

*Debased Informalism: Lok Adalats
and Legal Rights in Modern India*

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It is cheaper for complainants to submit to be plundered than to seek redress.

—Revenshaw

INDIA HAS PULLED off the astonishing feat of sustaining a regime of constitutional liberty, with vigorous judicial protection of human rights in a very large, very poor, and very diverse society. In the face of daunting obstacles, the Indian courts have managed to sustain a regime of constitutional order and legal regularity. With scant material resources, the Indian courts have adapted the structure of colonial law to the vastly different conditions of an independent democratic India and to protect and extend constitutional liberty.¹ For all the system's flaws and imperfections, this is surely one of the epic legal accomplishments of our time. Yet it has gone largely unappreciated by supporters of democracy and the rule of law.

The flourishing of a legal order requires not only the leadership of judges and the mediation of lawyers but also the responsive participation of the citizenry. For the law to infuse the practices of institutions and inform the dispositions of citizens, those citizens need access to the law's protections and remedies. Because courts are passive institutions, they have to be moved by citizens. One of the glories of the Indian legal system is that citizens have direct access to the higher judiciary to effectuate a vital set of fundamental protections.² But for most citizens, in most matters, the site at which they could use the system is the lower courts. At the very time that the higher reaches of the Indian legal system have proved extraordinarily responsive and resilient, its lower reaches seem to be trapped in a downward spiral of ineffectiveness (Bearak 2000).

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In this chapter we examine the problems that plague India's legal system.

period, which raises a question about the representativeness of his finding for India overall. But there is no reason to think that Maharashtra has less litigation than India as a whole, because the data point to a general correlation of court use with economic development. Although its presentation of Indian data contains glaring scholarly deficiencies, a recent Asian Development Bank (ADB) study of legal institutions in six Asian nations—China, Japan, Korea, Malaysia, Taiwan, and India—offers rough confirmation both of the absolute level of litigation in India and its low comparative rank (Pistor and Wellons 1999). Comparing India with China, Taiwan, Korea, Malaysia, and Japan, the ADB study finds that in India, the rate of filing cases in the lower civil courts was 1,209 per million (1.2 per 1,000) population in 1995.⁷ 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 the differences in the acuity of the researchers. The Indian rate is only slightly higher than the Chinese rate, but the Chinese figure includes

only commercial cases.⁸ And the Indian rate is far lower than that of the other countries in the ADB comparison. Malaysia, whose legal institutions most resemble those of India, had a civil litigation rate in 1990 of 17,850 cases per 1 million inhabitants (17.8 per 1,000)—almost fifteen times that of India. And India's rate was well below those in Korea (14.7 civil cases per 1,000 inhabitants excluding family-law cases) and Japan (3.4 per 1,000), two societies that are known for being nonlitigious. 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.

Are these low rates of court use an inheritance from the colonial past? Robert Moog (1993) examined litigation rates in the northern state of 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

Perceptions and Realities of Litigation in India

How can it be that despite the low rate of civil litigation, there is a widespread perception that the courts in India are inundated with cases, that frivolous litigation is rife, and that there is an abundance of hungry lawyers? Is there a connection between the relative scarcity of litigation and the impression that there is so much of it?

Certainly the Indian courts are desperately congested, even though the number of cases filed is small on a per capita basis. In 2002 there were “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” (Debroy 2002). The courts appear to be heavily used because there are relatively few courts and few judges staffing them. As Table 3.1 shows, common law countries tend to have fewer judges per capita than do civil law countries.

But India has only one-tenth to one-sixth the number of judges per capita found in the developed parts of the common law world. Indian courts tend to be poorly equipped and inefficient. Apart from the physical and technical deficiencies of the courts, outmoded procedural laws provide abundant

TABLE 3.1
Numbers of Judges, Common Law and Civil Law Countries

	Year	Judges	Judges per 100,000 inhabitants
Common law countries			
United States	1998	28,049	10.4
England and 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			
Germany	1995	22,134	27.1
Denmark	1997	653	12.4
France	1997	6,287	10.7
South Korea	1995	1,212	2.7
Japan	1999	2,949	2.3

SOURCES: Canada: www.oip.usdoj.gov/bjs/pub/ascii/wfbcjcan.txt (judges); Denmark: www.uncjin.org/Statistics/WCTS/WCTS6/Publication.pdf (judges); England and Wales: www.open.gov.uk/lcd/judicial/judapp.htm (judges); France: Loic (1999) (judges); Germany: *European Research Network on Judicial Statistics* (ongoing); India: Pistor and Wellons (1999) (judges); Japan: www.kantoi.go.jp/foreign/judiciary/0620system.html (judges); Malaysia: Pistor and Wellons (1999) (judges); South Korea: Pistor and Wellons (1999) (judges); Taiwan: Pistor and Wellons (1999) (judges); United States: www.census.gov/ipc/www/idbsum.html (population) and U.S. Bureau of Justice Statistics (1999) (judges).

*The population of England and Wales has been estimated at 89 percent of the population of the United Kingdom.

opportunity for delaying tactics, especially interlocutory appeals and stay orders.¹¹ Judges, fearful of the bar, lack leverage to discipline lawyers or even to use the available tools to expedite proceedings.¹² Delay is endemic: in 1997, almost one-third of the cases on the dockets of the district courts had been filed one to ten years earlier; one-quarter of cases sat for the same period in lower-level courts (Rajiv Gandhi Institute 1999). A recent story in the *New York Times* epitomizes the situation. The article highlighted a relatively simple property law dispute between two neighbors, a milkman and a meat cutter (Bearak 2000). Apparently the milkman had built a wall with two drains that leaked into the meat cutter's yard. The meat cutter had won a judgment in 1961 declaring the drains illegal; but because of the inordinate number of appeals allowed by the Indian legal process, the case remained open for thirty-nine years—long after both parties had died!

