“To the Listed Field . . .”:
The Myth of Litigious 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. This is a fitting portrait of what we might call the constitutional tier of India's legal system, comprising the high courts and Supreme Court, site of the work of a few hundred judges and a few thousand lawyers, where the writ petition procedure allows direct access (at the discretion of the court) to raise constitutional issues of fundamental rights, where judges prompted by adept counsel deliberate on intricate issues of legal doctrine, and where litigants, government, and sometimes the wider public attend to their judgments. But India's legal system is composed of multiple tiers that are related to different sections of the population in a pattern that resembles the skewed distribution of resources and access that prevails in other spheres of activity like education and health care.¹ Apart from the constitutional tier, there is another and vastly larger tier of courts and tribunals, staffed by hundreds of thousands of judges, officials, and lawyers, where ordinary Indians with everyday problems might seek remedy and protection. These forums are so beset with massive and persistent problems of access, cost, delay, and ineffectiveness that they are often described as in crisis or in pathological condition.²

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¹ The two tiers are intimately connected, but the formal institutional hierarchy that connects them separates as well as unites them. For example, appeals to the higher tier are designed to unify the system by making lower tier rulings conform to norms enunciated in the higher tier. But in practice, the delays generated by appeals — and the anticipation of them — are an important constituent of gridlock in the lower tier, insulating matters there from upper tier norms. And gridlock of the lower tier in turn is the inspiration for much enterprise to en masse matters in the higher tier (e.g., innovative use of the writ petition device, as in the Uphaar litigation) but that placement in turn can lead to token victories that dampen the pressure for reform of the lower tier.

² Discontent with the lower courts goes back to the colonial period. See generally A.K. Connell, Discontent and Danger in India (1880); John Dickenson, Government of India Under a Bureaucracy (1853); P.N. Bose, The Legal Exploitation of the Indian People, 21 Modern Rev. 90 (1917). A scholarly British District Officer concluded in 1945 that "[i]n Indian conditions the whole elaborate machinery of English law, which Englishmen tended
I. THE RISE AND COLLAPSE OF ORDINARY CIVIL LITIGATION

The received understanding of the crisis of India’s courts is that it is attributable at least in part to an excessive or inappropriate resort to litigation by the Indian public. This is certainly not a new observation. From the early days of British rule it was widely believed that Indians were excessively litigious and inclined to misuse opportunities for legal remedy to engage in rent-seeking and pursuit of grudges. Henry St. George Tucker, a director of the East India Company, complained in 1832 that, “the natives of these provinces, to whom the duel is little known, repair to our courts as to the listed field, where they may give vent to all their malignant passions.”

Others took a more benign view of Indian litigation. Sir William Hunter, Imperial Civil Service officer and compiler of the Imperial Gazetteteer of India, thought British courts offered a vent for “the pent up litigation of several centuries” and regarded it “only a healthy and most encouraging result of... conscientious government...[that for the first time Indians] are learning to enforce their rights.”

From the consolidation and rationalization of the legal system in the late nineteenth century through the first three decades of the twentieth century, the courts of British India attracted an increasing level of use. Niketa Kulkarni and I have analyzed the available judicial statistics since 1881. We found that the per capita rate of civil litigation rose gently and unevenly for the following half century, from 7,198 per million persons in 1881 to a high of 9,931 per million in 1933. Then it plunged precipitously. By the time of Independence in 1947 there were only 3,810 suits per million. Twenty years later the rate in the Republic of India was 1,487 suits per million — just a bit more than one-fifth the rate in 1881 and one-seventh the rate in 1933.

