ARTICLES

"Bread for the Poor": Access to Justice and the Rights of the Needy in India
Marc Galanter & Jayanth K. Krishnan

In Search of Gideon's Promise: Lessons from England and the Need for Federal Help
Norman Lefstein

Post-Realism, or the Jurisprudential Logic of Late Capitalism: A Socio-Legal Analysis of the Rise and Diffusion of Law and Economics
Eric M. Fink

NOTES

Prejudice Presumed: The Decision to Concede Guilt to Lesser Offenses During Opening Statements
Robert J. Nolan

A Cold Night: Unconscionability as a Defense to Mandatory Arbitration Clauses in Employment Agreements
Michael Schneider

Bailment and Veterinary Malpractice: Doctrinal Exclusivity, or Not?
Katie J.L. Scott
Articles

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

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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. Still, the courts remain grid-

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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 1.23 in Germany and 1.21 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 is Mumbai (formerly Bombay).
locked. 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-

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 embia-
over conciliatory proceedings. 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." 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. 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. There would be no lawyers and the tribunal would proceed informally, its decisions subject to review by the district court. 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. 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 jus-

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

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. 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.

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., 1986); Smriti Kothari, Social Movements and the Redefinition of Democracy, in India Breeding 141–61 (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 Carlجاز, Social Action Litigation in India: The Operation and Limitations of the World's
At the same time the government and the bar moved to implement...
In the first quarter of 2003, six Lok Adalats were conducted in Kerala.

government Departments and public sector agencies to settle pension and
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

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

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."

This is only a small fraction of the arguably inadequate average damages.
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 unrefomed civil proceedings. Instead they are cases diverted from a “reformed” and “streamlined” sector of the court system, 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 lawyer, the prospect of delay and other uncontrolled factors.

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.” 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.
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 in-
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

by the availability of the Lok Adalat is a benefit only by virtue of the enormous transaction costs imposed by the judicial system. 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. 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-detected from persisting in injurious conduct.7

The establishment of Lok Adalats represents the use of scarce reform energies to create alternatives that are “better” than the courts; but
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 will not discuss it further.)
the government agency. In six consecutive cases, the state's education department representative asked the panel for postponement, prompting the panel to convene an emergency meeting. This official would explain the case to the judicial panel, question the defendant on the specifics of his actions, and make penalty recommendations. Mean-
not reconciliation was the main priority of the parties. In one notable hundred thousand dollar life insurance policy that the boy had received
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 pat-
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 lawyer pulled Krishnan aside telling him that he purposely instructed his client not to show up at that day's Lok Adalat hearing. 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
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. 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 be-

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,” 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.” 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.
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 distance that is present between judges and lawyers within both the
ingen judge, who quietly remarked to Krishnan: “These lawyers are all alike, regardless of who they work for. Delay is all they know.”

Eventually the session began. The separate defendants had their re-
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 in-

March 2004] BREAD FOR THE POOR 829

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 accept-
all unwarranted pessimism about the possibilities for court reform that

Under one plausible reading of Section 89 a court now has the
power to steer cases into or out of Adulste, accompanied by the judge's for...
der Section 22E of the Legal Services Authority Act would be "final and binding" with no appeal.

In December 2002, lawyers across much of India went on strike to protest these amendments. 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
### APPENDIX A

**Number of Judges, Common Law and Civil Law Countries**

<table>
<thead>
<tr>
<th>Common Law Countries</th>
<th>Year</th>
<th>Judges</th>
<th>Judges per 100,000 capita</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>1998</td>
<td>28,049</td>
<td>10.4</td>
</tr>
<tr>
<td>England &amp; Wales</td>
<td>2002</td>
<td>2,518</td>
<td>6.6</td>
</tr>
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