In the state high courts, more than 50 percent of all cases were more than three years old, 37 percent were more than five years old, and 14 percent were more than ten years old (Rajiv Gandhi Institute 1999). Cases linger interminably, and arrears mount (Bearak 2000). Lawyers, fiercely loyal to existing practices, resist reforms by acting collectively and by wielding their "street power" (Hegde 1987). Debroy (2002) describes how in 1999, Parliament passed amendments to the Civil Procedure Code intended to reduce delay; but lawyers' public demonstrations and strikes forced the government to back away from the proposed reforms (Mitra 2000; and see Bearak 2000).

One sign of the courts' infirmity is public disdain for the lower courts. The public has low (and generally realistic) expectations of the law, of lawyers, and of the lower courts (V. N. Rao 1990; Rekhi 2002). Discontent with the lower courts goes back to the colonial period. Penderel Moon, a scholarly British district officer, concluded in 1945 that "in Indian conditions the whole elaborate machinery of English law, which Englishmen tended to think so perfect, simply didn't work and has been completely perverted" (22). And a long string of observers agreed that the workings of the legal system in the lower courts were perverse or even pathological (Mendelsohn 1981; and Cohn 1959; also see Bose 1917; Connell 1880, Dickinson 1883; and Kidder 1978).

Potential users avoid the lower courts whenever possible, many from ig-

- “Backlog and delay provide a profound disincentive to settlement. Defendants who have achieved preliminary injunctive relief, benefit from the time value of money by refusing to settle, even in cases that they realize they are likely to lose” (Chodosh et al. 1997–1998, 31).
- “The honest litigant is impeded in the asserting of his legal rights, while paradoxically enough, the dishonest litigant is encouraged to assert unfounded or exaggerated claims” (Rajiv Gandhi Institute 1999, 18).

And as a local banker recently confided to a journalist, “We tell our clients to settle if they have a strong case and to go to court if it’s weak” (Gardner 2000, 21).

A very high percentage of cases involve government bodies as parties. One observer estimates that the percentage of cases involving government bodies is

money. It is frequently about control of some valued resource: land, a house, a job, government recognition, a license, a resource that may not be readily reducible to a monetary equivalent. Even if a claim is phrased as one for money damages, it is rarely resolved by someone's writing a check. Claims for money damages are often part of a more complex struggle between the parties. And when outcomes are not readily reducible to a monetary equivalent, it is difficult for the parties to quit the sunk-cost auction.

For large sectors of society and large areas of conduct, civil courts afford no remedies or protections. When pressure builds to provide usable remedies for a particular sort of grievance, the solution, understandably, is not to undertake the Sisyphean task of reforming the lower courts: it is to bypass them. The writ jurisdiction, which provides direct recourse to the higher courts for violations of the Indian Constitution's Fundamental Rights, can be seen in retrospect as the prototype for this bypassing strategy.¹⁸

The typical bypass strategy is to establish a tribunal with exclusive jurisdiction over certain types of cases—motor vehicle accidents, consumer complaints, or labor disputes, for example.¹⁹ The Central Administrative Tribunal, for example, has jurisdiction over “service matters,” including disputes about government employment, promotions, pensions, and the like. The forums created by these measures are courtlike: they weigh competing proofs and arguments within a framework of rules. In some instances (for example, motor vehicle accidents), the presiding officer is the very judge from whose court the cases have been removed.

Some tribunals displace courts of first instance. Court fees are eliminated, and the procedures may be simplified. Other tribunals—for example, the Custom Excise & Gold Control Appellate Tribunal and the Income Tax Appellate Tribunal—hear appeals from administrative determinations.²⁰ Still others, like the Debt Recovery Tribunals, hear only cases brought by banks and financial institutions; they have no jurisdiction to hear cases against those creditors.²¹ The notion is that tribunals will do a superior or at least more efficient job of adjudication than the regular courts. Yet many of these tribunals are plagued by overcrowded dockets, similar to those in the regular courts. For example, recent figures note that the Debt Recovery Tribunals have more than twenty thousand cases pending (Banks concerned 2000). A government report described a backlog of nearly fifty thousand cases on the Central Administrative Tribunal's docket (Parliament of India 1999–2000). And in 2000, more than forty thousand cases were pending before the Motor Vehicle Tribunal (Pending accident cases 2000). (Data are scant regarding the time these cases have been pending and the time it takes for a case to be resolved.)

Bypasses of the courts are not confined to those operated by government.

Claimants may seek redress in arbitration. Legislative provision for arbitration in India dates from the Arbitration Act of 1940. Section 30 of the act provides that an award must be enforced by a decree of a court and leaves wide scope for setting aside awards—an opportunity that has been much availed of. The accretion of technical complexities inspired the Supreme Court to observe that

the way in which the proceedings under the Act are conducted and without an exception challenged in Courts, has made lawyers laugh and legal philosophers weep. Experience shows and law reports bear ample testimony that the proceedings under the Act have become highly technical accompanied by unending prolixity, at every stage providing a legal trap to the unwary. [An informal forum chosen by the parties]

Indian Company.'” (cited in Meschievitz 1987, 16). Some British administrators suspected that there was a poor fit between the imposed British legal institutions and Indian notions of justice. In response, the British tried to incorporate *panchayats*—the indigenous tribunals of pre-British India—into the administration (Galanter 1989b). The plan was not to restore the *panchayats* as they had persisted over the years but to establish “purposefully designed, cheaper cousins of the formal courts garbed with a consensual gloss” (Meschievitz and Galanter 1982, 23).

A movement to restore an indigenous legal system flourished briefly in the years just after independence (Galanter 1989a). The legal system inherited from the British was seen as unsuitable to a reconstructed India, in which faction and conflict bred by colonial oppression would be replaced by harmony and conciliation. Gandhians and socialists within the ruling Con-

gress 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 nonjusticiable directive principle.²² As part of the Panchayati Raj policy of the late 1950s, judicial or *nyaya panchayats* with jurisdiction over

searcher in Uttar Pradesh in the 1970s, frustrated by the rarity of *nyaya panchayat* sessions, whose villagers hosts graciously offered to convene court of

cilitate her research (see Meschievitz and Galanter, 55, 64–67).

