Interest Litigation*, 23 COLUM. J. TRANSNAT'L. L. 561, 570–75 (1985); Rajeev Dhavan, *Law as Struggle: Public Interest Law in India*, 36 J. OF THE INDIAN L. INST. 302, 306–08 (1994) [hereinafter Dhavan, *Law as Struggle*].

26. For a recent and comprehensive account, see S.P. SATHE, *JUDICIAL ACTIVISM IN INDIA: TRANSGRESSING BORDERS AND ENFORCING LIMITS* (2002). The vast literature includes UPENDRA BAXI, *COURAGE, CRAFT AND CONTENTION: THE INDIAN SUPREME COURT IN THE EIGHTIES* (1985); Marc Galanter, *New Patterns of Legal Services in India*, in LAW AND SOCIETY IN MODERN INDIA, *supra* note 3, at 279–95 [hereinafter Galanter, *New Patterns*]; Baar, *supra* note 25; Baxi, *supra* note 24; Bhagwati, *supra* note 25; Jamie Cassels, *Judicial Activism and Public Interest Litigation in India: Attempting the Impossible?* 37 AM. J. COMP. L. 495 (1989); Clark D. Cunningham, *Public Interest Litigation in the Indian Supreme Court: A Study in the Light of American Experience*, 29 J. OF THE INDIAN LAW INST. 494 (1987); Dhavan, *Law as Struggle*, *supra* note 25; Oliver Mendelsohn, *Life and Struggles in the Stone Quarries of India: A Case-Study*, 29 J. OF COMMONWEALTH AND COMP. POL. 44 (1991); N.R. Madhava Menon, *Justice Sans Lawyers: Some Indian Experiments*, 12 INDIAN BAR REV. 446 (1985); G.L. Peiris, *Public Interest Litigation in the Indian Subcontinent: Current Dimensions*, 40 INT'L & COMP. L.Q. 66 (1991); S.P. Sathe, *Judicial Activism*, 10 J. OF INDIAN SCH. OF POL. ECON. 399 (1998); S.P. Sathe, *Judicial Activism (II): Post-Emergency Judicial Activism: Liberty and Good Governance*, 10 J. OF INDIAN SCH. OF POL. ECON. 603 (1998); Susan D. Susman, *Distant Voices in the Courts of India: Transformation of Standing in Public Interest Litigation*, 13 WIS. INT'L L.J. 57 (1994).

At the same time the government and the bar moved to implement the long-standing commitment to legal aid.²⁷ A body was established, under the aegis of the Chief Justice of India, to coordinate the implementation of legal aid programs.²⁸ And, most strikingly, there appeared a number of innovative legal service schemes in which social action groups for the first time sought to use law systematically and continuously to promote the interests of various constituencies.²⁹ For example, “middle class” organizations, such as the Consumer Education and Research Centre (CERC), emerged which attempted to address pervasive problems of public safety and consumer protection.³⁰ With support from foreign non-governmental organizations (NGOs), grassroots groups dedicated to protecting the rights of tribal people flourished, like AWARE in Andhra Pradesh³¹ and the legal aid program at Rajpipla in Gujarat.³² These organizations shared the conviction that law could be used effectively to promote the well being of various segments of the population.

These programs pointed beyond the prevailing “service” notion of legal aid as episodic *ad hoc* representation in court by generalist lawyers. Instead these new initiatives envisioned “strategic” operations of a scale, scope, and continuity that enabled lawyers to acquire specialized expertise, coordinate efforts on several fronts, select targets, and manage the sequence and pace of litigation, monitor developments, and deploy resources to maximize the long-term advantage of a client group.³³ The no-

27. Implementation of legal aid before the Emergency was desultory. See generally G. Oliver Koppell, *The Indian Lawyer as Social Innovator: Legal Aid in India*, 3 LAW & SOC'Y REV. 299 (1969). Among the many “populist” amendments to the Constitution enacted during the Emergency was a new Directive Principle decreeing “equal justice and free legal aid.” See INDIA CONST. (Forty-Second Amendment) Act, 1976 sec. 8, 39A.

The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

Id.

28. The Committee on Implementation of Legal Aid Schemes (CILAS) was established in 1980 by the government of India with Supreme Court Justice (as he was then) P.C. Bhagwati as Chair of Budget Activities.

29. See, e.g., Galanter, *New Patterns*, *supra* note 26, at 279–95; CHARLES R. EPP, *THE RIGHTS REVOLUTION* 97 (1998); D.L. Sheth & Harsh Sethi, *The NGO Sector in India: Historical Context and Current Discourse*, 2 VOLUNTAS 49 (1991).

30. See Friedrich Naumann Stiftung, India, Consumer Education and Research Centre (CERC), at <http://fnf-southasia.org> (last visited Jan. 25, 2004).

31. See SAKUNTALA NARASIMHAN, *EMPOWERING WOMEN: AN ALTERNATIVE STRATEGY FROM RURAL INDIA* 75–94 (1999) (describing the history and current activities of AWARE [Action for Welfare and Awakening in Rural Environment]).

32. See *THE WEEK*, at <http://www.the-week.com> (last visited Jan. 25, 2004).

33. Galanter, *New Patterns*, *supra* note 26, at 279–95; Peiris, *supra* note 26.

tion was to relieve disadvantaged groups from dependence on extraordinary, spontaneous personal interventions and thus to enable legal work to be calculating and purposive rather than atomistic.

Public interest litigation has promoted important social changes, raised public awareness of many issues, energized citizen action, ratcheted up governmental accountability, and enhanced the legitimacy of the judiciary.³⁴ But judicially orchestrated public interest litigation has proved only to be a frail vessel for enlarging access to justice by empowering disadvantaged groups.³⁵ Among its limitations are an inability to resolve disputed questions of fact; weakness in delivering concrete remedies and monitoring performance; reliance on generalist volunteers with no organizational staying power; and dissociation from the organizations and priorities of the disadvantaged.³⁶ While affirming and dramatically broadcasting norms of human rights, the courts frequently were unable to secure systematic implementation of these norms.³⁷

II. THE SHIFT TO INFORMALISM

A. THE PROPONENTS

Apart from failures of implementation, judicially supported public interest litigation aroused considerable resistance both from those who opposed its program and from those who were discomfited by the recasting of the judicial role.³⁸ However, there were some judges that avidly promoted public interest law and, as we noted earlier, they too were entranced by the image of informal conciliatory justice brought to the masses by the charismatic or expert outsider. In his 1976 report, Justice

34. In 2002, Professor S.P. Sathe published a detailed study documenting how the environment, the rights of women and minorities, the rights of the ill and poor, and others all received important protections as a result of public interest lawsuits filed by rights-conscious activists. See SATHE, *supra* note 26, at ch. 6.

35. See generally AGRAWAL, *infra* note 37.

36. See EPP, *supra* note 29, at 97–98; GALANTER, *New Patterns*, *supra* note 26, at 279–82; Smitu Kothari, *The Human Rights Movement in India: A Critical Overview*, in RETHINKING HUMAN RIGHTS: CHALLENGES FOR THEORY AND ACTION 83, 92–99 (Smitu Kothari & Harsh Sethi eds., 1991); Cunningham, *supra* note 26, at 506–07.

37. For empirical support for these two sentences, see EPP, *supra* note 29, at chs. 5–6 (noting how the public interest litigation docket of the Supreme Court, contrary to the conventional wisdom, failed to increase significantly between 1960 and 1990. Epp argues that the top-down approach in promoting public interest lawsuits only went so far, due to the limited resources grassroots public interest advocates had in bringing such cases in the first place). For an earlier critique of public interest litigation, see S.K. AGRAWAL, *PUBLIC INTEREST LITIGATION IN INDIA: A CRITIQUE* (1985); ARUN SHOURIE, *COURTS AND THEIR JUDGMENTS: PREMISES, PREREQUISITES, CONSEQUENCES* (2001); Mendelsohn, *supra* note 26, at 46.

38. AGRAWAL, *supra* note 37, at 10–13 (identifying several Supreme Court judges who have expressed “a not-too-friendly posture to [public interest litigation]”).

Bhagwati, the foremost judicial proponent of public interest litigation, proposed one-day forums to settle pending cases.³⁹

As the surge of public interest law activity leveled off, the reform energies that had fueled its growth found new channels. Where prominent judges had been patrons and instigators of public interest litigation, their successors have become promoters of Lok Adalats. The dominant themes of “reform” have become informality, conciliation, and alternative institutions rather than vindication of rights through adversary processes in mainstream adjudicative institutions.⁴⁰ As the name suggests (again, literally, “people’s court”), its sponsors seek to present it as indigenous and traditional.⁴¹ The promoters of the official *nyaya panchayats* in the 1950s were eager to present them as a continuation of the historical panchayat institution. Similarly, the promoters of Lok Adalats stress their indigenous character and “rich tradition,” even though they have little resemblance to earlier institutions.⁴² (Ironically, Harivallabh Parikh had regarded the Lok Adalat at Rangpur as an innovative rather than traditional forum.⁴³)

39. See P.N. BHAGWATI, *supra* note 19, at 41–42.

40. *Id.* Part of the appeal of the Lok Adalats to judges may be that it reduces—all but eliminates—the role of lawyers in reform.

41. This institution goes by various appellations in different localities (settlement camp, settlement mela, lok nyayalaya, janata nyayalaya, neeti mela, etc.) but we use Lok Adalat throughout since it is the most common name and the one given official recognition in the Legal Services Authorities Act, 1987 (amended 1994). For a critical assessment, see Sarah Leah Whitson, “Neither Fish, Nor Flesh, Nor Good Red Herring” *Lok Adalats: An Experiment in Informal Dispute Resolution in India*, 15 HASTINGS INT’L & COMP. L. REV. 391 (1992). Empirical accounts of the working of Lok Adalats are rare, but see Robert S. Moog, *Conflict and Compromise: The Politics of Lok Adalats in Varanasi District*, 25 LAW & SOC’Y REV. 545, 552–64 (1991); Gene Kassebaum, *ADR in India: The Lok Adalat as an Alternative to Court Litigation of Personal Injury and Criminal Cases in South India* 5 (1989) (unpublished manuscript, on file with Authors).

42. See generally YOGESH MEHTA, *LOK ADALATS AND PUBLIC INTEREST LITIGATION* (Ahmedabad: Gujarat State Legal Services Authority, 2000). An extended description of Lok Adalat organization and operations, embedded in a full-blown ideological account of Lok Adalats as a people’s movement establishing contemporary versions of ancient popular courts, may be found in SUNIL DESHTA, *LOK ADALATS: GENESIS AND FUNCTIONING: PEOPLE’S PROGRAMME FOR SPEEDY JUSTICE* (1995). In a similar vein, a team of Indian and American court reformers describe their reforms as “preserving and supporting formal litigation as a means of last resort, while simultaneously restoring and modernizing consensual dispute resolution processes often utilized in pre-colonial society.” Hiram E. Chodos et al., *Indian Civil Justice System Reform: Limitation and Preservation of the Adversarial Process*, 30 N.Y.U. J. INT’L L. & POL. 1, 58 (1997–1998). Earlier they note that “Lok Adalats resemble the traditional *panchayat* system of five village elders acting as arbitrators for local dispute resolution.” *Id.* at 41, n.130. But *panchayats* were not composed of village elders, rather of caste elders; depending on the circumstances they were no more arbitrators than mediators or legislators, and, notwithstanding the name, there were not necessarily five.