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3 Henry St. George Tucker, Memorials of Indian Government 21 (1853).
4 W.W. Hunter, Annals of Rural Bengal 342-43 (7th ed. 1897)
5 Of course there are difficulties in comparing British India with the Republic of India, which contains both less than and more than the territory of British India. Only one of the territorial units of pre-Independent India remained substantially unchanged for the period we dealt with: the United Provinces, which became the State of Uttar Pradesh. Fortunately
The totals are broken down into two kinds of land cases (rent suits and title suits) and suits for money damages or movable property (which I shall refer to as money damage suits). It is in the latter category that the great collapse of litigation occurs. Money damages suits fell from 6,948 per million in 1933 to 1,482 in 1947 to 905 in 1967. It was not only the rate that fell but the absolute number of suits. The overall total of cases instituted fell from 2.7 million in 1933 to 1 million in 1947; money damage suits fell from 1.9 million to just 400,000.

This must have been a catastrophe for India's lawyers, especially since they did little non-litigation work. There are abundant contemporary references to the shrinkage of litigation, the decrease in the demand for lawyers' services, and the decline in their economic position. One observer noted that "the senior-most members of the bar may be seen too willing to offer their services on the lowest imaginable fees and that too for doing the pettiest kind of work." Another concluded that "the legal profession has degenerated into a most ill-paid profession, except for a few who are at the top of the ladder . . . ." Speaking of "the pitiable condition of the Bar in India," a lawyer observed that "In nowadays litigation is shy and this is due to the prohibitive cost of litigation, the protracted nature of legal proceedings and the monetary depression." Another noted that "the volume of litigation coming before the Courts . . . seems to have been steadily going down." The editors of Calcutta Weekly Notes attributed the "economic distress which has overtaken [lawyers] and which shows no signs of decreasing" to statutory changes reducing rural resort to the courts and predicted that "business for the Courts will be poor and law, as a profession, for some time at least will be less and less of a source on which a man can depend for his living." The reality of the litigation implosion is undeniable, but it is not easy to come up with a plausible explanation of what happened.

we were able to find data for UP from 1903 and the same trends that we report for India as a whole are evident.

6 Prem Mohan Verma, Reorganization of the Legal Profession, 14 ALLAHABAD WKLY. REP. (1936).

7 The Lawyer's Conference: Address of the Chairman, Reception Committee, 41 CALCUTTA WKLY. NOTES 93, 94 (May 10, 1937).

8 V.S.V., Reform of the Legal System and Improvement of the Condition of the Bar, 1937 A.I.R. 1937 Jour. 130, 131.

9 P.S. Sivastavami Aiyar, Fifty Years of Eventful Life, 1 MADRAS L.J. 89, 96 (1939).

10 The Prospect Before Lawyers, 44 CALCUTTA WKLY. NOTES 1, 2 (Nov. 20, 1939).
What is clear is that the rate of court use never recovered.\textsuperscript{11} Robert Moog examined litigation rates in Uttar Pradesh (UP) 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 UP had fallen dramatically from the early days of Independence, when there were 1.63 per thousand persons (1,630 per million) in 1951, to 1976 when there were only 0.88 per thousand (880 per million).

Although reliable comparative data are scarce and comparison is fraught with apples-and-oranges problems, there is evidence that suggests that civil court use in India is among the lowest in the world on a per capita basis. Before his untimely death, the late Professor Christian Wollschlager, the trailblazer of comparative judicial statistics, presented a comparison of the per capita rate of filing of civil cases in some thirty-five jurisdictions for the ten-year period from 1987 to 1996.\textsuperscript{12} 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.\textsuperscript{13} Since no national figures are available for India, Professor Wollschlager included in his comparison figures on Maharashtra. Maharashtra, one of India’s most industrialized states, whose capital, Mumbai, is India’s financial center, ranked thirty-second of the thirty-five jurisdictions with an annual per capita rate of 3.5 filings per 1000 persons.\textsuperscript{14} That would be 3,500 per million, about a third of the rate in British India in the early 1930s and very close to the 1977 all-India figure provided by the Law Commission.

Wollschlager looked only at a single state and one ten-year period, and there is a question as to how representative his finding is for 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. Notwithstanding some puzzling inconsistencies in its presentation of Indian data, a recent Asian Development Bank 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 finds that in India, the rate of filing cases in the lower

\textsuperscript{11} We were not able to find annual data after 1968, but there are some data points: the rate of filings per million was 3600 in 1977 (according to a Law Commission compilation), very close to the 3500 Wollschlager found in Maharashtra for 1986-1996.