In little more than a decade, the *nyaya panchayats* were moribund (Meschievitz and Galanter 1982). It is not clear whether they withered away because they lacked the qualities of the indigenous tribunals or because they displayed them all too well. Most likely, they represented an unappetizing combination of the formality of official law with the political malleability of village tribunals. The *nyaya panchayat* was “thus a body of men . . . that handles disputes without regard to applicable rules and yet appears to villagers as formal and incomprehensible” (66).²⁵

Nevertheless, the *panchayat* idea continued to exert a powerful attraction on legal intellectuals.²⁶ The report of the Expert Committee on Legal Aid, chaired by (and consisting of) Justice Krishna Iyer, speaks glowingly of

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 template for future developments. The end of Emergency Rule and the return to democracy in 1977 brought great ferment in the Indian legal world and hope that institutions and organizations could be contrived to protect the rights of the powerless.²⁹

PUBLIC-INTEREST LITIGATION AND ITS INFLUENCE ON THE *LOK ADALATS*

In the early 1980s, a small number of judges and lawyers, seeking ways to actualize the Constitution's promises of justice, embarked on a series of unprecedented and electrifying initiatives, among them

- the relaxation of requirements of standing.
- the appointment of investigative commissions.
- the appointment of lawyers as representatives of client groups.
- 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.

Public-interest litigation, or *social action* litigation, as these initiatives are now called, has sought to use judicial power to protect excluded and powerless groups (like the environmentally susceptible prisoners and migrant labor-

ers) and to secure entitlements that were going unredeemed.³⁰

At the same time there were measures by the government and the bar to implement the long-standing commitment to legal aid.³¹ A body was established, under the aegis of the chief justice of India, to coordinate the implementation of legal aid programs.³² 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 (see, for example, Fpp 1008:

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, manage the sequence and pace of litigation, monitor developments, and deploy resources to maximize the long-term advantage of a client group (Galanter 1989d; Peiris 1991). The notion 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.

Judicially orchestrated public-interest litigation proved a flawed vessel for empowering disadvantaged groups (see, generally, Agrawala 1985). Among its limitations was 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 (Cunningham 1987; Epp 1998; Galanter 1989d; Kothari 1991). Consider the famous 1982 *Asiad workers case*.³⁵ Here the Supreme Court upheld the Payment of Minimum Wage Act and further stated that any employer found guilty of not paying workers the minimum wage was in violation of Article 23 of the Constitution.³⁶ But the Court was unable to implement this and similar decrees. Although the Court's decision in the *Asiad workers case* was "pronounced in the language of outraged morality," the judgment had little impact on the petitioners' cause: it was handed down well after the workers' project was completed (Mendelsohn 1991, 69). Nor did the decision have a long-term effect on workers generally: in short order the employers "quietly reverted to paying the workers paltry wages, less than the minimum, in total disregard of the Supreme Court ruling."³⁷

A similar result occurred in another famous case, this one brought by a lawyer-swami working with bonded laborers in Faridabad quarries near Delhi. The petitioners in *Bandhua Morcha v. Union of India* (1982) asked the

failure are several but at root is a variation of what one always finds in relation to exploitation of the poor in India: the overwhelming power of large employers and the unreliability of the state as an ally of the poor, despite good intentions of elements within the judiciary and bureaucracy. (46)³⁸

Writing ten years after Mendelsohn and twenty years after the bonded-labor case, Arun Shourie (2001) concludes that the sustained and detailed attention of the Supreme Court in this matter has borne little fruit. He suggests that this is the general fate of the Courts' public interest interventions.

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.³⁹ However, there were some judges who 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 Bhagwati, the foremost judicial proponent of public-interest litigation, proposed one-day *lok adalats* to settle pending cases. 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*.⁴⁰ The dominant themes of reform have become informality, conciliation, and alternative institutions rather than vindication of rights through adversary processes in mainstream adjudicative institutions. The most prominent and widespread expression of the new informalism is the proliferation of judicially sponsored *lok adalats*.⁴¹ As the name (literally, "people's court") suggests, its sponsors seek to present *lok adalats* as indigenous and traditional. 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" (Mehta 2000), even though they have little resemblance to earlier institutions.⁴²

Lok Adalats: *How They Function Today*

Cases on the docket of a local court (or tribunal) are, with the consent of one or both of the parties, transferred to a *lok adalat* list. At an intermittent one-day "camp," typically on a Sunday, attended by judges and other officials and promoted with considerable hoopla, the cases are called before a mediator or panel of mediators (see Moog 1991, 1997; and Ramaswamy 1997). The mediators are typically retired judges or senior advocates.

CASELOADS

1. 2. 3. 4. 5. 6. 7. 8. 9. 10. 11. 12. 13. 14. 15. 16. 17. 18. 19. 20. 21. 22. 23. 24. 25. 26. 27. 28. 29. 30. 31. 32. 33. 34. 35. 36. 37. 38. 39. 40. 41. 42. 43. 44. 45. 46. 47. 48. 49. 50. 51. 52. 53. 54. 55. 56. 57. 58. 59. 60. 61. 62. 63. 64. 65. 66. 67. 68. 69. 70. 71. 72. 73. 74. 75. 76. 77. 78. 79. 80. 81. 82. 83. 84. 85. 86. 87. 88. 89. 90. 91. 92. 93. 94. 95. 96. 97. 98. 99. 100.

ambit of Lok Adalats" (P. C. Rao 1997, 27). The *lok adalat* device has occasionally been used for mass settlement, resolving two separate takings cases in which residents of two different areas received approximately 1.5 billion and 186.8 million rupees respectively; and, more recently, sugar cane growers and laborers were awarded 12 million rupees in a *lok adalat*-brokered settlement (Ramaswamy 1997).