43. Interview with Upendra Baxi, Professor of Law, University of Warwick, Warwick, Eng. (May 20, 2003).

B. THE "CHARACTER TRAITS" OF LOK ADALATS

The early Lok Adalats approximated a standard template, although as we shall see there are many new variations. Cases on the docket of a local court (or tribunal) were, with the consent of one or both of the parties, transferred to a Lok Adalat list.⁴⁴ At an intermittent one-day "camp," typically on a weekend day, attended by judges and other officials and promoted with considerable hoopla, the cases are called before a mediator or panel of mediators.⁴⁵ The mediators are typically retired judges or senior advocates.⁴⁶

The first Lok Adalat was held in 1982.⁴⁷ As of March 1996, some 13,061 had been organized nationwide and some 5,738,000 cases were resolved there (about 440 per Lok Adalat).⁴⁸ Twenty-one months later the total had risen to some 17,633 Lok Adalats and 6,886,000 cases settled.⁴⁹ That means that in the twenty-one-month period, 4572 Lok Adalats were held—some 218 per month or 2600 per year and that approximately 1.148 million cases were resolved (about 251 per Lok Adalat.) Unpublished data from the National Legal Services Authority shows that as of the end of 1999, 49,415 Lok Adalats were held with 9,720,289 cases being settled (about 197 per Lok Adalat).⁵⁰ By November 30, 2001, there were 110,600 Lok Adalats that had settled 13,141,938 cases (about 119 settled per Lok Adalat).⁵¹ It is unclear whether this seemingly continuous drop in the number settled per Lok Adalat is due to the increasing number of Lok Adalats, less success in achieving resolution, fewer cases, smaller numbers of mediators, or more difficult and complex cases. There appears to be considerable regional variation. In the state of Gujarat from March 1982 to the beginning of January 2000, 14,766 Lok Adalats were held; nearly 90% of all cases "dealt with" were settled.⁵² In contrast, dur-

44. The Legal Services Authorities Act, 1987 (amended 1994). See also K. Ramaswamy, *Settlement of Disputes Through Lok Adalat Is One of the Effective Alternative Dispute Resolution (ADR) on Statutory Basis*, in ALTERNATIVE DISPUTE RESOLUTION: WHAT IT IS AND HOW IT WORKS 100 (P.C. Rao & William Sheffield eds., 1997); Moog, *supra* note 41, at 554.

45. ROBERT S. MOOG, WHOSE INTERESTS ARE SUPREME: ORGANIZATIONAL POLITICS IN THE CIVIL COURTS IN INDIA 135-38 (1997); Ramaswamy, *supra* note 44, at 98.

46. Ramaswamy, *supra* note 44, at 98.

47. *Id.* at 96.

48. *Id.* at 102.

49. Press Release, Press Information Bureau, Government of India, Annual Report of Ministry of Law, Justice and Company Affairs (July 2, 1998), available at <http://pib.nic.in/focus/foyr98/fo0799/Foco207981.html>.

50. Data obtained from the National Legal Services Authority (NLSA), New Delhi, December 2001. We presume that the data are from 1982 onwards; however, no official at the NLSA was able to confirm this point nor give us a reliable starting date as to when the data were first collected.

51. *Id.*

52. THE GUJARAT STATE LEGAL SERVICES AUTHORITY: NYAYA PATH, December 2000, at 114.

ing the first quarter of 2001, 651 Lok Adalats were conducted in Kerala with only 39% of the cases settled. Clearly there is much variability here and a larger empirical examination of these patterns is required before any final conclusions can be made.

What sorts of cases are in Lok Adalats? One set of sophisticated commentators tells us that Lok Adalat cases are "limited to auto accidents and family matters."⁵³ But the dockets are considerably more varied, including vast numbers of ordinance violations and minor criminal cases. While dockets vary from one place to another, generally they are shaped to capture cases involving the poor. Lok Adalats, says one proponent, "specially cater to the needs of weaker sections of society."⁵⁴ They are for "poor people," especially for petty non-contested cases.⁵⁵ Many proponents of Lok Adalats see them not as a species of court reform but as a species of legal aid, one particularly suited to the poor, oppressed, and female. Like judicially inspired public interest law, the theme is bountiful caring for the weak, but the movement is centered not around eminent judges and prominent lawyers, but district judges, social workers, and local advocates.

Lok Adalats are typically not able "to attract cases with heavy financial stakes or important civil litigation. Private litigation [has] remained totally outside the ambit of Lok Adalats."⁵⁶ The Lok Adalat device has occasionally been used for mass settlement: resolving two separate takings cases where residents of two different areas received approximately 1.5 billion and 186.8 million rupees respectively,⁵⁷ and more recently sugar cane growers and laborers were awarded 12 million rupees in a Lok Adalat brokered settlement.⁵⁸

In terms of how frequently it meets, originally the term Lok Adalat was used to refer to a transitory forum, staffed by volunteers and convened from time to time. It has grown to encompass a continuing institution with fixed location and personnel.

Permanent Lok Adalats [that] have . . . been introduced in the various Government departments that provide services . . . [including] the telephone companies, the electricity board, the municipal corporations, the city development authorities and the insurance companies. . . . Today Lok Adalat-type mechanism is being invoked by Gov-

53. Chodosh et al., *supra* note 42, at 43.

54. P.C. Rao, *Alternatives to Litigation in India*, in *ALTERNATIVE DISPUTE RESOLUTION: WHAT IT IS AND HOW IT WORKS*, *supra* note 44, at 27.

55. Paras Diwan, *Justice at the Door-Step of People: The Lok Adalat System*, 78 ALL INDIA REP. J. 85 (1991).

56. P.C. Rao, *supra* note 54, at 27.

57. Ramaswamy, *supra* note 44, at 97.

58. *Id.*

ernment Departments and public sector agencies to settle pension and provident fund claims, bank debts, consumer grievances and similar small claims of a civil or revenue nature.⁵⁹

The purpose of these permanent Lok Adalats "is to achieve the resolution of petty disputes between a citizen and such departments before they reach the courts."⁶⁰ In Part III, we will discuss permanent "in house" Lok Adalats in more detail.

While proponents of Lok Adalats stress their participatory character, it is clear that the form of participation envisaged for poor claimants or defendants is reception of the guidance of their betters. The tribunal is to consist of "judicial officers of the area and . . . educated social workers, law college teachers and retired judicial officers"⁶¹ They will give the poor "appropriate guidance."⁶² This picture seems to be confirmed by the knowledgeable reformers who tell us that in Lok Adalats, resolutions are fashioned by the evaluative views of the mediators, rather than through negotiations by the litigants.⁶³ Others have sardonically described adjudication in Lok Adalat as "banyan tree justice."⁶⁴

C. DISCOVERY AND AWARD-SETTLEMENTS

How does the Lok Adalat deal with disputed questions of fact? Early on, one proponent boasted "[t]here will be no necessity for witnesses or examination or cross-examination, to produce legal documents or present case law."⁶⁵ Other accounts suggest that controversy about facts, and perhaps about norms, rarely intrudes when Lok Adalats are sitting. Cases may be "already compromised by the persuasion and efforts of judges and advocates alike, for the purpose of being placed before the Lok Adalats."⁶⁶ There may be a "pre-Lok Adalat conference in which parties are approached by the legal aid team and discussions about the pros and cons of the case take place."⁶⁷

59. N.R. Madhava Menon, *Lok Adalat: An Indian Contribution to World Jurisprudence*, SOUVENIR, at 56, 57.

60. S.P. Barucha, *Keynote Address*, SOUVENIR at 18-19.

61. K. Gupteswar, *The Statutory Lok Adalat: Its Structure and Role*, 30 J. OF THE INDIAN L. INST. 174, 179 (1988).

62. Mahabaleshwar N. Morje, *Lok Nyayalaya: A Place of Justice for Common Man in Changing Society*, 71 ALL INDIA REP. J. 68, 69 (1984).

63. Chodosh et al., *supra* note 42, at 41 n.130.

64. This reference dates back to the early 1980s when it is said that one of the first Lok Adalats took place under a banyan tree in Gujarat. There is even evidence that this tradition has continued. For a recent account of a "banyan tree" Lok Adalat, see Yogindra Gupta, *Mishap Victim Gets Rs. 2.25 Lakhs*, TRIB. NEWS SERVICE, Apr. 24, 1999, available at <http://www.tribuneindia.com/1999/99apr25/haryana.htm>.

65. Morje, *supra* note 62, at 68.

66. Virendra Singh Barhat, *Judicial Courts v. Lok Adalats*, 74 ALL INDIA REP. J. 5, 6 (1987).

67. Diwan, *supra* note 55, at 87.

Generally, the largest cases in Lok Adalats are claims by accident victims under the Motor Vehicle Act. This is the only type of case counted separately and statistics are compiled of the amount of compensation awarded in these cases. Thus, the Ministry of Law stated at the end of 1997 that some 349,710 motor vehicle accident claims had been resolved by Lok Adalats and some rupees 1160 crores awarded (this is an average award of rupees 33,190).⁶⁸ Our data from the National Legal Services Authority show that by the end of November 2001, 825,255 of these cases had settled at an average award of 39,432.⁶⁹ Lok Adalats therefore resolved over 10,000 motor accident cases per month during the last four years (475,545 in forty-seven months from January 1998 to the end of November 2001)—and at higher amounts.

Gene Kassebaum's study of Lok Adalats in Karnataka from 1986 to late 1988, found that about sixty-two percent of the cases were motor accident claims.⁷⁰ Since the claimants in motor accident cases are typically passengers or pedestrians and the defendants are typically companies or government agencies, these matters "tend to be contests between the relatively rich and the relatively poor, the powerful and the weak."⁷¹ The sessions observed by Kassebaum were organized so that all the cases involving claims against a particular insurer or transport company were placed before the same panel, a considerable convenience to these defendants. The parties in these Karnataka Lok Adalats were represented by advocates—although advocates were excluded in Uttar Pradesh Lok Adalats described by Robert Moog.⁷² Most cases were settled after brief,

68. Press Release, Press Information Bureau, *supra* note 49. See also *The Banyan Tree: Volume II—Bringing Change. Section I: The Basis and Framework of the Legal System in India*, available at <http://healthlibrary.com/reading/banyan2/5section1.html> (last visited Jan. 25, 2004), discussing how in the state of Andhra Pradesh, since 1986, claimants have received over Rs. 44 lakhs in payments from automobile insurance companies. But see Press Release, Press Information Bureau, Government of India, Performance of Lok Adalats (Feb. 21, 2000), available at <http://pib.myiris.com/textfile/search/article.php3?&filename=../press/D26581.htm&srch=motor>, evaluating the overall performance of Lok Adalats. The site states that between 1985 and 2000 "42,477 Lok Adalats were organised in different parts of the country where 90,74,971 cases were settled. In 4,88,669 motor accident claims cases, compensation amounting to rupees 2054,56,21,491 has been awarded." However, from this latter site it is unclear if of the 9,074,971 cases, only 488,669 were motor cases, in which cases the actual percentage of all cases being motor accident cases would be seemingly low, or whether there were other motor cases that did not settle.

69. Data provided to Authors by the National Legal Services Authority.

70. Gene Kassebaum, *supra* note 41, at 5. Figures are for all Lok Adalats held in the state from June 1986 to mid-November 1988. Kassebaum observes that "the big cities use the Lok Adalat to dispose of vehicle accident claims, the small towns and taluks use Lok Adalat to settle long pending criminal and other civil cases. The medium size cities do some of each." *Id.* at 16. See also Moog, *supra* note 45, at 135-46 (describing Lok Adalats in Uttar Pradesh with dockets made up almost entirely of criminal and revenue cases).

71. Kassebaum, *supra* note 41, at 7.

72. Moog, *supra* note 41, at 554.

often perfunctory, negotiations that focused on the quantum of damages.⁷³

The amounts awarded in Lok Adalats are arguably quite small. In the 13,553 cases resolved in Karnataka from 1986 to 1988 (of which 8537 were motor accident cases), the average settlement was rupees 14,758.⁷⁴ This is only a small fraction of the arguably inadequate average damages awarded to claimants who persevere to fight their cases through the courts. A sample analysis some years back of the recoveries in motor accident cases reported in the most comprehensive and widely circulated set of Indian law reports, the *All India Reporter*, shows that, at least for 1986, the average recovery in the thirty-one cases for which data was obtainable was rupees 48,376.⁷⁵ Of course, the cases that were fought all the way to a High Court could be expected to involve more severe injuries on the average than those brought to a Lok Adalat.