\textsuperscript{13} Id. at 577, 582.

\textsuperscript{14} Id.
civil courts was 1,209 per million (1.2 per thousand) population in 1995.\textsuperscript{15} This is about one-third as many cases as Wollschläger found, which may reflect differences between Maharashtra and India as a whole and perhaps in the acuity of the researchers. The Indian rate is only slightly higher than the Chinese, but the Chinese figure includes only commercial cases.\textsuperscript{16} 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.\textsuperscript{17} India’s placement at the bottom of this list is especially remarkable if we recall that Japan (3,386.8 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)\textsuperscript{18} 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 must contend with an excessively litigious population.

A few qualifications are needed to frame the comparison. First a smaller proportion of India’s and Maharashtra’s population is adults than is the case in the developed countries at the top of Wollschläger’s list.\textsuperscript{19} Second, societies differ in what matters they assign to lawyers, courts, and alternative institutions; the nomenclature and record-keeping of these alternatives may defeat any attempt to include them. Thus, in Maharashtra the count included matters

\textsuperscript{15}\textbf{Katherine Pistor \& Philip A. Wellons, The Role of Law and Legal Institutions in Asian Economic Development, 1960-1995, at 246 (1999). Earlier Pistor and Wellons reported that in 1995 “there were only 507.9 civil cases” per million people filed in the subordinate courts. \textit{Id.} at 219. This would be only one-sixth of the Wollschläger level and would put India far below such jurisdictions as Nepal and Ethiopia. It may be that those who prepared the country report for the ADB volume were counting something different than Wollschläger did, but there is no indication of what that was in the text of the published volume.}

\textsuperscript{16}\textit{Id.} at 246. Philip C.C. Huang estimates the rate of civil filings in China as 1630 per million in 1989. \textbf{Philip C.C. Huang, Civil Justice in China: Representation and Practice in the Qing 180 (1996).}

\textsuperscript{17}\textbf{Pistor \& Wellons, supra note 15, at 246.}

\textsuperscript{18}\textit{Id.}

\textsuperscript{19} Consider that in Germany the percentage of the population under fifteen is fourteen percent and in Sweden it is seventeen percent, while in India, overall the percentage of the population under fifteen is thirty-two percent. \textit{See} Population Reference Bureau, World Population Data Sheet, \url{http://www.prb.org/pdf08/08WPDS_Eng.pdf} (last visited May 31, 2009). I was told on August 2, 2001 (through email) by the Census of India that of the 78,921,135 people in Maharashtra, 50,508,485 people were above the age of fifteen. Therefore, the percentage of the population older than fifteen in Maharashtra is thirty-six percent.
litigated in courts but did not include cases brought to tribunals of various sorts. Third, in India civil court delays and court fees may induce some potential claimants to divert their efforts to criminal courts or to non-governmental forums. But even if we were to double or triple the reported rate to adjust for the age disparity and for the diversion of civil claims into tribunals, criminal courts, and non-governmental forums, the rate would still be low, both historically and comparatively.

Nevertheless the colonial perception that India is a very litigious place is alive and well. As of May 7, 2006 Wikipedia’s entry on India’s government noted that, “It is frequently observed that Indians are highly litigious, which has contributed to a growing backlog of cases.” This overall impression is belied by observers of particular topics of litigation, who report a dearth of litigation about human rights, shareholder grievances, and torts. It is my sense that many educated urban Indians combine a perception of widespread litigiousness with an aversion to resort to the courts short of dire emergency. Litigiousness is located somewhere else, in people unlike themselves, who believe in reconciliation and regard litigation as nasty and profitless.

