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*391 "NEITHER FISH, NOR FLESH, NOR GOOD RED HERRING" LOK ADALATS: AN EXPERIMENT IN INFORMAL DISPUTE RESOLUTION IN INDIA

Sarah Leah Whitson [FNa]

The Indian legal system's most recent experiment in alternative dispute resolution (ADR) has fallen short of its stated aims to "indigenize" the formal legal system inherited from Britain and to extend legal protection to the poor. While the reasons for this failure are intricately tied to its unique legal context, India's experience with ADR validates standard critiques of similar Western experiments in informal justice.

The Indian Constitution calls on the national government to promote modern values of equality and non-discrimination. At the same time, it directs the state to foster local government and judicial self-administration consistent with traditional values and mores that often promote inequality and discrimination. This latter directive fueled advocates of ADR, who criticized the formal legal system as adversarial, procedurally inflexible, and inconsistent with a purported native preference for informal local conciliation.

The Lok Adalats (the L.A. courts), literally "people's courts," represent the latest attempt to reform the Indian legal system by emphasizing informal justice. Administered through the legal aid program, the L.A. courts were designed to provide speedy and informal resolution of disputes through conciliation and mediation at the local level. Scholars, judges, and the newly-developed legal aid bureaucracy promoted L.A. courts as a popular innovation with tremendous promise to "indigenize" legal proceedings. However, many of these advocates expected the L.A. courts to enforce equality and non-discrimination rather than local mores. Their ambivalence towards local control and prejudices is reflected in the increasing formalization of the L.A. courts. The L.A. courts became a hybrid*392 of central control and indigenous conciliation, and lost support among the population they were designed to serve. As a result, the L.A. courts have become, like previous attempts to create informal legal mechanisms in India, another "moribund institution." [FN1] These failures evidence the tension inherent in India's effort to extend the authority of its modern constitutional values while purporting to promote popular participation in and access to justice.

This Article examines the theoretical and practical development of the L.A. courts in the context of the history of legal aid and experimental legal systems in India. The Article then reviews the functioning of L.A. courts and similar programs in four Indian states, [FN2] and compares L.A. courts to nyaya panchayats (N.P.s), the informal judicial branches of local governments set up by the central state. Finally, it assesses the applicability of general critiques of ADR to the specific experience of L.A. courts in India. Because of the near identity of the Indian and Anglo-American legal systems, the Indian experiment provides an interesting control study on the rhetoric and reality of legal informalism.

I. LEGAL AID AND LOK ADALATS: A HISTORY

The L.A. court movement is a product of decades of deliberation and experimentation with methods of providing a wider segment of the population with access to the legal system in India. As an outgrowth of the legal aid movement, it shares much of its rationale and purposes. The history and development of the crusade to provide legal aid

in India explain the particular development, goals, and purposes of the L.A. courts.
The movement for legal aid in India initially grew out of judicial and scholarly concern about the need to provide free legal defense to those charged with criminal offenses. British judges noticed the need for ***393** such assistance, and some isolated voluntary organizations set up funds to finance the legal fees of a few criminally charged indigents. The first and most comprehensive inquiry into the problem of providing free legal assistance came just after independence in 1949. The former Chief Justice of the Supreme Court, Bhagwati, directed this inquiry through the Committee on Legal Aid and Legal Advice in the State of Bombay. [FN3] The Committee concluded that legal aid was "a Governmental responsibility and ... concluded that the principles of equality before the law and equal protection of the law as laid down in Article 14 of the Indian Constitution put a duty on the State to provide aid to all the citizens...." [FN4] A continuing series of state and nationally sponsored reports on the need for a government legal aid program followed this first report.
In 1958 the Law Commission of India presented a significant report on the legal system entitled Reform of Judicial Administration. This report emphasized the failure of the Government to move forward with any system for providing legal assistance to the indigent: "Legal aid ... has unfortunately been regarded as of very minor importance," [FN5] but "the rendering of legal aid to the poor litigant is a question of fundamental character." [FN6]
Also in 1959, a consideration of the problem of providing for the "rule of law in free society" resulted in the recognition by the International Commission of Jurists of "the need for the state to ensure legal counsel to all." [FN7]
[A] full review of the means to implement this demand was made by the Committee on Legal Aid at the Third All-India Law Conference in 1962.... [T]he committee outlined a comprehensive national programme providing for the establishment of legal aid committees in all districts of the country. The Committee suggested state participation in the scheme with aid in all criminal cases where the defendant could not engage counsel, and gradual extension of aid in civil cases as well. [FN8]
As the Law Ministry took steps to implement a legal aid program, ***394** the Emergency of 1962 intervened. Only the Supreme Court complied with the constitutional demand for legal aid in its rules for criminal cases. Because of the constitutional requirement for legal aid in criminal cases, states only provided legal aid to individuals accused of capital offenses. The states of Kerala and Maharashtra, which were the most active in their early implementation of limited legal aid schemes, had legal aid programs run largely by private organizations. [FN9]
In 1966 the Law Ministry justified the absence of any national scheme for the provision of free legal services with the belief that individual states had the responsibility for providing legal aid. "Administration of Justice is a subject included in the State List and the grant of legal aid and assistance to the poor is, therefore, primarily the responsibility of the State Governments...." [FN10]
In the 1970s the calls for establishing a national legal aid scheme became more urgent. The National Conference on Legal Aid of 1970 once again discussed the problems of legal aid and insisted on legislation to make provision of legal aid a statutory obligation for the states. Justice Bhagwati, who led the crusade, saw the role of legal aid as part of a grander scheme for social justice.
Bhagwati headed the first major state commission in Gujarat organized to consider a program for legal aid. The Gujarat Committee's report, later called the Bhagwati Committee report, was perhaps the most important in identifying an ideological framework in support of legal aid; it argued that poverty was intimately linked to the lack of legal assistance and access to the courts. Bhagwati introduced his notion of "strategic" legal services, which urged that legal aid should be not only "remedial" but also "preventive." The "Preventive Legal Services" Programme "aim[ed] at prevention and elimination of ... various kinds of injustices which the poor as a class suffer; ... involve[d] radical, multi-dimensional use of lawyer skills for protection of group interests; ... recognize[d] the interrelation between law and socio-economic problems of