Forums similar to Lok Adalats are conducted by voluntary groups as well as by the courts. For example, the principal activity of the People's Council for Social Justice (PCSJ) in Kerala, is conducting *Neeti Melas* (festivals of justice). Staffed largely by retired judges and court personnel, PCSJ urges people to avoid the courts and avail themselves of its services instead.⁷⁶ Rather than a departure from the official norms, it proposes to give disputants' access to a purer, conciliatory, non-adversarial forum for the application of those norms.⁷⁷ In fifteen years the PCSJ has conducted 227 *Neeti Melas* and has settled over 8000 motor accident cases.⁷⁸

73. Kassebaum, *supra* note 41 (reporting that fifty-four percent of the cases that appeared at the Lok Adalat reached a settlement).

74. *Id.* at 15, 35.

75. This analysis was performed by Mary Versailles, J.D., University of Wisconsin, class of 1990. In three other motor vehicle cases, recovery was confined to the statutory "no fault" award of Rs. 15,000 for death and Rs. 7500 for permanent disability. If three cases are included, the average recovery is reduced to Rs. 44,769.

76. See <http://www.councilforjustice.org>, which is the website of the organization.

77. *Id.*

78. *Id.*

D. PRELIMINARY (PRE-FIELDWORK) DATA ON LOK ADALATS

The motor accident cases that figure so prominently in the caseload at the Lok Adalats, governmental and voluntary, are not cases diverted from the rigidities of ordinary unreformed civil proceedings. Instead they are cases diverted from a "reformed" and "streamlined" sector of the court system,⁷⁹ the Motor Accident Claims Tribunals, themselves established to provide expeditious proceedings with no court fees and some compensation available without a showing of fault. This accentuates the point that Lok Adalats should not always be considered as providing additional access to justice: While some of the Permanent Lok Adalats may address claims that have not yet been brought to a court or tribunal, overall the Lok Adalat docket is made up of cases that have already been brought to another forum. Lok Adalats do not provide new facilities for the vast portion of potential claims that are discouraged by court fees, the cost of lawyers, the prospects of delay, and paltry recoveries. More systematic data are needed before any firm conclusions can be drawn, but from the information presently available to us, it appears that the main work of Lok Adalats is to provide a truncated process for some of those few who do attempt to utilize the courts.

Just five years after the judiciary began to sponsor Lok Adalats, Parliament enacted The Legal Services Authorities Act of 1987, which was amended in 1994 and then again in 2002.⁸⁰ The Act visualizes a regime of Lok Adalats with jurisdiction over "any matter,"⁸¹ composed of judicial officers and other qualified members,⁸² authorized to proceed according to its own procedures, which need not be uniform⁸³ and to be "guided by the principles of justice, equity, fair play and other legal principles."⁸⁴ Rather than an award in accordance with the law, the Lok Adalat is instructed to "arrive at a compromise or settlement."⁸⁵ The 1994 amendments to the Act mandate that the compromise "shall be final and binding on all the parties to the dispute, and no appeal shall lie to any

79. Whitson, *supra* note 41, at 426.

80. The Legal Services Auth. Act, No. 39 of 1987, (1995) (amended 1994; amended 2002).

81. *Id.* at § 19(3).

82. *Id.* at § 19(2).

83. *Id.* at § 22(2).

84. *Id.* at § 20(4). This formula bears a striking resemblance to the "justice, equity and good conscience" that was the residual source of law in British India and elsewhere in the empire and remains so today in India and elsewhere. Although the formula was designed to enable courts to appeal to "sources of law other than English common and statute law," in practice its effect was "to introduce conceptions which strongly resemble the general character of English law." J. Duncan M. Derrett, *Justice, Equity and Good Conscience*, in *CHANGING LAW IN DEVELOPING COUNTRIES* 138, 150 (J.N.D. Anderson ed., 1963).

85. Legal Services Auth. Act § 20(3).

court against the award.”⁸⁶ (The 2002 amendments reiterate this principle under Section 22E.)

Lok Adalats differ sharply from the earlier *nyaya panchayats*. The jurisdiction of Lok Adalats is not confined to specific categories of minor matters, but can extend to “any matter.” Instead of the popularly elected panches, Lok Adalat officials are nominees of the state administration. Where the panches could issue decisions, the Lok Adalat panelists—at least until now—can only “determine and arrive at a compromise or settlement.”⁸⁷ Table 1 summarizes some of the differences between Lok Adalats and various past and present forums for providing access to justice for everyday troubles and injuries.

86. *Id.* at § 21(2). Even with this provision we are uncertain whether “the so-called finality . . . [has] the effect of barring judicial review under articles 226, 227, 32, or 136 of the Constitution.” See Gupteswar, *supra* note 61, at 181 (writing before the 1994 amendments, arguing that judicial review was still possible).

87. *Id.* at § 19(5).

TABLE I
SALIENT FEATURES OF FORUMS FOR EVERYDAY JUSTICE IN INDIA

| CHARACTERISTIC | TRADITIONAL PANCHAYAT | DISTRICT COURTS/ SUBORDINATE COURTS | ARBITRATION | NYAYA PANCHAYAT | HIGH COURTS/ SUPREME COURT PUBLIC INTEREST LITIGATION | LOK ADALATS |
|---------------------------|-----------------------------|---|--------------------------------------|-----------------------------|---|----------------------------|
| FLOURISHED | Before British rule | Since early 19th Century | 1940- | 1950-1975 | 1977- | 1982- |
| PERSONNEL | Communal Notables | Bureaucratically selected career judges | Selected by the parties | Elected by local electorate | Appointed Judges (legal practitioners) | Retired judges, volunteers |
| NORMS APPLIED | Custom of Caste or Locality | Lex Loci (state law) | Reflection of state law | Statute law | State law with innovative | Not known |
| SANCTIONS IMPOSED | Fines, Excommunication | Money damages, injunctive relief | Money awards (enforced by the court) | Fines | Money damages, injunctive relief | Enforced by court |
| ACCOUNTABILITY AND REVIEW | Politics of Reconsideration | Appeal within judicial hierarchy | Enforcement by court | Appeal to the courts | No appeal | No appeal |
| REPRESENTATION | Self, Factional Spokesman | Lawyers | Lawyers | Self | Lawyers | Self, lawyers |

This campaign to institutionalize Lok Adalats comes in spite of (and perhaps because of) the fact that little is known about their performance. One serious issue that immediately comes to mind is whether this “informalism” disadvantages weaker parties. The few available accounts raise a host of serious questions. For example, how genuine is the “consent” by which the parties consign their cases to Lok Adalats? Robert Moog portrays pressures on officials to produce large numbers of cases for Lok Adalats, leading in some instances to the institution of criminal cases for the purpose of having them resolved there.⁸⁸ Also, cases that have in effect been resolved in the courts are assigned to Lok Adalats to inflate the total of resolutions there.⁸⁹ Clearly, there are career incentives for officials to produce the cases and settlements desired by their superiors. Beyond this, there are questions about the quality of the process: Are the issues salient to the parties ventilated? Are the merits of their cases effectively presented? Can the forum probe and resolve conflicting assertions of fact? Do the resolutions embody legal standards? What is the procedure for enforcing decisions? How regularly are decisions enforced? How do the outcomes compare with the parties’ legal entitlements? Are outcomes reasonably consistent with one another?

Apart from these questions about the resolution of specific cases, there are questions about the general effects of the diversion of these claims to Lok Adalats.⁹⁰ Does the diversion diminish the deterrent effect of awarding damages? Does it diminish the supply of precedents and impede the development of tort doctrine and expertise that are responsive to India’s new industrializing economy? If it relieves the courts to do other things, what do they in fact do? Does it encourage or discourage preventive measures by frequent injurers (e.g., bus companies) and their insurers? Neither those who operate Lok Adalats nor those who promote them have displayed much interest in systematic assessment of the quality of their performance. Such assessment is essential to ascertain whether the results justify the expenditures and commend these initiatives over others.⁹¹ Assessment involves comparing the performance of

88. Moog, *supra* note 45, at 138–46; Moog, *supra* note 41, at 557–65.

89. Moog, *supra* note 45, at 138–46; Moog, *supra* note 41, at 557–65.

90. The following set of questions listed in the text presuppose that litigants are economically rational actors. Of course, though, other considerations may also come into play such as family honor or potential opportunities that accompany delay. We are sensitive to these other “non-rational” incentives, but for an overall discussion of “general effects” associated with litigation. See Marc Galanter, *The Radiating Effects of Courts*, in *EMPIRICAL THEORIES ABOUT COURTS* 117–42 (K. Boyum & L. Mather eds., 1983).

91. On the formidable conceptual and methodological problems involved in evaluating alternative methods of dispute resolution see Marc Galanter & Mia Cahill, *Most Cases Settle: Judicial Promotion and Regulation of Settlements*, 46 *STAN. L. REV.* 1339 (1994).

the Lok Adalats with the aspirations their promoters have for them. So far, what is remarkable is how modest these aspirations are.

Proponents of Lok Adalats, like earlier reformers, claim to draw on the legacy of *panchayats*. But as Table 1 summarizes, they are distinct from traditional *panchayats* in virtually every respect: they operate in the shadow of the official courts; they are staffed by official appointees rather than communal leaders; they apply some diluted version of state law rather than local or caste custom; they arrange compromises instead of imposing fines and penances backed up by the sanction of excommunication. Nor can Lok Adalats be viewed as a continuation of the push for *nyaya panchayats* that peaked in the 1950s. The proponents of *nyaya panchayats* sought to provide a convenient, accessible, understandable forum that would encourage popular participation, express popular norms, and promote harmonious interaction. They were unable to deliver on this, but the aim was to provide a system of justice superior to that of India's British-style courts. In contrast, the virtues claimed for Lok Adalats are their expeditiousness and lower processing cost.⁹² What commends them is not that they deliver a superior form of justice, but that they represent deliverance from the agony of litigation in a system conceded to be terrible.

The Lok Adalats' achievement, then, is to provide an official process for claimants to secure a portion of their entitlements without the aggravation, extortionate expense, inordinate delay and tormenting uncertainty of the court process.⁹³ To secure this, they yield up discounts. Assume, for example, a motor accident claimant who would secure Rs. 50,000 compensation [and accumulated interest from date of filing] after an expensive ten-year struggle in the courts. Imagine that this same claimant might be able to get half that amount at a Lok Adalat in just a few months.⁹⁴ This is clearly a preferable outcome for the claimant, given the legal costs avoided and given the appropriate discount for the futurity and uncertainty of the court recovery. Thus, the establishment of the Lok Adalat arguably provides a significant benefit for a claimant in this situation.

But, of course, this claimant is entitled not to the discounted future value of his claim, but to the full present value. What makes the delivery of the discounted amount a "benefit" is simply that the full entitlement can be vindicated only by recourse to a disastrously flawed judicial system that, at best, can deliver it in ten years. Thus, the "benefit" conferred

92. See Shiraz Sidhva, *Lok Adalats: Quick, Informal Nyaya*, LEX ET JURIS, Dec. 1986, at 36-41.

93. See Gupteswar, *supra* note 61, at 174.

94. *But see* Diwan, *supra* note 55, at 85 (claiming that discounts are only five to ten percent of the value of the claim).

by the availability of the Lok Adalat is a benefit only by virtue of the enormous transaction costs imposed by the judicial system.⁹⁵ And these transaction costs impact differentially on different kinds of parties. Those who are risk averse and unable to finance protracted litigation are the ones who have to give the discounts in order to escape these costs; those who occupy the strategic heights in the litigation battle are able to command steep discounts.⁹⁶ Since the sums awarded by the courts fall far short of fully compensating the injured, the injured are triply under-compensated: first, by the inadequate level of compensation delivered by the courts; second, by the high transaction costs; and finally by the discounts they must yield to avoid the infliction of these costs. And, as the injured are under-compensated, injurers are under-assessed for the costs they impose on society for their risk-creating behavior and under-deterred from persisting in injurious conduct.⁹⁷

The establishment of Lok Adalats represents the use of scarce reform energies to create alternatives that are “better” than the courts; but it is not necessary to be very good to be better than the ordinary judicial system. The flaws of the system serve not as a stimulus to reform it, but as a reason for setting up institutions to bypass it. Reformers take pride in delivering needed compensation more expeditiously to some of the victims. But the features of the system that make this discounted result appear to be an advance go unexamined and unattacked. Lok Adalats are then an instance of a debased informalism—debased because it is commended not by the virtues of the alternative process but by avoidance of the torments of the formal institutional process.