II. SCORCHED EARTH AND SUNK COSTS: GRIDLOCK WITHOUT LITIGOUSNESS

If litigation rates are low, what sustains the perception of litigiousness? How can it be that so few Indians invoke the courts while there is a widespread perception that the courts are inundated with cases and that frivolous litigation is rife? What is the 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. One reason that the courts appear to be heavily used is because there are

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20 Wollschläger, supra note 12, at 580 (“Given the practical imposibility ... of collecting comprehensive data, a selection must suffice. This can be representative in a loose sense only. Litigation rates are calculated here on the basis of annual filing in courts of first instance per 1000 total population.”).


22 See Bibeck 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”).
relatively few courts. As Table 1 shows, common law countries tend to have fewer judges than civil law countries.23

<table>
<thead>
<tr>
<th>Common Law Countries</th>
<th>Year</th>
<th>Judges</th>
<th>Judges per 100,000 capita</th>
</tr>
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<tbody>
<tr>
<td>U.S.A.</td>
<td>1998</td>
<td>28,049</td>
<td>10.4</td>
</tr>
<tr>
<td>England &amp; Wales</td>
<td>2001</td>
<td>3518</td>
<td>6.6</td>
</tr>
<tr>
<td>Canada</td>
<td>1991</td>
<td>1817</td>
<td>6.5</td>
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<tr>
<td>Malaysia</td>
<td>1990</td>
<td>274</td>
<td>1.6</td>
</tr>
<tr>
<td>India</td>
<td>1995</td>
<td>9564</td>
<td>1.0</td>
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</tbody>
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| Civil Law Countries   |      |        |                          |
| Germany               | 1995 | 22,134 | 27.1                     |
| Denmark               | 1997 | 653    | 12.4                     |
| France                | 1997 | 6287   | 10.7                     |
| Taiwan                | 1995 | 1252   | 5.7                      |
| S. Korea              | 1995 | 1212   | 2.7                      |
| Japan                 | 1999 | 2949   | 2.3                      |

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. Indian courts tend to be poorly equipped and inefficient.

Apart from the physical and technical deficiencies of these courts, outmoded procedural laws provide abundant scope for delaying tactics, especially interlocutory appeals and stay orders. Judges, fearful of the bar, lack leverage to discipline lawyers or use the available tools to expedite proceedings. Anecdotes about delays of Bleak House proportions are complemented by statistics that show delay is endemic: in 1997, almost one-third of the cases on the dockets of the district courts were sitting anywhere from one to ten years, while a quarter of cases sat for this same period of time in subordinate courts.

Cases linger interminably and arrears mount. Lawyers, fiercely loyal to existing practices, resist reforms by collective action and by wielding their “street power.” In 1999 Parliament passed amendments to the Civil Procedure Code intended to reduce delay, but agitation by lawyers (including public demonstrations and strikes) forced the government to back away from the proposed reforms.


25 Chodosh, Mayo, Ahmadi & Singhvi, supra note 24, at 39-40 (noting that “judges play little or no role in moving cases toward resolution fairly and expeditiously. Judicial reluctance to exercise managerial authority may be related to a variety of structural and institutional factors”); see also ROBERT MOOG, WHOSE INTERESTS ARE SUPREME?: ORGANIZATIONAL POLITICS IN THE CIVIL COURTS IN INDIA 52 (1997) (commenting on the impotency of these judges notes that they are known for “sitting in their courtrooms doing nothing an hour after court . . . [a]s 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.”).

26 CHARLES DICKENS, BLEAK HOUSE (1884).

27 Rajiv Gandhi Inst. for Contemporary Studies, supra note 24, at 35.

28 For instance, the New York Times reported about a relatively simply property law dispute between two neighbors, a milkman and a meat-cutter. 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! See Barry Bearak, In India, The Wheels of Justice Hardly Move, N.Y. TIMES, Jun. 1, 2001, at A1, A4.

29 See Sashee Hegde, Limits to Reform: A Critique of the Contemporary Discourse to Judicial Reform in India, 29 J. INDIAN L. INST. 154 (1987) (arguing that “the legal system in modern India, which has been a part of the colonial legacy handed out in 1947, has entrenched itself chiefly due to the vested interest that lawyers have in the system.”).