Although the term *lok adalat* originally was used to refer to a transitory forum, staffed by volunteers and convened from time to time, rather than a continuing institution with fixed location and personnel, the notion has been stretched to cover

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 [the] Lok Adalat-type mechanism is being invoked by Government 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. (Menon 2000, 56-57)

Their purpose "is to achieve the resolution of petty disputes between a citizen and such departments before they reach the courts" (Barucha 2000, 18-19). We have not been able to find any description of the structure or operation of these permanent "in-house" *lok adalats*, but from the skeletal accounts we are struck by parallels to the internalization of dispute resolution in captive tribunals described by Lauren Edelman and her colleagues (Edelman, Erlanger, and Lande 1993; Edelman and Suchman 1999).

While proponents of *lok adalats* stress their participatory character, it is clear that the form of participation envisaged for poor claimants or defendants is receiving 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" (Gupteswar 1988, 179). They will give the poor "appropriate guidance" (Morje 1984). 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

and perhaps over 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*” (Barhat 1987, 6). 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” (Diwan 1991, 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 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 Rs. 1,160 crores awarded (this is an average award of 33,190 rupees).⁴⁶ Our data from the National Legal Services Authority show that by the end of Novem-

ber 2001, 825,255 of these cases had settled at an average award of 39,432 rupees. *Lok adalats*, then, resolved more than 10,000 motor vehicle accident cases a month from January 1998 through November 2001—and at higher amounts.

Gene Kassebaum’s study (1989, table 1) of Karnataka from 1986 to late 1988 shows that about 62 percent of the *lok adalat* cases were motor accident

TABLE 3.2
Salient Features of Forums for Everyday Justice in India

| Characteristic | Forum | | | | | |
|------------------------------|--------------------------------|---|--|-----------------------------------|--|----------------------------------|
| | Traditional <i>panchayats</i> | District courts/
subordinate courts | Arbitration | <i>Nyaya panchayats</i> | High courts/
Supreme Court
public-interest
litigation | <i>Lok adalats</i> |
| 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
innovation | Unknown |
| Sanctions imposed | Fines, excommunication | Money damages,
injunctive relief | Money awards
(enforced by
the court) | Fines | Money
damages,
injunctive
relief | Enforced by
the 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 spokesperson | Lawyers | Lawyers | Self | Lawyers | Self, lawyers |

be expected to involve more severe injuries on average than those brought before 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.⁴⁹ The group does not promise a departure from official norms: instead it proposes to give disputants access to a purer, conciliatory, nonadversarial forum for the application of those norms. In fifteen years the PCSJ has conducted 227 *neeti melas* and has settled more than 8,000 motor vehicle accident cases.

Assessing the Performance of Lok Adalats

The motor vehicle accident cases that figure so prominently in the caseloads of the *lok adalats*, government and voluntary, generally have not been diverted from the civil courts. Most come from the Motor Accident Claims Tribunals, a sector of the court system designed to speed hearings, reduce costs, and award compensation in accident cases without a showing of fault (Whitson 1992). This accentuates the point that *lok adalats* do not provide additional access to justice: they 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—from using the courts at all. More systematic data is needed before any firm conclusions can be drawn, but from the information presently available to us, it appears that *lok adalats* provide a truncated process for some of those few who do attempt to utilize the courts.

The Legal Services Authorities Act of 1987 (amended in 1994 and 2002) visualizes a network of *lok adalats* with jurisdiction over "any matter," made up of judicial officers and other qualified members, authorized to follow its own procedures (which need not be uniform) and to be "guided by the principles of justice, equity, fair play and other legal principles."⁵⁰ There is no law governing awards; instead *lok adalats* are instructed to "arrive at a compromise or settlement." The 1994 and 2002 amendments mandate that the compromise "shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award."⁵¹

Lok adalats differ sharply from the earlier *nyaya panchayats*. The jurisdiction of *lok adalats* is not confined to specified categories of minor matters

differences between *lok adalats* and various past and present forums for providing access to justice for everyday troubles and injuries.

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 the mechanism's "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*. Moog (1997) portrays pressures on officials to produce large numbers of cases for *lok adalats* lead

Proponents of *lok adalats*, like earlier reformers, claim to draw on the legacy of the *panchayats*. But as Table 3.2 shows, *lok adalats* 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 community leaders; they apply some diluted version of state law to decision making rather than local or caste custom; and they arrange compromises instead of imposing fines and penances backed up by the sanction of excommunication. Nor can *lok adalats* be viewed as descendants of the *nyaya panchayats*. The proponents of *nyaya panchayats* wanted to create a convenient, accessible, simplified 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 (Sidhva 1986). 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 (Gupteswar 1988). To secure this, they yield up discounts. Assume, for example, a motor accident claimant would secure 50,000 rupees compensation (and accumulated interest from the 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.⁵⁴ 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* can be thought of as providing a significant benefit for a claimant in this situation.

But of course, this claimant is entitled not to the discounted future value

pensated: 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 undercompensated, injurers are underassessed for the costs they impose on society for their risk-creating behavior and underdeterred from persisting in injurious conduct.⁵⁶

Lok adalats are the product of a process that makes use of scarce reform energies to create alternatives that are better than the courts; but, as we have seen, it is not necessary to be very good to be better than the ordinary judicial system in India. Ideally the flaws in the system would act as a stimulus for reform; in reality, they simply have led to the creation of institutions to bypass the courts. Reformers take pride in delivering needed compensation more expeditiously to victims. But the elements of the system that make discounted compensation appear to be a benefit go unexamined. *Lok adalats*, then, are an instance of *debased informalism*—debased because they are commended not by the virtues of the alternative process but by the need to escape the formal institutional process.