III. VISITS TO THE FIELD

During the latter half of 2002 and early and middle parts of 2003, we observed a sample of Lok Adalats in one of India’s most politically and economically important states.⁹⁸ In this section, we discuss how our findings compare with the conventional wisdom on these dispute resolution forums.⁹⁹ As already stated, the Lok Adalat in India is not a homogenous

95. For purposes of the argument here, transaction costs include lawyers’ fees, court fees, bribes and other litigation expenses, uncertainty of outcome and uncertainty of execution if a favorable outcome is obtained.

96. Marc Galanter, *Why the “Haves” Come Out Ahead: Speculations on the Limits of Legal Change*, 9 LAW & SOC’Y REV. 95, 119–20 (1974). See generally H. LAURENCE ROSS, *SETTLED OUT OF COURT* (1970).

97. For a general evaluation of how the injured and poor are treated by the Indian legal system, see N.R. Madhava Menon, *Legal Aid and Justice for the Poor*, in LAW AND POVERTY: CRITICAL ESSAYS (Upendra Baxi ed., 1988).

98. To protect the confidentiality of the people we observed and interviewed, we purposely withhold the name of the state.

99. Conducting the fieldwork for this study was Jayanth K. Krishnan.

institution. There are many types and the numbers grow by the day. In this section we discuss five particular Lok Adalats: what we might call a General Lok Adalat that usually hears motor accident cases and family law disputes; an Electricity Lok Adalat; a government Pension Lok Adalat; a High Court Lok Adalat; and a Women's Lok Adalat. (Because there was minimal activity at the Women's Lok Adalat the day it was observed, we mainly discuss the activity of the others.) We were furthermore able to collect important (albeit incomplete) quantitative data on the operation of several other types of Lok Adalats. As we shall see, although the subject matter within each of these Lok Adalats is distinct, there are similarities in how these forums function. More evidence is required before drawing any firm conclusions; however, our data thus far confirm our worries that the quality of Lok Adalat justice falls seriously short of the aspirations of "Access to Justice" proponents.

A. SETTING THE SCENE

Most of the observed Lok Adalats took place on a Saturday, beginning around ten in the morning and lasting anywhere from two to seven hours. The Electricity, Pension, High Court, and Women's Lok Adalats were held in moderately maintained, state government buildings, while the first observed General Lok Adalat was conducted in a recently constructed, separate hall located adjacent to the district court. (A second observed General Lok Adalat was held in a district court building.) In most cases, retired justices from the state High Court chaired the judicial panels; in the General Lok Adalats a current, chief district judge served as head of that panel. The Legal Services Authority Act also mandates that judicial panels of Lok Adalats include one social worker and one lawyer or other legal expert and that one of the three members must be a woman. As we discuss below, there was variation regarding adherence to this requirement.

The Electricity, Pension, High Court, and General Lok Adalats each had long lines of claimants who often waited hours before having their cases heard. (The day the Women's Lok Adalat was observed, only seven cases were on the court docket.) The rooms holding the sessions were stuffy, crowded, and lacked air conditioning. Claimants typically sat and listened for their names to be called by a government-employed Lok Adalat clerk before approaching the judicial panel. Standing next to the panel would be a court stenographer who, upon direction of the presiding judge, would write down for the record what the judge believed to be the pertinent information regarding the case. The presence of lawyers representing claimants varied depending on the Lok Adalat. In the General, High Court, and Women's Lok Adalats most claimants came accompanied by lawyers. In fact, as we will explain shortly, in the General

Lok Adalat, there was a situation where the same lawyer represented numerous bus passengers who were victims in a massive traffic accident. In the Electricity and Pension Lok Adalats the vast majority of claimants represented themselves. Most surprisingly, in the Electricity Lok Adalat, another party that was present and advocating a position (usually against the claimant) was the police. We discuss below how police participation impacted this Lok Adalat.

B. TYPES OF CASES HEARD AND THE PROCESS OF ADJUDICATION

I. *The Pension and Electricity Lok Adalats*

Although the Pension and Electricity Lok Adalats deal with matters distinct from one another, similar patterns are present in *how* these two forums operate. The Pension Lok Adalat handles cases brought by retired civil servants who are disputing the pension amount allocated to them by the government department for which they worked. The Pension Lok Adalat also hears claims initiated by current civil service workers seeking a promotion or increased monetary compensation. A judicial panel consisting of a retired High Court judge, the General Secretary of the Retired Employees Association, and a practicing lawyer oversee these matters. The Pension Lok Adalat was statutorily created by our selected state in 2001, as a “permanent and continuous”¹⁰⁰ body. According to the presiding judge, “500 cases have been settled in the last year and a half,” in which each claimant received the requested amount from the governmental department.¹⁰¹ This statistic, however, is contrary to the information provided by the Pension Lok Adalat office. According to the official data, as of December 12, 2002, 605 cases had been referred to the Pension Lok Adalat, with only 214 reaching settlements. Three hundred seventy-six cases were adjourned, three were returned to the regular courts, and twelve had yet to be heard.¹⁰²

Irrespective of this disparity, the presiding judge of the Pension Lok Adalat repeatedly expressed hostility towards the presence of lawyers in these forums and noted that were it not for them, the number of settled cases would dramatically increase.¹⁰³ “Lawyers are famous,” the judge commented to Krishnan, “for dragging on cases.”¹⁰⁴ But of the twenty-three cases Krishnan observed only three claimants even came accompanied by lawyers. Moreover, in thirteen cases (none of which had lawyers involved), the party guilty of being unprepared and delaying matters was

100. Language is from the state statute creating this Lok Adalat.

101. Interview with Presiding Judge of Pension Lok Adalat (Dec. 28, 2002).

102. Data were provided to Krishnan during his visit to the Pension Lok Adalat (Dec. 28, 2002).

103. Interview with Presiding Judge of Pension Lok Adalat, *supra* note 101.

104. *Id.*

the government agency. In six consecutive cases, the state's education department representative asked the panel for postponement, prompting the presiding judge to shout, "Why the hell aren't you people ready? Is this how you run things over there?"¹⁰⁵ (Nevertheless, the motion for delay in each case was granted.) And in that morning session, just three cases were resolved, with the remaining postponed to another sitting.

The government's lack of preparedness also could be found in the Electricity Lok Adalat. This forum was established in 2001 to settle disputes between consumers and the state electricity company.¹⁰⁶ According to the presiding judge of the Electricity Lok Adalat, ninety percent of the cases involve billing disputes—mainly claimants accusing the electricity company of excess charges.¹⁰⁷ The remaining matters deal with the company seeking compensation from individuals that the company contends have stolen electrical power. The day that Krishnan observed this Lok Adalat twenty-five cases were on the panel's docket. Thirteen resulted in a settlement while ten were postponed at the request of the company; two cases did not reach any resolution and the parties agreed to litigate these matters in the regular state court.

Aside from the government not being prepared in nearly half of the cases in the Electricity Lok Adalat, there was another curious aspect to this proceeding. Of the twenty-five cases on the docket for that day, three involved the company making theft charges against individual consumers. Assisting the company in the presentation of its case to the two-member judicial panel was the *police*. Krishnan interviewed the police representative at the Lok Adalat who explained the reason for law enforcement's participation. This official stated that typically, when the company lodges a theft complaint against a private individual, protocol requires that a formal report be filed with the police department.¹⁰⁸ A special police division investigates the complaint and if the charges are substantiated, then these findings are released to the company. At that point the company may pursue a civil liability claim in the district court, but if it and the defendant agree, then they may bring the case to the Electricity Lok Adalat for a speedier resolution.¹⁰⁹ (The police reserve the right to file criminal charges against the individual with the city prosecutor.)

But the police's role does not end with the investigation of the theft matter. As Krishnan observed, in the Electricity Lok Adalat the police

105. Presiding Judge, comments during Pension Lok Adalat (Dec. 28, 2002).

106. The mission of this Lok Adalat is similarly set forth in the statute creating this body.

107. Interview with Presiding Judge of Electricity Lok Adalat, location withheld (Jan. 4, 2003).

108. Interview with police official present at Electricity Lok Adalat (Jan. 4, 2003).

109. *Id.*

representative served as the lead advocate for the company. This official would explain the case to the judicial panel, question the defendant on the specifics of his actions, and make penalty recommendations. Meanwhile, none of the defendants/consumers Krishnan observed had legal representation, nor were they able to present adequate responses to the satisfaction of the judicial panel or to the police. As the police representative explained to Krishnan, “because we are familiar with these types of matters, it is quicker and better if we [rather than the company] deal with these cases.”¹¹⁰ These criminal matters in the Electricity Lok Adalat, however, were not the only cases in which the police were involved. In at least a half dozen billing disputes the police representative argued on behalf of the company against the consumer. In the last case of the day, one that happened to be the most heated dispute of all those on the docket, the police official directly denounced the consumer for wasting the panel’s time and urged him to pay the bill once and for all, which the consumer ultimately did. Even the presiding judge of the Electricity Lok Adalat conceded in an interview following the proceedings that claimants may, at times, “feel somewhat intimidated” with the police being present.¹¹¹ The police involvement in the Electricity Lok Adalat is reminiscent of Dr. Julia Eckert’s recent description of the Shiv Sena courts in Maharashtra, where police officials there served not just as enforcers but also as interpreters and arbitrators of the law.¹¹²

2. General Lok Adalats

Two different General Lok Adalats in two different cities, where in each setting the respective chief judge served as head of the judicial panel, were observed during the course of the field research. The first General Lok Adalat observed was located in a district about twenty miles outside of the capital city. The morning set of cases involved several divorce matters. Before even going to the Lok Adalat room, couples would enter the presiding judge’s private office, where their respective lawyers presented the reasons for the divorce application. In this “pre-Lok Adalat” hearing, the judge explained to the participants that his main goal was to see if the marriage could be salvaged. “Especially if there are children,” he explained, “we want to try to do whatever we can to achieve reconciliation.”¹¹³

The expectations of the parties, however, during these pre-Lok Adalat hearings were far different. In the observed cases, formal separation,

110. *Id.*

111. Interview with Presiding Judge of Electricity Lok Adalat, *supra* note 107.

112. Julia Eckert, *Legal Pluralism, Legal Reality, and the Changing Modes of Policing in Mumbai* 4 (2001) (unpublished manuscript, on file with authors).

113. This comment was made to Krishnan while the parties were in the room (Aug. 17, 2002).

not reconciliation, was the main priority of the parties. In one notable case, a middle-class couple¹¹⁴ came into the room accompanied by their two young children and almost immediately began screaming at one another as well as to the judge. The wife accused the husband of having an extramarital affair and emotionally abusing her, while the husband sobbed that his wife had made a false criminal complaint against him, which had resulted in his arrest. Throughout this whole episode, which lasted nearly one-half hour, the children sat quietly crying while the lawyers unsuccessfully attempted to calm their clients down.