30 See Debroy, supra note 22.

31 Id.; Sumit Mitra, Objection Sustained, INDIA TODAY, Mar. 11, 2000, at 32; see also Bearak, supra note 28.
One sign of the courts’ infirmity is public disdain for these lower courts. The public has low (and generally realistic) expectations of law, lawyers, and courts. Potential users forgo the lower courts or avoid them wherever possible; many from ignorance and most from calculation. The principal source of the low use of courts and lawyers is neither that the courts are congested nor the absence of “legal literacy” among the masses of Indians; it is that lawyers and courts are able to deliver so little in the way of remedy, protection, and vindication. The courts provide a useful facility for those who wish to postpone payment of taxes or debts and those who wish to forestall eviction or other legal action. Generally, they serve those who benefit from delay and non-implementation of legal norms — that is, parties who are satisfied with the status quo (as it existed ex ante or after obtaining an interim order). “[B]acklog 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.” Observers conclude that in this setting “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.” Tellingly, a banker confided to a journalist, “we tell our clients to settle if they have a strong case and to go court if it’s weak.”

A very high percentage of cases involve government bodies as parties. One analyst estimates that the government is a litigating party in more than sixty percent of court cases and an even higher percentage of cases before tribunals. When the government is a litigant it tends to pursue cases simply for delay and engages in relent-

32 Debroy, supra note 22.


35 M. Jagannadha Rao, Arbitration and ADR in India, in ALTERNATIVE DISPUTE RESOLUTION: WHAT IT IS AND HOW IT WORKS 105 (P.C. Rao & William Sheffield eds., 1997) (noting that “[t]he rich and the powerful can litigate endlessly and reduce the poor to ashes. Even the State can flood the courts with fruitless and frivolous litigation.”).

36 Chodosh, Mayo, Ahmad & Singhvi, supra note 24, at 31.

37 Rajiv Gandhi Inst. for Contemporary Studies, supra note 24, at 18.


less appeals even where the chance of winning is remote.\textsuperscript{40} For example, in the state of Uttar Pradesh, the government has lost virtually every case in which it has participated in the Public Services Tribunal, but it nevertheless it still appeals a large percentage to state's high court.\textsuperscript{41} Again, UP's state-owned bus company is involved in thousands of pending motor accident cases, but refuses to make reasonable settlement offers and forces the victims in each case to take the case to trial — which the state loses on most occasions.\textsuperscript{42} This pattern of scorched earth litigation fills the courts (and tribunals) with merit-less claims (and defenses) and discourages meritorious claims by increasing the expense and delay of using these forums.

For those who require vindication and prompt implementation of remedies and protections against dominant parties — women from husbands or relatives, laborers from landowners, citizens from government — the system works only haltingly, partially, and occasionally. Since many of the potential meritorious claims are absent from the courts, it is not surprising that the claims that are present include a significant portion that are "frivolous" in the sense of being brought or maintained for purposes of harassment and delay.

Given the long delays (and high interest rates at which future value must be discounted), mounting expenses, and meager damage awards, the present value of most suits for money damages is probably close to zero if it is not negative. Indeed much litigation in India can be described as a "sunk cost auction."\textsuperscript{43} A sunk cost auction is a game, often used as a business school exercise, in which some good (say a million rupees) is awarded to the highest bidder, but the person who bids the second-highest amount also must pay the amount she or he bid. Thus even if the opponent's last bid exceeds one 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 by the prize amount. Litigation resembles this — as expenses mount, the competitors invest ever-higher amounts in the hope of staving off larger losses. Widespread popular intuition of this produces avoidance of the civil courts. Many potential seekers of money damages instead look for another source of remedy: within the judicial sphere it might be a criminal complaint.

\textsuperscript{40} Id.

\textsuperscript{41} Id.