Informalism in the Regular Courts

THE BHOPAL CASE

Lok adalats are only the most visible manifestation of this debased informalism, premised on the irredeemable nature of the formal legal process. But informalism has also emerged in the judicial setting. A most dramatic and striking example of this mindset in the regular courts was the February 1989 settlement of the Bhopal chemical disaster case. A main issue in this case involved determining the liability of Union Carbide Corporation, the party responsible for causing a 1984 chemical leak in the city of Bhopal that resulted in thousands of deaths and injuries. The government, the Supreme Court bench, and many observers argued that the settlement was justified because it spared the victims further litigation that would have lasted “anywhere from 15 to 25 more years.”⁵⁷ They did not claim that the settlement was fair, that it represented the victims’ true entitlements. Instead they asserted that whatever the magnitude of those entitlements, the unalterable character of the judicial system—in particular, lengthy delays—precluded

the victims’ recovering full compensation, and that the discounted present value of the claims actually was less than the settlement amount.⁵⁸ The elements of the system that ensured protracted delay were treated as given and unchangeable (Hosein 1993).

This inevitability argument was propounded forcefully two years later by

Chief Justice Ranganath Misra in his concurring judgment, dismissing the various objections to the settlement:

If the litigation was to go on merits in the Bhopal Court it would have perhaps taken at least 8 to 10 years; an appeal to the High Court and a further appeal to this Court would have taken in all around another spell of 10 years with steps for expedition taken. We can, therefore, fairly assume that litigation in India would have taken around 20 years to reach finality. From 1986, the year when the suit was instituted, that would have taken us to the beginning of the next century and then steps would have been made for its execution in the United States. . . . That litigation in the minimum would have taken some 3–10 years to be finalised. Thus, relief would have been available to the victims at the earliest around 2010. In the event the U.S. Courts would have been of the view that strict liability was foreign to the American jurisprudence and contrary to U.S. public policy, the decree would not have been executed in the United States and apart from the Indian assets of [Union Carbide], there would have been no scope for satisfaction of the decree. [*Union Carbide Corp. v. Union of India*, 4 SC 584 (1991), 18–19]

In arranging the settlement, the Supreme Court had acted “in a pragmatic way to protect the victims” (21).

The Bhopal situation replayed on a vast stage the decay of public-interest law. Originally, the government anticipated institutional innovation to secure the interests of the victims; imaginative (if not optimal) innovations were urged by a few creative judges and lawyers (Covell 1991).⁵⁹ But changes along these lines proved too difficult or too costly in light of other commitments. Alternative ideas for reform of legal institutions were absent, and in the end the intractability of these unreformed and unreformable institutions was invoked to establish the adequacy of what might be thought a meager result. (That the Government presides over the very system whose intractable shortcomings it invokes to justify its “realism” and “pragmatism” adds a certain mordant irony to the exercise. See Galanter 1985.)

Both *lok adalats* and the Bhopal settlement are instances of what Resnick (1986) called “failing faith”—that is, a loss of faith in the efficacy and legitimacy of the formal legal process absent any vision of reform (see, generally, Chandra 1997). Instead what is offered is a program of palliation, almost the antithesis of the vitality underlying public-interest law. Proponents of public-interest litigation believe that litigation should be strategic, its goal to empower constituencies of the disadvantaged (Sheth and Sethi 1991). In contrast, the new informalism of *lok adalats* addresses isolated individual victims or claimants. Where public-interest litigation sought to marshal facts through extensive investigation and to develop the law through pioneering

litigation encouraged the development of new specialized expertise and wide dissemination of new knowledge, new informalism demands no ex-

pertise and generates no new knowledge. Where public-interest litigation sought to use the wider, radiating effects of legal action to bring about large-scale movement toward constitutional ideals, new informalism eliminates

consideration of these general effects and confines its concern to specific cases (Chodosh et al. 1997–1998; Whitson 1992).⁶⁰ What remains constant is paternalism, the sense that beneficent, educated outsiders can intervene to make the world better for the suffering masses, who have no capacity to exercise judgment for themselves. But in the new informalism, paternalism is combined with defeatism, the sense that the benefactors cannot change the system, that they can only ameliorate its effects.

INFORMALISM AND THE JUDICIAL SYSTEM

The highly visible embrace of informal negotiation in the Bhopal case and in *lok adalats* is echoed at other locations in the judicial system. Until recently, Indian judges were reluctant to actively engage in promoting com-

- Do they embody legal standards?
- Are they based on a full appreciation of the relevant facts? (In this connection it should be noted that judicial promotion of compromise in India does not follow an extensive discovery process that has exposed the relevant facts. Instead, it may be a substitute for fact-finding).
- Do they take into account norms that are not legally prescribed for authoritative decision making by the court?
- Is the influence of nonlegal factors like the skill of attorneys, a party's inability to bear costs, and the like increased or reduced?
- Are the disputants more inclined to restore or continue relations?
- Are judicially arranged compromises more likely to elicit compliance rather than to be dishonored or challenged?
- Is the outcome perceived as fairer by the parties?

Then there are questions about wider, systemic effects on the judicial process:

- Is there more or less variability in the treatment of similar cases?
- In which kinds of cases are compromises being used successfully?
- What effect do judge-sanctioned compromises have on the stock of legal precedents? As the terms or methods of compromises become known, do they serve as precedents in other cases?
- How does this activity affect the working style of lawyers or judges?
- How does it affect public perceptions of justice?

The genuine appeal of the new informalism should not be underestimated. It dispenses with public-interest litigation's reliance on the bountiful intervention of high-status actors and its emphasis on symbolic results. In contrast, the new informalism concerns itself with institutional routines and relies on dedicated actors who are content to remain obscure (P. C. Rao 1997). It counts its accomplishments in the delivery of rupees and raises to

achievement of their goals.⁶² The development of new knowledge about these devices requires attention from those supporting and promoting informalism and those critically evaluating it. One promising way to address this issue would be to create a forum for regular documentation of informal activity.

Suppose, for example, a *lok adalat* yearbook was established, with appropriate insider endorsement, to collect basic descriptive material, both about policy and operation; to commission and conduct surveys, and to provide a forum for debate about practices, policies, and results. Such a yearbook could help fill the factual vacuum that surrounds most discussion of *lok adalats* (as it did of *nyaya panchayats*). It could promote standardized record keeping; it could create data sets that would facilitate comparison among programs and would permit observations of changes over time. Because there is little comparable knowledge about other legal institutions (for example, the district courts), the contents of such a yearbook should not be narrowly confined. For only by including materials on these companion institutions can there be realistic assessment of the effects of *lok adalats*.