As this commotion was occurring, the presiding judge chatted with the second author (Krishnan) intermittently about how he had seen this couple now for the third time and how they still refused to try to reconcile.¹¹⁵ At that point, the husband interrupted, yelling at the judge, "Sir, please, reconciliation is not possible!"¹¹⁶ Yet, the judge continued to explain that this type of "venting session" was good for the couple's emotional health.¹¹⁷ He then called the children over to sit next to him and asked how they felt about their parents' fighting. Too nervous to speak, the eight-year-old boy shrugged, while his five-year-old sister held her brother's hand, continuing to weep. In a firm tone, the judge then noted to the parents: "See—is this how you want your children to see you? Is this nonsense you are fighting about really good for them? A boy and a girl need both a mother and father—this fighting is not good at all."¹¹⁸ With that, the judge ordered the couple to attempt to work their problems out and to return next week if they could not resolve their differences.

As this family left, another family entered into the judge's chambers also for a pre-Lok Adalat hearing. The claimants in this case were the maternal grandparents of a seven-year-old Indian-American boy, whose parents had been killed in a traffic accident near their home in Chicago three years ago. Since the accident, the boy had been living with his maternal grandparents in our selected state, but the paternal grandparents (the defendants) were seeking to establish some set of custodial rights. As opposed to the previous divorce case, here the lawyers for the parties played an active role, each explaining their case to the judge. The claimants' lawyer sought to have the judge issue a decree formally severing all legal ties of the paternal grandparents to the boy. According to this lawyer, the only reason the defendants sought custody was because of a one

114. Both the husband and wife were civil service employees.

115. Interview with Presiding Judge of General Lok Adalat (Aug. 17, 2002).

116. Comment by husband made Aug. 17, 2002.

117. Interview with Presiding Judge of General Lok Adalat, *supra* note 115.

118. Presiding Judge, comments during General Lok Adalat (Aug. 17, 2002).

hundred thousand dollar life insurance policy that the boy had received (in trust) upon his parents' death.

The judge noted to Krishnan that a case of this financial magnitude was unusual for a Lok Adalat, and that this was one of the most emotionally trying matters he had ever seen.¹¹⁹ But he expressed annoyance at how involved the lawyers were in this case. When the defendants' lawyer attempted to present his case, the judge shouted: "Let me ask you, how many times did your clients visit the boy in the States? Were they even ever a part of his life?"¹²⁰ When the lawyer tried to explain that the paternal grandparents were only of modest means and therefore could not afford to travel to the United States, the judge cynically responded, "If this is so, how do they expect to take care of a little boy, now?"¹²¹

That the judge asked these questions was not so troubling, given that the paternal grandparents admittedly had very little contact with their son since a family rift had occurred some years back. Noteworthy, however, was the level of hostility the judge expressed towards these lawyers who attempted to advocate on behalf of their clients. The judge ultimately proposed a tentative settlement between the parties, whereby the claimants could supervise weekend visits to the defendants' residence while the boy was on summer holidays. But because neither side was comfortable with the proposal, the judge told them to return the following week for another meeting. Later over lunch, the judge stated to Krishnan that the lawyers in this case were the ones who continued to prevent an amicable solution.¹²² Had they not been involved, he commented, an agreeable settlement more likely would have been reached.¹²³

This disregarding attitude towards lawyers was particularly highlighted during the afternoon session where Krishnan observed a case involving twenty-six claimants who were seeking compensation from a state-owned bus company for injuries they sustained during a violent traffic accident. Assisting the district judge in the adjudication of this matter was a social worker and another judge of that same court. The victims were uneducated, rural villagers who, through their lawyer, accused the bus driver of gross negligence. On one side of a table separating the parties were several bus company officials and their lawyer; on

119. Interview with Presiding Judge of General Lok Adalat, *supra* note 115.

120. Presiding Judge, *supra* note 118.

121. *Id.*

122. Interview with Presiding Judge of General Lok Adalat, *supra* note 115.

123. This resentment towards lawyers was also expressed by a judge from the Women's Lok Adalat. This individual, a prominent lawyer before retiring two years ago, stated that in her Lok Adalat, "lawyers are always up to no good." The Women's Lok Adalat deals almost exclusively with cases of divorce, and as she noted, "things run so much more smoothly" when the parties come on their own without counsel. Interview with Judicial Officer from Women's Lok Adalat (Jan. 5, 2003).

the other side was the line of victims who all were represented by the same lawyer. The claimants' lawyer presented each victim who one-by-one told the three-judge panel of the injuries he/she incurred. The claimants' lawyer then provided to the panel medical reports and in some cases x-rays of each victim's injuries. The panel reviewed the reports and then the chief district judge held each x-ray up to the light and attempted to decipher the seriousness of the injuries. When Krishnan asked if he had medical training to read the x-rays, the judge noted that since he had been involved in many of these types of cases in the past, he had developed a "knack" for this skill.¹²⁴

In terms of the settlements, the negotiations followed a definite pattern. The bus company proposed a figure, the claimants' lawyer (half-heartedly) countered, the bus company then stated another figure, and in three-fourths of the cases observed, the district judge actively supported the company's proposed amount. (In those matters where the judge did not completely endorse the company's offer, he negotiated a settlement where the final figure still came close to the company's second proposal.) Three other observations merit mention. First, when the claimants' lawyer ultimately accepted the settlement, he would do so without even consulting the clients. Second, the bus company's lawyer rarely spoke during any part of the proceeding; the company officials directly engaged in the negotiations. And third, on average, each individual case took anywhere between fifteen *seconds* to two minutes to resolve.

After the proceedings, Krishnan questioned the claimants' lawyer about the assembly-line manner in which he handled these cases. Before answering, the lawyer made it a point to note that professionally he struggles to attract clients and is further hindered by his lack of legal experience.¹²⁵ One way he has sought to improve his contacts as well as his professional capital is by working in Lok Adalats. Because Lok Adalats are promoted by people who the lawyer perceives as having the power and the ability to help him professionally, he makes it a point to work in these forums. Eventually, however, he did confess that the powers-that-be, he felt, evaluated his productivity (and that of the Lok Adalat) on the number of cases disposed during a Saturday session.¹²⁶

In July 2003, judges from the capital's Civil (District) Court Complex invited Krishnan to compare how their General Lok Adalat operated with what we just described. While there were some noticeable differences between the two, more striking were the number of similari-

124. *Id.*

125. Interview with claimants' lawyer (Aug. 17, 2002).

126. *Id.*

ties present. In terms of the differences, first, consider the physical setting of the Capital City General Lok Adalat. Unlike in the above example where there was a separate hall dedicated especially for dealing with Lok Adalat cases, the City Civil Complex contained several courtrooms where every Saturday one or more of these would be used for hearing Lok Adalat matters. Litigants would line the walls both inside and outside of the courtroom waiting for a government “caller” to scream out their names to proceed to the Lok Adalat bench. A long table, approximately four feet wide and fifteen feet long, would separate the petitioner from the defendant and at the head of this table would sit the three-judge panel, made up of a social worker, an advocate/lawyer, and civil judge. Although these General Lok Adalat hearings would occur every Saturday, they could also be held several days during the week, if a matter pending in the regular courts that was thought to be close to compromise was diverted into this dispute resolution forum.

Another difference between the urban, General Lok Adalat and the first one observed involves the role played by the chief district judge. We saw that the first judge was hands-on and very micro-managerial. In contrast, the capital city’s chief district judge acted more like a supervisor, checking-in now and then to see how the judicial panel was functioning and staying updated on its progress.¹²⁷ But even though this chief judge appeared more detached, his impact and presence on the General Lok Adalat remained quite significant. During Krishnan’s observations it was common for the judicial panel—minus the chief judge—to work for about an hour or so attempting to settle various disputes. The majority of matters coming before the panel included divorce cases, property disputes, and motor vehicle accident claims. Suddenly in the middle of a case, the chief judge would walk into the room, where everyone then would immediately stand to greet him with great respect.¹²⁸ He would go over to the bench, ask for a summary of the case being heard, and then take the lead in trying to bring this matter to a resolution. (The other members of the judicial panel would feverishly change their seats to make sure that the chief judge was front-and-center.)

From there, the chief judge would exhibit what one of the members of the judicial panel told Krishnan was “great leadership.”¹²⁹ For example, in the first case where he interceded, the chief judge listened to a lawyer representing an injured factory employee state how his client was not receiving worker’s compensation because the employer had failed to

127. There were two separate observations made of this capital city General Lok Adalat. The first occurred on July 19, 2003, and the second occurred on July 26, 2003.

128. This type of intervention occurred during both of Krishnan’s visits.

129. Interview with Judicial Officer of General Lok Adalat (July 19, 2003).

pay the necessary premiums. The opposing counsel responded that under the law the employer was exempt from having to purchase this particular type of insurance and thus was not liable for injuries suffered by any worker. Visibly frustrated that the case was not being compromised, the chief judge began scolding both parties' lawyers for their role in perpetuating this dispute. Speaking to the worker's lawyer, the judge stated: "You know he [the employer] doesn't have the bloody money to pay what you're asking. So why do you insist on not trying to work with him?"¹³⁰ And turning to the employer's lawyer, he declared: "Obviously this poor guy is hurt and this happened at your client's plant. Don't you feel some responsibility to do something?"¹³¹ He then dismissed the parties, ordering them to see if they could settle their case on their own and to return next week if such compromise failed.

After they left the courtroom, Krishnan spoke separately to the lawyers for both sides. The worker's lawyer expressed great frustration that the judge "did not even bother"¹³² to look at the receipts of all the medical expenses incurred by his client. He noted that even if his client reduced his financial demands by one-half, there still would be no way the worker could cover these costs on his own. "At least the other judges [i.e., those on the original Lok Adalat panel] were listening to my client's difficulties. We did not even get to make our case here."¹³³ The employer's lawyer also was dismayed about what had just occurred. "How can he [the employer] settle or reach a compromise if he has no money to give? Why we even bother to come here [to the Lok Adalat], I just don't know."¹³⁴

The resignation expressed by this second lawyer turned out to be a rather common sentiment. Several lawyers stated that while on occasion participating in Lok Adalats did bring about quicker settlements for their clients, in most cases judges refused to take the time to study what often were complex issues, examining, for example, important evidence in a very cursory manner or simply not at all. Indeed, frustrated by what they perceived as the heavy-handedness of the chief judge, four different lawyers interviewed said that they have begun to engage "quietly" in tactics that they hope will eventually undermine the Lok Adalat process.¹³⁵ For instance, after being lectured by the chief judge for not having his client present in a property law dispute for now the third time, a reprimanded

130. Chief Judge, comments made in General Lok Adalat (July 19, 2003).

131. *Id.*

132. Interview with worker's lawyer (July 19, 2003).

133. *Id.*

134. Interview with employer's lawyer (July 19, 2003).

135. Interview with separate lawyer present at General Lok Adalat (July 19, 2003).

lawyer pulled Krishnan aside telling him that he purposely instructed his client not to show up at that day's Lok Adalat hearing.¹³⁶ Since the Legal Services Authority Act, which governs Lok Adalats, requires that disputing parties sign onto all compromises reached, so long as this lawyer's client continued to refuse to make himself available no pact could be finalized. The ultimate goal, the lawyer indicated, was to put this case back into the regular courts, where he believed his client had the best chances of success.¹³⁷

Another way that lawyers have exhibited this passive resistance¹³⁸ is by not showing up themselves to a Lok Adalat hearing. The following week, for example, Krishnan returned to the City Civil Court where he witnessed a divorce proceeding involving a Muslim couple. In India, religious law typically governs family law cases dealing with issues such as marriage, divorce, inheritance, and the like. Thus, Hindu law applies to Hindu couples, Islamic/*Shariat* law applies to Muslim couples, Christian law applies to Christian couples, and so on. Elsewhere we have detailed how this system operates,¹³⁹ but for our purposes here it is important to recognize that the Indian state courts are charged with administering the relevant religious law.¹⁴⁰ When a case is brought before a Lok Adalat, the same principle is present; the judicial panel is asked, for example, in the case of a Muslim couple seeking a divorce to apply the norms set forth in the *Shariat*. But oftentimes neither the judges nor the parties are familiar with what can be complex provisions in the *Shariat* regarding divorce. In these situations deference is frequently given to the lawyers who presumably have practiced for years in this area and are more familiar with how the law should be applied. Yet without the lawyers present—as was the case that Krishnan observed involving the Muslim couple petitioning for divorce—the panel and the parties are reluctant to finalize a settlement that may not comport with the traditions of Islamic law. The result

136. Interview with “reprimanded” lawyer (July 19, 2003).

137. *Id.*

138. For a classic, academic discussion of how passive resistance is used, see generally JAMES SCOTT, *WEAPONS OF THE WEAK: EVERYDAY FORM OF PEASANT RESISTANCE* (1987).