poverty." [FN11]
Throughout his involvement with legal aid programs in India, Bhagwati emphasized the need to provide legal assistance to individual claimants, and the importance of using law to transform the socio-economic status of the poor and oppressed. This strategic/preventive arm of *395 the legal aid program required expansive legal literacy and group legal action campaigns, as well as the novel "public interest litigation." Justice Bhagwati promoted the development of public interest litigation through decisions mandating innovative standing and evidentiary rules and procedures, which allowed almost anyone to bring a case on behalf of the public interest.
Other judges shared Bhagwati's belief in using the legal system to pursue a vision of social justice. These members of the judiciary, supported by a number of scholars, believed that the law and the legal system could be used for certain ends, and that judges could and should take an active role in pursuing both the means of expanding access to the legal system and the ends of creating a more just social and economic order.
Following the Bhagwati Committee report, the Government of India appointed Justice V.K. Krishna Iyer as chairman of a committee to study the implementation of legal aid. Justice Iyer was also one of the vocal proponents of using the law for social justice, and one of the most liberal Supreme Court Justices of India. His committee submitted its report in 1976, recommending a free legal aid scheme, a National Legal Services Authority accountable to Parliament, simplification of legal procedure, and emphasis on conciliated settlements outside court. [FN12]
Iyer's report briefly noted that conciliation and informal dispute resolution should be part of the legal aid scheme. "[O]ut-of-court conciliation and settlement will be key tactics of the scheme, dictated by its clients' limited resources of time and money, and the difficulties of successfully negotiating the court system which all litigants face." [FN13] Furthermore, the report stipulated that an agreement to "a just compromise as certified by the Legal Aid Committee" would be made a "condition precedent" to a party's receipt of legal aid. [FN14]
Support for conciliation and settlement of disputes outside the official courts was not new among those interested in reforming the Indian legal system. In fact, wide-scale experimentation with informal dispute resolution had occurred through the N.P.s. Iyer's report saw the N.P.s as arenas where conciliation and settlement could be promoted, and urged extension of their jurisdiction. [FN15] The Committee further recommended the establishment of tribunals where settlements and decisions could be made quickly, under rules calling for expedited procedures in cases where the dispute centered upon compensation, similar to the Motor*396 Vehicles Tribunals established in a few states. [FN16]
American experimentation in the 1960s and 1970s with "neighborhood legal centers" for small, community disputes and with arbitration contributed to the Committee's emphasis on conciliation and alternative dispute resolution. [FN17] Liberal American legal theory played an important role in the development of the Indian schemes for legal aid and legal reform; many Indian academics and judges returned from the United States persuaded by what they saw as favorable legal developments in America. [FN18] Thus, it is not strange that Justice Iyer quoted American Supreme Court Justice Burger on the need for local mechanisms of dispute resolution and how to build them: " W e could consider the value of a tribunal consisting of three representative citizens, ... and vest in them final unreviewable authority to decide certain kinds of minor claims. Flexibility and informality should be the keynote in such tribunals, and they should be available at a neighbourhood or community level...." [FN19]
Similarly, Justice Iyer used the American experience to show how a promising, informal legal system could go wrong:
The Arbitration Society sponsored a Public Tribunal of Justice, 'a People's Tribunal,' for prompt, inexpensive settlement of all civil ... controversies.... [I]t was promoted as a 'common sense proceeding' in which 'the facts alone will prevail ... unshackled by legal rules and considered by arbitrators who aim at simple justice without regard to legal