Furthermore, it is important to identify the "strategic" possibilities of informalism. Are there ways that *lok adalats* could be used to create leverage for change instead of substituting for it? Could the mediators in a district meet together to share information and adopt policies designed to enhance awards or promote vehicle safety? We should not dismiss out of hand the possibility that imaginative actors could find ways of extracting some strategic leverage from these devices.

ADDITIONAL DIFFICULTIES WITH INFORMALISM

Informational deficiencies aside, the informalist impulse displays two major problems. The first is the romantic illusion that effective informal justice is an alternative to a strong, proficient formal system rather than a by-product of such a system and could be enjoyed without the cost of repairing the formal system. But informal systems work because the parties can avail themselves of the remedies and protections afforded by the formal system. Those remedies cannot be found in an informalism detached from a flourishing system of efficacious courts. The road to useful informalism is through vigorous reform of formal legal institutions, not through resigned surrender to the inalterability of their defects. Informalism is not another bypass—one that can deliver something better than courts; it can only deliver a diluted version of what courts can deliver. The only way to give better remedies by informal settlements in the shadow of the law is to give better remedies in the courts.⁶³

The second problem goes back to the widespread perception that India

nothing to make remedies accessible to ordinary citizens. Reformers embrace informalism as part of a battery of reforms that they believe will sig-

It is easy to imagine schemes of social insurance and administrative regulation that might perform these functions in a superior fashion. But choices among institutions turn not only on images of their optimal performance, but also on the probability of their being enacted and sustaining themselves. Is there any likelihood that other institutions could produce more ample

It is difficult to visualize what shape such reformed legal practice might take. There may well be lessons learned from earlier initiatives in legal services delivery. We mentioned AWARE and CERC as successful models of the use of the legal system to serve oppressed groups and unrepresented interests. These institutions serve very different constituencies, they cultivate different kinds of expertise, and they have very different ways of using the law. But they share an ability to innovate, a drive to go beyond volunteerism and spontaneity to institutionalize new ways of using the law, and the capacity to absorb new increments of resources. Such programs should be helped to develop and to serve as models (and training grounds) for other programs. Information about innovative uses of the law should be generated and disseminated. Support should be extended to new groups that exemplify fresh approaches and explore new possibilities, increasing the capital stock of ideas and experience and keeping alive the sense that things could be otherwise.

Although it is important to support the efforts of the law's nonprofit or voluntary sector, it seems too much to ask that the needs of the poor and disadvantaged be supplied by altruistic lawyers. The amount of altruism that might be mobilized is limited by a number of factors. Most lawyers' skills and routines may not be readily transferable to the demands of innovative lawyering on behalf of the deprived, who need not only courtroom advocacy, but investigation, organization, and monitoring of implementation (Epp 1998; Galanter 1989d). Also, work for the public interest is to some extent a positional good—when it loses its rarity and its visibility, it may provide less psychic reward.⁶⁸ Given the magnitude of the undertaking, it is necessary to think of ways that the commercial private bar could make a living from effective representation of the poor and oppressed. The task of policy is to enable lawyers to do good while doing well. This would require not only provision of appropriate support services but modification of the ways that lawyers are retained and paid and engage in entrepreneurial activity to provide representation. Restructuring the way that law practice for the poor is organized and conducted is of vital importance.

Reforms of the higher courts and special forums for business disputes are in the cards. In the coming decades, India will have to decide whether it will maintain a dual legal system in which, on the one hand, government and corporate elites have access to proficient courts, while most Indians remain trapped in an undercapitalized, gridlocked system. The new informalism represents an intensification of stratification into a two-tier system of civil justice. As the lower courts diminish in function, the higher judiciary's functions are enlarged. As the cases of "little people" are removed from the regular courts, the higher courts will not deal with the problems of ordinary Indians on a regular and routine basis, but only in intermittent paternalistic

“public interest” sorties, leaving those courts to take up cases from government and from the business sector. Changes in the organization of law practice will amplify such a bifurcation of remedies unless there is investment in innovative reorganization of nonelite law practice and in building a strong and effective system of lower courts in which ordinary Indians can find expeditious remedies for everyday harms.

Conclusion: What Is to Be Done?

Within the Indian legal world, the tide is running strongly toward a debased informalism that reflects a resigned pessimism about the liberative possibili-

lite courts in Andhra. Naxalite courts also lack due process; and, as part of their functioning, those found to be police informants or enemies of the movement are summarily executed.

Operation of courts is not confined to revolutionary groups. It is also found in groups that are part of the political establishment. In Maharashtra, the ruling party, the Shiv Sena, runs its own courts out of various local party offices (*shakhas*) (Eckert 2001). These courts handle mostly civil law matters; and the judges who decide disputes, local leaders within the *shakhas* known as *shakhas pramuks*, are untrained in the law. They are not paid for their services. The police frequently work in tandem with the judges. Judgments are delivered orally, and usually no written record is kept.⁷⁴ Litigants typically are not represented; and most decisions are rendered in a single sitting. There are no provisions for appeal, and *shakha* strongmen leave the parties with little choice but to follow the “court’s” orders. Notwithstanding such seemingly undemocratic features, the Shiv Sena court system seems now to be part and parcel of the legal culture in Maharashtra.

a system of seven-member village courts to be known as *gram nyayalayas* (*Panchayat Raj* 2001b). The jurisdiction of these village courts is somewhat unclear, although one observer notes that the Civil Code of Procedure will not be applicable.⁷⁶

What binds together this collection of rivals to the court system is not only their departures from due process, but their success in attracting users. Surely some participants come to these rival courts under duress; but the costly, slow, and frustrating character of the official judicial process makes it understandable that many voluntarily choose these rivals and acquiesce in their decisions. There is a market for courts that give prompt and enforceable judgments. Where the state fails to provide such courts, others who appreciate their potential for mobilizing political support and generating legitimacy will try to fill the vacuum. We submit that faux-traditional *lok adalats* will not be a robust contender in this competition.

vent ways of applying new insights and technologies to the problems of providing access to justice to India's citizens, long inured to its absence.