139. Marc Galanter & Jayanth K. Krishnan, *Personal Law and Human Rights in India and Israel*, 34 *ISRAEL L. REV.* 98 (2000).

140. For a complete set of bibliographic resources on personal law in India, see *id.* For a selected sample of citations, see J.D.M. DERRETT, *AN INTRODUCTION TO THE LEGAL SYSTEM* (1968); GERALD LARSON, *RELIGION AND PERSONAL LAW IN SECULAR INDIA: A CALL TO JUDGMENT* (2001); John Mansfield, *The Personal Laws or a Uniform Civil Code?*, in *RELIGION AND LAW IN INDEPENDENT INDIA* (Robert Baird ed., 1993); SWAPNA MUKHOPADHYAY, *IN THE NAME OF JUSTICE: WOMEN IN LAW AND SOCIETY* (1998); Archana Parashar, *Do Changing Conceptions of Gender Justice Have a Place in Indian Women's Lives? A Study of Some Aspects of Christian Personal Law*, in *CHANGING CONCEPTS OF RIGHTS AND JUSTICE IN SOUTH ASIA* 140 (Michael R. Anderson & Sumit Guha eds., 2000).

then is a postponement of the matter until lawyers for both parties can make themselves available to the Lok Adalat.

Following the adjournment of this Muslim divorce case, Krishnan interviewed first the husband and then the wife. While the husband side-stepped the question of why his lawyer did not appear, the wife directly stated that her lawyer had purposely not attended for fear that the wife would not receive a fair hearing in this forum.¹⁴¹ According to the wife, her lawyer had little confidence that the judicial panel (particularly if the chief judge was present) would show the lawyer the deference he believed he deserved.¹⁴² The lawyer also apparently stated to the wife that it would be the judge's biased beliefs that would dictate the outcome rather than the principles of equity or law. Since the Lok Adalat lacked any enforcement power to make the lawyer attend, the plan was that eventually the case (after going through several postponements) would be re-directed to the regular state courts where the lawyer believed he would have a better shot at obtaining a more favorable outcome for his client.¹⁴³ (It seems that the lawyer mentioned to the wife that the regular state courts have over the past few decades expanded the rights of Muslim women in divorce matters, beyond what traditionally has been allowed for by the *Shariat*.¹⁴⁴)

141. Interview with Muslim wife (July 26, 2003).

142. *Id.*

143. *Id.*

144. For case law supporting this, see *Bai Tahira v. Ali Hussain Fissalli*, A.I.R. 1979 S.C. 362, 365–66; *Fuzlunbi v. K. Khader Vali*, A.I.R. 1980 S.C. 1730, 1736; *Mary Roy v. State of Kerala*, A.I.R. 1986 S.C. 1011, 1014; *Mohd. Ahmed Khan v. Shah Bano Begum*, A.I.R. 1985 S.C. 945, 954. See also FLAVIA AGNES, *LAW AND GENDER INEQUALITY: THE POLITICS OF WOMEN'S RIGHTS IN INDIA* (1999) (*Ullah v. Uttar Pradesh*, Writ Pet. 45 1993; Writ Petition 57 1993). For the third case, where a Bombay High Court ruled that Muslim divorced women are entitled to maintenance payments beyond what is prescribed by the *Shari'a*, see Sultan Shahn, *Ulema to Launch Campaign for Personal Law*, *TIMES OF INDIA* 1999 (Internet edition) (1999). A decision by the Supreme Court in April 2003 illustrates the Court's willingness, at least in an indirect manner, to reenter the debate over women's rights in family law cases. In upholding a family court divorce decree that gave a Muslim woman more property rights than are typically allowed under Muslim personal law, the Court refused to entertain the husband's petition that family courts (which are special courts created under the Family Courts Act of 1984 but are still part of the governmental judicial system and answerable to the Supreme Court) do not have jurisdiction to render such a verdict. For a full discussion of this case, see J. Venkatesan, *Family Courts Can Decide Property Disputes*, *HINDU*, Apr. 18, 2003, available at 2003 WL 18909860. Also, in July 2003, the Supreme Court in overturning a Christian personal law dealing with inheritance, stated in dicta that India should eventually move towards considering a uniform civil code. This statement from Chief Justice Khare resulted in widespread protest by various religious minority communities as well as a host of scholars, academics, and commentators. See *SC Favors Uniform Civil Code*, *INDIA EXPRESS* (Internet edition), at <http://www.indiaexpress.com/news/national/20030723-1.html> (July 23, 2003). The Chief Justice has commented:

It is a matter of regret that Article 44 of the Constitution [which calls for the government to endeavor towards a uniform civil code] has not been given effect to. Parliament is still to

That lawyers are strategically acting in this manner is of no surprise to members of the Lok Adalat's judicial panel or to the chief judge. "We are not stupid,"¹⁴⁵ the chief judge told Krishnan. "We know what they are doing and how they are trying to frustrate our efforts, but we do the best we can and try not to bother with them."¹⁴⁶ In fact to illustrate how well the Lok Adalat can function *without* lawyers, the chief judge made it a point to highlight another divorce case that he personally settled. In this matter, a Hindu couple from a rural village came before the Lok Adalat to petition for a divorce. As in the Muslim divorce case described above, neither party's lawyer attended the Saturday session. Nevertheless, the chief judge, determined to broker a settlement, spent nearly twenty minutes listening to the complaints and demands of both the husband and wife.

The main contested issue in this case involved alimony for the wife; she was seeking more than the husband was willing to pay. Confused by her unwillingness to reduce her demands by even one rupee, the judge therapeutically asked the wife why she was so hostile and angry. The wife responded by saying that the husband had flaunted his affair with another woman throughout the village, utterly humiliating the wife. At this point the chief judge had what might be described as a "eureka" moment. He demanded to know from the husband why he had behaved in this manner. "You are having a concubine and you don't even feel ashamed?"¹⁴⁷ he inquired. "What you have done is very wrong, and you need to compensate her [the wife] properly,"¹⁴⁸ the judge stated. After some further cajoling the husband reluctantly agreed to the wife's demands and thereafter the matter was disposed. The judge then, addressing Krishnan as well as about twenty students from a nearby law school who were observing this session as part of their clinical training, emphasized two important morals of this particular episode. First, he said, thanks to the Lok Adalat this case, which would have potentially lasted for years in the regular courts, is now completed and the parties can go on with their lives. Second, this matter was expeditiously resolved mainly because there were no lawyers present. Lawyers, he asserted, would have raised "useless"¹⁴⁹ objections and made time-consuming, irrelevant argu-

step in for framing a common civil code in the country. A common civil code will help the cause of national integration by removing the contradictions based on ideologies.

Id.

145. Interview with Chief Judge of General Lok Adalat, location withheld (July 26, 2003).

146. *Id.*

147. Chief Judge, address to law students (July 26, 2003).

148. *Id.*

149. *Id.*

ments. Keep this in mind, the judge told the students, because they were after all the next generation of India's best and brightest legal minds.

The discord that is present between judges and lawyers within both the General Lok Adalats seems to reflect a deep tension that proponents of this institution to date have not fully acknowledged. In the next section we turn to examining another type of forum, the High Court Lok Adalat, where judge-lawyer hostility has similarly serious implications for the claimants seeking to access justice.

3. *The High Court Lok Adalat*¹⁵⁰

The High Court Lok Adalat is an interesting creature. Established in 2000, it meets one weekday a month in a building located next to the High Court that houses the state Legal Services Authority Commission.¹⁵¹ This particular Lok Adalat seeks to dispose of the thousands of cases that continue to backlog the High Court. The matters that typically come before the High Court Lok Adalat are petty criminal cases that the Indian penal code characterizes as compromise-able, or "compoundable." In American terms, the institution serves to facilitate plea bargains between the state's public prosecutor and the petty criminal defendant. (Where the victim is an individual, the public prosecutor generally consults with the victim before striking any deal.) There is a three-judge panel that presides over the High Court Lok Adalat: a retired High Court judge, along with two advocates.¹⁵² As with the other Lok Adalats, at least one member of the panel must be a woman, but the statutory requirement that the panel include a social worker is not strictly enforced.¹⁵³

On the day that Krishnan traveled to the High Court Lok Adalat, sixteen cases were scheduled for hearing. Yet before the session began, the presiding judge informed Krishnan that he was very skeptical of reaching a settlement in any case. "These damn lawyers are just not showing up,"¹⁵⁴ he commented. "They are following the order of the [state] Bar Council not to come and work in the Lok Adalat."¹⁵⁵ As it turned out, half of the defense lawyers did attend that day's session with their clients, but the proceedings were delayed because the public prosecutor arrived over thirty minutes late—much to the dismay of the presid-

150. The observation of this Lok Adalat by Krishnan occurred on July 30, 2003.

151. Interview with Presiding Judge of the High Court Lok Adalat (July 30, 2003).

152. *Id.*

153. *Id.*

154. *Id.*

155. *Id.*

ing judge, who quietly remarked to Krishnan: “These lawyers are all alike, regardless of who they work for. Delay is all they know.”¹⁵⁶

Eventually the session began. The separate defendants had their respective counsel present and the judicial panel called each individual up one-by-one. Six of the cases involved “excise” matters, or otherwise put, state charges against a defendant for selling alcohol without a license. On this issue of excise, the Indian Penal Code is both complex and technical. Under some circumstances excise violations will be compoundable (e.g., when the amount of alcohol sold is under ten liters), while others will not be.¹⁵⁷ In five of the six cases, the violations were found to lie outside of the High Court Lok Adalat’s jurisdiction, much to the ire of the presiding judge who scolded the lawyers on both sides for not knowing this beforehand. Yet in every one of the cases that was dismissed, the judicial panel scrutinized the statutes to see if there was any way of fitting the respective cases into one of the compoundable categories. In his eagerness to find a way to resolve more than just one dispute, a judicial officer—not on the bench but who happened to be visiting this session and serving as an active advisor to the panel—stated in an exasperated voice, “I really think if we read the provision this way, we can make this work.”¹⁵⁸

If there was great frustration that almost all of the excise cases failed to meet the penal law’s compoundability requirement, then consider how the panel reacted when a different type of case that could be settled, was not. The last case of the day involved two defendants who already had been convicted in criminal court of violating Section 354 of the Indian Penal Code. That provision states that it is a crime to:

Assault or [use] criminal force to a woman with the intent to outrage her modesty—whichever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine or both.¹⁵⁹

Both of the defendants had been sentenced to a prison term and ordered to compensate the victim financially, but they were appealing their

156. *Id.*

157. Laws regulating liquor in India date back to 1944, when the pre-Independent state, under the British Raj, passed the Central Excise Act of 1944. Since 1944 some states have viewed the central government’s legislation as providing the floor or the minimum regulation, and thus have tightened up restrictions accordingly.