\textsuperscript{42} Id.

or a suit for injunctive relief; outside it might be resort to a police official, a party functionary, a dada, a caste panchayat.

The sunk cost auction is especially enticing in India, where controversy is frequently less about monetary compensation than about control of some valued resource: land, a house, a job, government recognition, a university admission, a license, management of a temple, and so forth. Even if a claim is phrased as one for money damages it is rarely resolved by someone writing a check. Claims for money damages are often part of a more complex struggle between the parties. Because outcomes may not be readily reducible to a monetary equivalent, it is difficult for parties to quit the sunk-cost auction.

III. BYPASSES

For large sectors of society and large areas of conduct courts afford no remedies or protections. When pressure builds up 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 but 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.

The typical bypass is the establishment of a tribunal with exclusive jurisdiction over cases on a particular topic, such as those that deal with motor vehicle accidents, consumer complaints, or labor disputes. 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 court-like: they weigh competing proofs and arguments within a framework of authoritative rules. In some instances (e.g., 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 procedure may be simplified. Other tribunals hear appeals from administrative determinations such as the Custom Excise and Gold Control Appellate Tribunal and the Income Tax Appellate Tribunal.\textsuperscript{47} Still others, like the Debt Recovery Tribunal, hear only cases brought by banks and financial institutions but have no jurisdiction to hear cases \textit{against} such creditors.\textsuperscript{48} 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, a few years ago the Debt Recovery Tribunals in India had over 20,000 cases pending.\textsuperscript{49} A 1999-2000 government report showed that the Central Administrative Tribunal had nearly 50,000 cases on its docket.\textsuperscript{50} (Data is scant regarding the length of time these cases have been pending or how long 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.\textsuperscript{51} The Act provided that an award must be enforced by a decree of a court, and left 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. Informal forum chosen by the par-

\textsuperscript{47} There are over twenty national tribunals and national commissions in India. For a list, see Law Info. Ctr., Commissions and Tribunals, http://web.archive.org/web/20021225042320/http://lawinc.com/locator/CommissionsandTribunals.htm (last visited May 31, 2009). At the state level there also exist various state-based tribunals as well.


\textsuperscript{51} Arbitration Act, No. 10 of 1940, § 30; \textit{INDIA CODE} available at http://indiacode.nic.in/fullact1.asp?tfnum=194010.
ties, for expeditious disposal of their disputes has by the decisions of the Court been clothed with “legalese” of unforeseeable complexity.\(^{52}\)

A distinguished Indian lawyer has suggested that the formalism that pervades arbitration is a reflection of ingrained litigant strategies:

Indian sentiment has always abhorred the finality attaching to arbitral awards. A substantial volume of Indian case-law bears testimony to the long and arduous struggle to be freed from binding arbitral decisions. Aided and abetted by the legal fraternity, the aim of every party to an arbitration (domestic or foreign) is: “try to win if you can; if you cannot, do your best to see that the other side cannot enforce the award for as long as possible.”\(^{53}\)

As if in desperation, the government and the judiciary have attempted to build a bypass within the courts themselves in the form of various kinds of Lok Adalats, in which procedural constraints are relaxed and judges enabled to import standards and impose outcomes that are difficult to contest.\(^{54}\) These internal bypasses do little in the way of providing a more responsive forum in which to pursue unredeemed entitlements.

While tribunals, arbitration, and Lok Adalats enable parties to bypass the lower courts, these forums frequently display similar deficiencies — crowding, excessive formalism, expense, delay, and truncated remedies. While structural factors like poor facilities and budgetary limitations play a role in the presence of these ailments, they also derive from the strategies employed by litigants and lawyers. The problem is not bottlenecks; it is also how the game is played in the bottle. It is a not a matter of too many lawsuits instituted by the public but of perverse and unrewarding patterns of litigation — and non-litigation — sustained by the professionals who staff the courts and appear in them. Real reform cannot simply focus on bypasses around and within the courts but must address incentives and strategies of all the relevant legal players and the structures in which they operate.