Notes

We are indebted to Erik Jensen, Julia Eckert, and Richard Messick for sharing their observations with us and to David Gower for helping to prepare Table 3.1. We also are grateful to the officials at the National Legal Services Authority and the Lok Adalat Cell at the Patiala Court House for providing us with access to data on *lok adalats*.

1. For a variety of essays on this topic, see Verma and Kusum (2000) and Kirpal et al. (2000).

2. The Constitution of India, in Articles 32 and 226, empowers the Supreme Court and the other high courts to issue writs in cases where Fundamental Rights are violated.

3. References to many expressions of this view among British administrators can be found in Galanter (1989a). For a contemporary example, see M. J. Rao (1997), who notes that "like the Americans and others, we [Indians] too are a litigious society" (103).

4. These data were taken from the Population Reference Bureau's Web site (www.prb.org/Content/NavigationMenu/Other_reports/2000-2002/sheet2.html). We were told on August 2, 2001, in an e-mail from the Census of India, that 50,508,485 of the 78,921,135 people in Maharashtra (64 percent) were over age fifteen. Therefore the proportion of the population under age fifteen is 36 percent.

5. Good examples of the variations among legal systems come from *Courts, Law, and Politics in Comparative Perspective* (Jacob et al. 1996). There, for example, Kritzer discusses how "unlike the United States, France, Germany, and Japan, nonlawyers play a prominent role in the criminal justice system in England, at least at the lower levels" (84); Provine notes that France differs from many other democracies in that "the role of courts in protecting individual rights is debatable in France, and their power to review legislation or executive orders for constitutional defects is highly suspect" (177); and Sanders, in a discussion of environmental and automobile accident cases, writes that Japan eschews "Western procedures . . . [in favor of] a set of institutional arrangements and procedures that offer few incentives to litigate" (357).

6. Wollschläger admitted that "given the practical impossibility [of collecting

9. See page 219. But, perplexingly, at page 246 is another comparison of 1960 and 1995 that depicts a *rise* in the rate of civil litigation over the period, from the equivalent of 0.5 case per 1,000 inhabitants to 1.2. Again, it may be that something different is being counted, but the text does not make clear a distinction.

10. Even sophisticated observers speak of an “explosion of litigation” in India. See Chodosh et al. (1997–1998).

11. According to Chodosh et al. (1997–1998) court procedures should be the highest priority for reform. Also see Rajiv Gandhi Institute for Contemporary Studies (1999).

12. Chodosh et al. (1997–1998) note that “judges play little or no role in moving cases toward resolution fairly and expeditiously.” They go on to say that “judicial reluctance to exercise managerial authority may be related to a variety of structural and institutional factors” (39–40). Moog (1997), commenting on the impotence of Indian judges, writes that they are known for “sitting in their courtrooms doing nothing an hour after court . . . [is] in session, still waiting for the first case to be heard. Often, and for a number of reasons, judges . . . function as little more than passive onlookers at the proceedings before them” (52).

13. For a study on the impact of court decisions on society, see Baxi (1992). The idea that courts have little power to implement decisions is not an uncommon argument, even in the United States.

14. Personal communication from Richard Messick, legal and policy analyst for the Public Sector Group of the World Bank (January 14, 2002).

15. Confirmation of this comes from the low percentage of rights-based claims that reach India’s Supreme Court. See Epp (1998).

16. For work that discusses how the law and lawyers have been used only intermittently to help those in need, see Galanter (1989c).

17. A *sunk-cost auction* is a game, often used as a business school exercise, in which some good (say 1 million rupees) is awarded to the highest bidder, but the person who bids the second-highest amount also must pay the amount he bid. Thus, even if the opponent’s last bid exceeds 1 million, there is an incentive to bid just a bit more in order to reduce one’s loss by the value of the prize; but then the opponent is presented with a similar incentive, *ad infinitum*. In practice, the game ends when one party runs out of money or grows indifferent to the possibility of reducing the loss

Act (1993). Also see *State Bank of India v. Vijay Kumar Tayal* (Delhi High Court, suit nos. 2806-11, 1993; suit nos. 150 and 493, 1994).

22. Article 40 reads: "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 units of self-government." For a classic work on the appeal of traditional

other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities" (inserted by the Constitution Act (Forty-Fourth Amendment, section 8) of 1976.

32. 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. N. Bhagwati as chair of Budget Activities.

33. See fnf-southasia.com/cerc.htm.

34. Narasimhan (1999) describes the history and current activities of AWARE.

35. *Peoples' Union for Democratic Rights v. Union of India*, 1982 SC 1473.

36. Article 23 states in part that "traffic in human beings and beggars and other similar forms of forced labour are prohibited and any contraventions of this provision shall be an offence punishable in accordance with the law."

37. From a public-interest law Web site (www.healthlibrary.com/reading/

banyan2/90presed.htm) that tracks social-action litigation in India (accessed in January 2002).

38. A report by the Human Rights Watch Project for Asia (available on the Web at www.hrw.org/hrw/reports/1996/India3.htm) notes that bonded-labor practices continue in India despite the Court's ruling.

39. Agrawala (1985) identified several Supreme Court judges who had expressed "a not-too-friendly posture" to public-interest litigation (10-13).

40. Part of the appeal of the *lok adalat* for judges may be that it reduces—all but eliminates—the role of lawyers in the resolution of disputes.

41. This institution goes by various names in different regions of the country (*settlement camp*, *settlement mela*, *lok nyayalaya*, *janata nyayalaya*, and *neeti mela* are just a few); but we use *lok adalat* because it is the most common name and the one used in the Legal Services Authorities Act (1987, amended 2002). For a critical assessment

45. This reference dates back to the early 1980s, when, it is said, one of the first *lok adalats* took place under a banyan tree in Gujarat. For evidence that the tradition continues, see Y. Gupta (1999).