158. Judicial Officer, comments while observing High Court Lok Adalat (July 30, 2003).

159. INDIA PEN. CODE § 354. For a discussion of this matter, see *Review of Rape Laws, March 2000*, LAW COMMISSION OF INDIA (Mar. 25, 2000), available at www.lawcommissionofindia.nic.in/rapelaws.htm. The Centre for Social Research, a prominent non-governmental organization in India, has devoted considerable time to evaluating and critiquing the compoundability aspect of Section 354. <http://www.csrindia.org/ctogotodo.html>.

case to the High Court. On appeal the High Court affirmed the lower court's prison sentence, however it recommended to the public prosecutor and the defense lawyers that they try to hammer out an agreement on the issue relating to compensation.¹⁶⁰

Also present at this hearing was the assaulted teenage victim and her older, very feeble father. The judicial panel summoned the two, along with the public prosecutor and the defendants' lawyers to the bench. The judges urged the parties to come to some sort of financial settlement so the matter could be disposed. As the prosecutor and defense lawyers began to negotiate, the victim's father requested to speak. He asked: If the lower court's prison sentence was affirmed, why did its original, levied compensation award require any adjustment at all? He explained that his family was poor and struggled to eek out an existence. Lowering the award, even by just a few hundred rupees, would have a significant impact on him, his wife, and his children. The presiding judge tried to explain to the father the bigger picture of why it was important not to clog the High Court with matters that could be easily resolved here in the Lok Adalat. But the father, although timid in the way he spoke, remained resolute. He would not agree to any reduction in compensation and if the case needed to be sent back to the High Court for a final decision, then so be it. Angered that no compromise could be reached, the presiding Lok Adalat judge adjourned the matter and ordered the parties to resolve their dispute in the regular state court.

In spite of the low number of settlements that occurred during Krishnan's visit to the High Court Lok Adalat, state Legal Services Authority officials hastened to point out that this day was an anomaly. According to these officials, 2003 has been a banner year; in particular, between January 1 and May 31 nearly 3000 cases have settled, with total awards reaching over half a million rupees.¹⁶¹ Moreover, the staff at the Legal Services office proudly displayed to Krishnan the year-by-year total of excise settlements dating back to 2000. Table 2 illustrates the results.

160. For years the courts—despite heavy criticism from women's rights and civil rights groups—have deemed Section 354 as compoundable and thus eligible for Lok Adalat adjudication. This is the reason that, procedurally, the case could come before the High Court Lok Adalat. *Id.*

161. Interview with Legal Services Authority (July 30, 2003).

TABLE 2¹⁶²

YEAR-BY-YEAR TOTAL OF EXCISE SETTLEMENTS DATING BACK TO 2000

| YEAR | NUMBER OF EXCISE CASES SETTLED BY HIGH COURT LOK ADALAT | TOTAL AMOUNT OF MONEY AWARDED (RUPEES) BY HIGH COURT LOK ADALAT |
|----------------------|---|---|
| 2000 | 44,810 | 19,373,021 |
| 2001 | 46,332 | 14,512,905 |
| 2002 | 10,214 | 2,049,100 |
| 2003 (Jan. 1–May 31) | 2914 | 540,635 |

Upon closer scrutiny the data prove to be quite perplexing. We see that in its first year, 2000, the High Court Lok Adalat settled nearly 45,000 cases, and dispatched almost 20,000,000 rupees in awards. Just two years later though, in 2002, the number of cases settled dropped to about 10,000 and the awards issued fell to slightly over 2,000,000 rupees. If the first six months of 2003 are indicative, this year will be the lowest number of cases settled by the High Court Lok Adalat and the lowest amount of money awarded. Of course because the data from the Legal Services office are incomplete in many ways, we are left with more questions than answers. For example, what percentage of cases that come before this Lok Adalat are actually settled? Could it be that, in 2000, ninety-five percent of the cases were settled, whereas in 2002 settlements occurred only ten percent of the time—or vice versa? Are fewer cases settled today because there are fewer disputes, fewer claimants willing to agree to a settlement, greater lawyer-obstinance to work within these forums, or something else?

The incomplete nature of the data collection was not restricted to the High Court Lok Adalat. Consider how the records bureau located inside the capital city's Civil Court Complex functions. This office keeps statistics on the activities of other types of Lok Adalats in the capital district. The staff provided Krishnan with access to a variety of records from 2002. For example, according to their data, last year a Criminal Lok Adalat that met 192 times settled 1090 criminal matters.¹⁶³ But when asked how many petty criminal cases were *referred* to the Criminal Lok Adalat, no one could provide an answer. Krishnan then went to observe how the Criminal Lok Adalat operated and it became apparent why the records office had no data on case-referrals. For one thing, the Criminal Lok Adalat is a dispute settlement body in name only. In reality all this forum

162. *Id.*

163. Interview with Record Bureau staff (July 24, 2003).

does is to sign off on pre-arranged settlements reached between the state and the charged defendant.¹⁶⁴

The proceeding takes place in the criminal courthouse, located about three miles away from the capital city's Civil Complex, specifically within the office of a criminal court judge (known as the metropolitan magistrate). The judge is at his desk while a female advocate, who serves as the titular second member of this "judicial panel," sits on the other side. There is no third member present. This Lok Adalat meets up to three times a week where between forty and fifty cases are disposed of in each session.¹⁶⁵ One-by-one, a defendant enters the judge's office escorted by a police officer. A clerk presents the judge with the defendant's file that explains the plea agreement reached with the state. The judge signs off on the matter and the case is reported as "settled." This episode takes just seconds to complete; once the judge signs the necessary forms, the defendant exits (presumably to jail or to pay a fine) and the next defendant comes in and the same process is repeated. That the Legal Services office finds no reason to maintain statistics on the number of cases that are referred to the Criminal Lok Adalat is understandable in view of this forum's one hundred percent "settlement" rate.

As an institution, the Criminal Lok Adalat acts more as an administrative rubberstamp than as a dispute resolution forum. There are no lawyers or prosecutors present. There is no contestation of facts or negotiations regarding the terms of the settlement. Krishnan was informed that meetings between the defendant and the prosecutor obviously do occur prior to the Criminal Lok Adalat judge signing off on the plea agreement.¹⁶⁶ And, furthermore, he was told that not all of the plea-bargaining meetings resulted in compromise. However, the Legal Services Authority office does not keep statistics of what transpires within these plea-bargaining meetings.¹⁶⁷ We do not know, for example, what percentage of compoundable cases is settled beforehand and what percentage is tried. The district Legal Services office only records (and highlights) the supposed success rate of the cases "settled" within the Criminal Lok Adalat.

It is unclear why records for the Criminal Lok Adalat are kept in this manner. In civil matters the record keeping tends to be a bit more detailed but it too remains incomplete. For example, the Legal Services office noted that last year within the capital district 132 out of 283 civil and

164. Krishnan observed the Criminal Lok Adalat on July 26, 2003.

165. Interview with Presiding Judge of Criminal Lok Adalat (July 26, 2003).

166. *Id.*

167. Interview with the Legal Services Authority (July 24, 2003).

family law cases settled in pre-Lok Adalat negotiation meetings.¹⁶⁸ Yet there was no breakdown on the types of civil matters settled or whether any litigants by passed the pre-Lok Adalat meeting and went directly to the Lok Adalat itself. Separately kept statistics for 2002, added more confusion:

460 out of 510 divorce cases were settled in the Lok Adalat;

168 out of 200 motor vehicle accident cases were settled in the Lok Adalat; and that

142 out of 200 “other civil matters” (mainly property disputes) were settled in the Lok Adalat.¹⁶⁹

Furthermore, the Legal Services office had other rather puzzling data. In Bank Adalats—dispute resolution forums intended to bring about compromise between customers who have a grievance against the Bank of India—only 181 out of the 800 cases settled in 2002.¹⁷⁰ In contrast, the district’s Water Company Adalat, which hears cases from individuals with complaints against the city’s Metro Water Supply and Sewage Board, received 152 cases in 2002 and settled 123 of them.¹⁷¹ The office also noted that thousands of cases have been settled in Jail Adalats—forums that occur in the jail cell of inmates who have been accused of committing a petty criminal offense but who lack the resources to post bail and thus have languished in custody for, in some cases, years.¹⁷² And once every three months the district Legal Services office holds a “mega-Lok Adalat,” which is a one day camp organized at the city’s central sports stadium where anywhere from 8000 to 10,000 cases are brought. Krishnan was told that, on average, the settlement rate at these mega-Lok Adalats is about fifty percent.¹⁷³

Yet how do we interpret any of these data? Along with the questions raised above, other issues come to mind. For example, how satisfied are the claimants that participate in Bank Adalats, Water Company Adalats, Jail Adalats, or mega-Lok Adalats—even when a settlement is reached? How effectively are the parties’ claims being presented? Do lawyers act strategically *vis-à-vis* the judges as we witnessed above? Are judges the dominant figures parsing out justice as they see fit? And perhaps most importantly, has the desire for increasing the number of cases settled so consumed those working within the process that they have lost focus on the substantive, concrete concerns of the average claimant?

168. *Id.*

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Id.*

The evidence we have gathered and the queries we raise do place into question the ultimate fairness of Lok Adalats. As we have found, the Lok Adalat is not a single institution, but a cluster of kindred institutions. Not only are new variants evolving, but, within each, those who operate them are improvising and new patterns are emerging. In spite of the traditionalistic reference of the name, there is little drawing on indigenous practices; in spite of the populist rhetoric, there is no evident community input or participative character to the proceedings. These institutions tend to operate in a top-down fashion—scheduling, location, personnel, and agendas are all decided by the authorities who occupy their positions by virtue of state connections. These forums are dominated by judges both as organizers and presiders. Correspondingly, the role of lawyers is notably diminished compared to the regular courts. With little lawyer input and no recourse to appeal, presiding officers enjoy far greater discretion than in regular state courts. Judges may be paternalistic, overbearing, or perfunctory in dealing with individual parties. They are not, however, necessarily more deliberative. Yet there are those who no doubt will be very critical of our findings and these questions we raise. We sketch our critics' likely rebuttal in the next section. As we conclude, however, this point of view does little to blunt our concern about how Lok Adalats are functioning in modern India.

CONCLUSION

A. "GRUFF" JUSTICE IS GOOD (ENOUGH) JUSTICE . . . IS INDIAN JUSTICE

Since we first began our investigation of Lok Adalats nearly two years ago, we have faced recurrent criticism from their defenders.¹⁷⁴ Critics have accused us of viewing Lok Adalats through a Western, even colonial lens, reminding us that India is not the United States, Britain, or Canada. Applying the standards we would use in the West to the Indian legal system is taken as an indication of insensitivity to cultural dynamics and as evidence of hubris.

According to these defenders, Lok Adalats need to be contextualized within the larger framework of India's legal system. The Lok Adalat was created to restore access to remedies and protections and to alleviate the institutional burden of millions of petty cases clogging the regular

174. It should be noted that our critics' argument, which we set forth in this section, has been expressed to us in verbal fashion. We have presented our findings and hypotheses to judges and lawyers in India and this has been their reaction to our claims. To date, we have not found anything in writing that captures their views that we are presenting here. This section thus is a summary that we hope does justice to our critics' position.

courts.¹⁷⁵ Recall that there are many obstacles within the regular courts—particularly the lower courts—preventing disputants from receiving speedy, accessible justice. The most important aspect of the Lok Adalat is that it offers the aggrieved claimant, whose case would otherwise sit in the regular courts for decades, at least some compensation now. We have to remember, these proponents argue, that in the big picture the cases that come before the Lok Adalats are rather petty. Although to the individual claimant her case has enormous personal significance, in most cases the claims are usually for small amounts of money and involve relatively minor issues.¹⁷⁶

Even assuming that Lok Adalats throughout India operate as they do in the sites we observed—where cases are reviewed quickly and judges tend to act in a unilateral (if not harsh) manner—this is acceptable. The presiding judge of a Lok Adalat is an experienced adjudicator with a documented record of public service and has legal acumen. So even if the judge happens to address claimants gruffly or to treat the issues before him in a seemingly hurried manner, at the end of the day his decisions are usually on the mark—or at least they are close enough, so that the parties are better off than they were originally. Regardless of how gruff and perfunctory the justice dispensed, Lok Adalats improve the overall legal system. To ignore their contributions is to misunderstand both how justice functions in India and the constraints on the path to greater access to justice in the future.