46. These figures come from the Press Information Bureau (see note 43). According to the Health Education Library for People (HELP) Web site (www.healthlibrary.com/reading/banyan2/9legal.htm), in the state of Andhra Pradesh, since 1986 claimants have received over Rs. 44 lakhs in payments from automobile insurance companies. But the Press Information Bureau, in its evaluation of

the overall performance of *lok adalats*, 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 Rs.2054,56,21,491 has been awarded" (see pib.nic.in/archive/lreng/lyr2000/rfeb2000/r21022000.html). However, the report does not make clear if of the 90,74,971 cases, only 4,88,669 were motor vehicle accident cases (which means the actual percentage of accident cases would be low) or if there were other accident cases that did not settle. (Placement of commas in numbers above reflects Indian style.)

47. Figures are for all *lok adalats* held in the state from June 1986 to mid-November 1988. Kassebaum (1989) 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" (16). Also see Moog (1997, 135-46), who describes *lok adalats* in Uttar Pradesh with dockets made up almost entirely of criminal and revenue cases.

48. The analysis was performed by Mary Versailles, then a student at the University of Wisconsin Law School. In three other motor vehicle cases, recovery was confined to the statutory "no-fault" award of Rs. 15,000 for death and Rs. 7,500 for permanent disability. If those three cases are included, the average recovery is reduced to Rs. 44,769.

54. But see Diwan (1991), who claims that discounts are only 5 to 10 percent of the value of the claim.

55. 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.

56. For a general evaluation of how the injured and poor are treated by the Indian legal system, see Menon (1988).

57. In a story published in the *Hindustan Times*, an unidentified government source was quoted as follows: "Eminent lawyers have argued that this case, which has already been four years in various courts in the pretrial stage, would in the most optimistic circumstances need anywhere from 15 to 25 more years for an ultimate decision" (Bhopal gas settlement 1989).

58. For a detailed account of this argument, see Cassels (1993) and, more generally, Galanter (1985).

59. For an ironic discussion of how several initiatives by Indian courts and lawyers actually ended up helping Union Carbide, see Galanter (2002).

60. Epp (1998) notes how the public-interest sector was "energized" to seek massive social change after the Emergency Rule ended.

61. From Jayanth Krishnan interview with Jitendra Sharmma, a senior advocate and secretary general of the International Association of Democratic Lawyers, December 11, 2001.

62. Measuring the quality of dispute resolution processes is a problem that has received considerable attention as an offshoot of the alternative dispute resolution movement in the United States. Interest in these questions is worldwide (see Plett and Meschievitz 1991). There have been important developments in understanding the conceptual problems of evaluation and in the techniques of assessment. Of course, Indian conditions are unique, and new learning cannot automatically transfer. But many of the questions the literature addresses do arise in the Indian setting, and they may well be useful starting points for those wanting to address the lack of analysis in the system of justice there.

63. The notion of bargaining in the shadow of the law derives from Mnookin and Kornhauser's (1979) work, "Bargaining in the Shadow of Law: The Case of Divorce" (compare Galanter 1981). Empirical studies of negotiations and settlement in the shadow of formal litigation procedures include Coursey and Stanley (1988); and Korobkin and Guthrie (1994, 1997).

64. In the discussion that follows, we assess the possible development of tort law in terms of personal injury (negligence or related notions of strict liability) and the misuse of authority. We put aside the question of whether that development should

67. See Bershok (1992), noting how the Indian legislature and courts are reconsidering existing piracy laws as a result of globalization; Fleiner (2001), stating that there have been fundamental changes in European legal systems as a result of globalization; and Yoo (2000), noting how the U.S. legal system, for one, must adapt to the globalization of political, economic, and security affairs. And see, generally, Aman (1998) and Fix-Fierro and López-Ayllón (1997).

68. Shaiko (1000) discusses the general question of what motivates individuals to

engage in public-interest work. Of course the question is not new. Among the classic works that discuss the issue are Clark and Wilson (1961); Hardin (1982); Moe (1980); Olson (1965); Ostrom (1990); and Salisbury (1969).

69. The MCC is an offshoot of the Naxalite movement, which we discuss below.

70. However, still today “tens of thousands are members [and supporters] of the various Naxal groups that operate in several Indian states” (P. Singh 1995). See also A. Gupta (2001), discussing how both criminal and civil cases are being heard by *jan adalats*.

71. We remain cautiously skeptical about this claim. As A. Gupta (2001) reports, “The MCC . . . forbids their ‘subjects’ from approaching any government courts for dispute settlement.” Until we have corroborating evidence that the people are choosing the political courts voluntarily, we have to acknowledge the possibility that the MCC is forcing them to turn away from the state courts.

72. For a history of the Naxalite movement, see Ray (1988) and P. Singh (1995).

73. Included among these groups is the MCC, which operates out of Bihar.

74. This and other descriptions of the Shiv Sena courts are taken from a letter from Dr. Julia Eckert, written July 22, 2001.

75. Communication dated August 11, 2001, from Professor V. Narayana Rao, a scholar at the University of Wisconsin who studies Indian linguistics and folklore.

76. Correspondence dated January 15, 2002, from Dr. V. S. Rekhi, director of the National Law Institute University, Bhopal, Madhya Pradesh.

77. The hollowing-out thesis is discussed at great length in the public-policy literature. Among the important works in this area are Di Francesco (2001); Gray (2000); Rhodes (1994, 1997a, 1997b); and Sadler (1999).

78. Di Francesco (2001) writes that the “rise of the ‘contract state’—where contractual relations form the basis of . . . public service delivery [in our case, justice and legal access to the poor]—reduces government leverage over public policy because of escalating fragmentation and loss of expertise” (104). Also see Foster and Blyden (2006) and Rhodes (2008).

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