We appreciate that many in India share a desperate desire to improve the condition of the legal system. But we question our critics' unabashed acceptance that Lok Adalats—even with their flaws—are better for the entire legal system than nothing at all. Lok Adalats consume scarce resources of money, personnel, attention, and energy. These resources might be better employed to address the fundamental problems facing the courts in India. To persist on the Lok Adalat track without critical examination of its costs and alternatives strikes us as manifesting

175. Defenders also credit Lok Adalats with reducing the frequency of “under the table negotiations.” Anyone familiar with how things work in India, the argument goes, knows that when a claimant has a grievance against, for example, a governmental electricity company or a similar agency, an easy way to resolve the dispute is quietly to bribe the relevant state official to fix the problem. Although by no means eliminating this behavior, the Lok Adalat provides an opportunity for claimants who disdain such corruption to pursue their cases within a legitimate judicial setting.

176. If the case is financially significant there is always the option of turning to arbitration, which in India is a formal, alternative dispute forum designed to handle large claims where large amounts of money are at stake. But even here, an agreement only goes into effect where both parties agree to the proposed terms set forth by the arbitrator. In 1996, India passed the Arbitration and Conciliation Ordinance, which sought to update the Arbitration Act of 1940. One of the most important aspects of the 1996 law is that it significantly reduces the ability of parties to set aside the arbitration agreement through litigation in the regular state courts.

all unwarranted pessimism about the possibilities for court reform that truly enhances access to justice.

B. LOK ADALATS AS A MOVING TARGET

We anticipate that there will be further extensions and enlargements of the Lok Adalat cluster and perhaps refinements and cutbacks as well. Within the past year there have been additional statutory initiatives to bolster the Lok Adalat. In 2002, Parliament enacted a new set of amendments to the Indian Civil Procedure Code. Among them, Section 89 enlarges the power of courts to refer cases to Lok Adalats.¹⁷⁷ Section 89 reads:

(1) Where it appears to the court that there exist elements of a settlement which may be acceptable to the parties, the court shall formulate the terms of the settlement and give them to the parties for their observations and after receiving the observations of the parties, the court may reformulate the terms of a possible settlement and refer the same for—

- (a) arbitration;
- (b) conciliation;
- (c) judicial settlement including settlement through Lok Adalat;
or
- (d) mediation.

(2) Where a dispute has been referred—

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;

(b) to Lok Adalat, the court shall refer the same to the Lok Adalat in accordance with the provisions of sub-section (1) of Section 20 of the Legal Services Authority Act, 1987 and all other provisions of that Act shall apply in respect of the dispute so referred to the Lok Adalat;

(c) for judicial settlement, the court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authority Act, 1987 [39 of 1987] shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(d) for mediation, the court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.¹⁷⁸

¹⁷⁷ INDIAN CODE CIV. PROC. § 89.

¹⁷⁸ *Id.*

Under one plausible reading of Section 89 a court now has the power to steer cases into Lok Adalats, accompanied by the judge's formulation of a resolution, whenever the judge believes that a settlement between the disputing parties is possible, even if the parties do not share this opinion or consent to the transfer. Presumably if a settlement were not arranged in the Lok Adalat, the case would return to the docket of the court. But this understanding is rendered problematic by another new provision, an amendment to the Legal Services Authority Act ("LSAA") added by Parliament in 2002.¹⁷⁹ Section 22D of the LSAA states:

The Permanent Lok Adalat shall, while conducting conciliation proceedings or deciding a dispute on merit under the Act, be guided by the principles of natural justice, objectivity, fair play, equity and other principles of justice, and shall not be bound by the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872.¹⁸⁰

At least some Lok Adalats are thus authorized to go beyond arranging settlements to "decid[e] . . . a dispute on merit," and they are given broad discretion to do this according to their general notions of justice.¹⁸¹ Even without this extension of the mandate as mediators, Lok Adalat judges already possess power that seems overbearing and coercive to the parties before them—especially poor and unrepresented parties.¹⁸²

The Indian Bar Council has been very critical of 22D particularly for allowing Lok Adalats to rule now on the merits of cases without the agreement of the parties. Further, many Indian lawyers worry that a claimant seeking justice in the regular state courts might end up having her case transferred without her consent to a Lok Adalat (via Section 89 of the Code of Civil Procedure). And once in the Lok Adalat, the claimant may then have a judgment "on merit" issued against her, which un-

179. C.I.S. Part II-A (2002), Legal Services Authority (Amendment) Act, 2002, Indian Parliament Act No. 37 of 2002, New Delhi, June 11, 2002.

180. *Id.* The invocation of "justice, objectivity, fair play, equity and other principles of justice" is reminiscent of the formula "justice, equity and good conscience" which was the residual source of law in British India. See Derrett, *supra* note 84.

181. The new Section 22D formula, "justice, objectivity, fair play, equity and other principles of justice" (again reminiscent of the "justice, equity, and good conscience" formula, see Derrett, *supra* note 84) differs significantly from the formula embedded in Section 20(4) of the Legal Services Authority Act which specifies that the Lok Adalat should pursue "a compromise or settlement between the parties" and in doing so "shall be guided by legal principles and the principles of justice, equity, and fair play."

182. The coercive potential of mediation in developing societies has been especially highlighted by Professor Sally Merry some years back. See Sally Merry, *The Social Organization of Mediation in Non-Industrial Societies: Implications for Informal Community Justice in America*, in *THE POLITICS OF INFORMAL JUSTICE*, *supra* note 8, at 17. As opposed to the mediators in Professor Merry's study, Lok Adalat judges have wielded—and with Section 22D in effect will probably continue to wield—their power with little to no check.

der Section 22E of the Legal Services Authority Act would be “final and binding”¹⁸³ with no appeal.

In December 2002, lawyers across much of India went on strike to protest these amendments.¹⁸⁴ In addition, the protestors filed a writ petition in the Supreme Court seeking to invalidate Section 22D. In a short but confusing judgment the Court dismissed the petition and upheld the amendments as free of any constitutional infirmity.¹⁸⁵ The Court went on to state that the amendments to the LSAA, including Section 22D, would take effect once “Permanent Lok Adalats” were “set up at an early date.”¹⁸⁶ What “Permanent Lok Adalats” means is unclear. From reading both the 2002 amendments of the Legal Services Authority Act, as well as the Court’s judgment, it appears as though no Permanent Lok Adalats have yet been established in India. Presumably such Permanent Lok Adalats would be confined to matters dealing with public utilities. But this turns out to be a potentially elastic category, including not only transport services, postal, telegraph and telephone services, electric and water services, sanitation, hospital, and insurance services, but also “any service which the Central or State Governments . . . may in the public interest . . . declare to be a public utility for purposes of this chapter.”¹⁸⁷ Recall that according to the statute that created the Pension Lok Adalats, these forums were to be a “permanent and continuous body.” So, is it possible now for Pension Lok Adalats to issue non-appealable judgments on the merits of a case? Might other Lok Adalats be assimilated to the “Permanent” and “public utility” categories? Judges and lawyers with whom Krishnan spoke expressed differing views on the exact impact of the Court ruling and of the new amendments. Needless to say, more research (and clarification from judges and government officials) is required before knowing how these amendments and this judgment will affect those pursuing legal claims.

These recent events underline the extent to which the scope and powers of Lok Adalats and their relation to other legal institutions remain fluid and unresolved. Such changes represent a series of improvisations by proponents trying to strengthen and extend what they perceive as a promising institutional initiative. At a conference on access to justice in New Delhi in November 2002, Galanter spoke about Lok Adalats with a number of High Court and Supreme Court judges. Almost uniformly

183. Legal Services Authority Act § 22E (2002).

184. For a discussion of this strike, see J. Venkatesan, *Lawyers Defy SC, Strike Work*, HINDU, Dec. 19, 2002, available at 2002 WL 104070994.

185. Pandey v. Union of India, Writ Petition 543/2002.

186. *Id.*

187. Legal Services Authority Act § 22A (2002).

they regarded Lok Adalats as a signal success. As one judge put it, in a twist on Marie Antoinette, they are “bread for the poor. Later they can have cake.”¹⁸⁸ On the other hand, critics see in these moves portents of a dismantling of legality in favor of paternalistic, intuitive, “*kadi* justice” for the poor.¹⁸⁹ The absence of appeals, the exclusion of lawyers, and the shift of decisional standards from “legal principles” to “principles of justice” suggest a major enlargement of the presiding judge’s discretion and a robust faith that the poor have more to gain from benign paternalism than from juristic or popular legality.

Each side the argument relies on assertions about the working of Lok Adalats that are based on supposition rather than investigation. We hope that research of the kind we propose will help to transform the debate, and the further development of the Lok Adalat institution, into an exchange in which aspirations for access to justice are tested by empirical observation and analysis.

188. Interview with judicial officer, New Delhi, India (Nov. 2002).

189. “Kadi justice” here refers not to the actual practice of Muslim *kadis* (*qadis*, *kazis*) but to Max Weber’s use of the term *kadijustiz* “to describe the administration of justice which is oriented not at fixed rules of formally rational law but at the ethical, religious, political, or otherwise expediential postulates of substantively rational law.” M. RHEINSTEIN, *MAX WEBER ON LAW IN ECONOMY AND SOCIETY* 213, n.48 (1954). An Indian synonym is “banyan tree justice.”

APPENDIX A¹⁹⁰

NUMBER OF JUDGES, COMMON LAW AND CIVIL LAW COUNTRIES

| COMMON LAW COUNTRIES | YEAR | JUDGES ¹⁹¹ | JUDGES PER 100,000 CAPITA |
|----------------------|------|-----------------------|------------------------------|
| UNITED STATES | 1998 | 28,049 | 10.4 |
| ENGLAND & WALES | 2001 | 3,518 | 6.6 |
| CANADA | 1991 | 1,817 | 6.5 |
| MALAYSIA | 1990 | 274 | 1.6 |
| INDIA | 1995 | 9,564 | 1.0 |

| CIVIL LAW COUNTRIES | YEAR | JUDGES | JUDGES PER 100,000 CAPITA |
|---------------------|------|--------|------------------------------|
| GERMANY | 1995 | 22,134 | 27.1 |
| DENMARK | 1997 | 653 | 12.4 |
| FRANCE | 1997 | 6,287 | 10.7 |
| TAIWAN | 1995 | 1,252 | 5.7 |
| SOUTH KOREA | 1995 | 1,212 | 2.7 |
| JAPAN | 1999 | 2,949 | 2.3 |

For a discussion of this table, consult footnote 2.

190. All population estimates from the U.S. census bureau web site. U.S. Census Bureau, International Data Base Summary Demographic Data, at <http://www.census.gov/ipc/www/idbsum.html> (data updated July 17, 2003). England and Wales population estimated at eighty-nine percent of United Kingdom population.

191. DEPARTMENT FOR CONSTITUTIONAL AFFAIRS, Judicial Appointments, at <http://www.dca.gov.uk/judapp.htm> (as of Dec. 1, 2003) (England and Wales); Debra Cohen & Sandra Longtin, *World Factbook of Criminal Justice Systems*, at <http://www.ojp.usdoj.gov/bjs/pub/ascii/wfbcjan.txt> (last visited Jan. 25, 2004) (Canada); PISTOR, *supra* note 1, at 246 (Malaysia, India, Taiwan, and South Korea); European Research Network on Judicial Statistics, Working Papers. Bologna: Edizioni Scientifiche (Germany); UNITED NATIONS OFFICE FOR DRUG CONTROL AND CRIME PREVENTION, Sixth United Survey of Crime Trends and Operations of Criminal Justice Systems, 131 (covering the period 1995-1997), available at <http://www.uncjin.org/Statistics/WCTS/WCTS6/Publication.pdf> (Denmark); Loïc Cadet, *Civil Justice Reform: Access, Cost, and Delay. The French Perspective*, in CIVIL JUSTICE IN CRISIS 291, 343 (A.A.S. Zuckerman ed., 1999) (France); THE SECRETARIAT OF THE JUDICIAL REFORM COUNCIL, *The Japanese Judicial System* (July 1999), available at <http://kantei.go.jp/foreign/judiciary/0620system.html> (Japan).