technicalities'.... But as arbitration became more deeply enmeshed in the legal system, ... the advantages of an informal alternative form of dispute settlement receded. [FN20]
Critique of the formal legal system, on the other hand, had become a cottage industry; the need to reform the Anglo-Indian legal system to suit better the needs of the population provided the underlying premise for discussion of possible changes. Arguments for a different system stemmed from feelings that the adjudicative system introduced by the British was inappropriate to Indian life and from the recognition that the formal system itself had too many problems.
Almost from the establishment of British courts in India, it was apparent*397 to the British that there were serious faults in these courts. It took years for disputes to be resolved, and there were too many appeals from lower courts. Use of forged documents and perjury in the courts became endemic. It was evident that courts did not settle disputes, but were used either as a form of gambling on the part of legal speculators who were landlords or merchants and who turned to the courts to wrest property from the 'rightful' owners, or as a threat in a dispute. [FN21]
These problems stemmed from the fundamental differences between the indigenous mechanisms for dispute settlement and the foreign legal system imposed on the country.
[T]he present attitude of the Indian peasant was an inevitable consequence of the British decision to establish courts in India patterned on British procedural law. The way a people settles disputes is part of its social structure and value system. In attempting to introduce British procedural law into their Indian courts, the British confronted the Indians with a situation in which there was a direct clash of the values of the two societies and the Indians in response thought only of manipulating the new situation and did not use the courts to settle disputes but only to further them. [FN22]
The British legal system was regarded by critics as "something undesirable" substantively because it remained "at variance with the accepted moral standards of social behavior," and procedurally, because it is overly complex. [FN23]
Among the conflicting norms and values, British notions of equality, as expressed in the court's treatment of parties exclusively as complainant and defendant--equal under the law irrespective of their statuses or relationships in society--were often contrasted to a traditional panchayat's considerations of caste and status when mediating disputes. The jural postulates that underlie the British-introduced courts--equality in the eyes of the law, judicial ignorance of the complainants, the idea that economic relations are based on contract not status, the goal of settling the case at hand and only that case, and the necessity of a clear cut decision rather than a compromise--were at odds with the wide range of adjudication procedures followed in the villages of India. [FN24]
*398 Furthermore, dissatisfaction existed with the way Indians used their rights and the legal system to manipulate the courts for ends that had little to do with the legal issues or rights involved. This behavior was attributed to the Indian population's superficial and artificial understanding of the foreign British system, which inhibited the use of the legal system for its intended purposes.
[N]ew rights and duties were created--through the introduction of new ideas about landed property, through the workings of the revenue system (by the underassessing of some villages and estates and the overassessing of others), and, in some areas of North India, through the auctioning of land to realize unpaid taxes. These rights and duties were differentially understood by those immediately affected by them.... [T]o the villager, the rights and wrongs in a case were secondary to his ability to manipulate the court through access to minor court officials, the hiring of clever lawyers, the fabrication of evidence, and the marshalling of false witnesses. [FN25]
Critics cited the British procedural focus on deciding each case separately and independently of other cases or circumstances, with a designated winner and loser. This aspect is described in the literature as diverging detrimentally from the panchayat system of urging compromise in order to maintain community harmony. The British system also contrasts with the panchayat tradition of deciding a case only in the context of the dispute, often part of a history of disputes and disagreements between the

parties' castes, tribes, or families. [FN26]
Despite the resort to courts and the tremendous increase in litigation, the village population is said to prefer informal settlement, finding it "morally and socially desirable." The people favor "out-of-court compromise rather than [a] 'fight to the finish.' " [FN27] "The merit of compromise is always supposed to lie in 'avoidance of any further bickerings and loss of money and time.' " [FN28] " I t is not culturally 'natural' for an Indian to turn at once to lawyer's law for redress of grievance. It is either the last or an inescapable resort." [FN29]
Interestingly, when comparing British-style law with "indigenous" law, "indigenous" is most often defined as Hindu customary law, although Hindu customary law may not have ever been practiced by the "indigenous" people. R.S. Khare explains that: "[A]lthough even Hindu ***399** Customary Law ..., as codified and accepted by the British law courts, may not be truly indicative of how social groups actually regulate their social relations and punish the deviant, it remains the nearest consistent version which can be compared with lawyer's law." [FN30]
The gap between this foreign legal system and the values, beliefs, and methods of dispute resolution of the native population was a major impediment to the state's ability to promote the liberating rights and freedoms guaranteed in the Constitution. "The state legal system, conspicuously present in urban areas, is only slenderly present in rural areas. The low visibility of the state legal system renders state law (its values and processes) inaccessible and even irrelevant for people." [FN31]
Four types of non-state legal systems continued to operate independent of the official state systems, which included both judicial courts and N.P.s. The non-state legal systems are caste, community, tribal-based panchayats, and private "reformist," non-state legal systems operating under the impetus of a local leader. Generally, these non-state systems epitomized the contrast with the formal legal system:
While the state law strives to attain justice inter partes through 'impartial' judges and elaborate procedures for ascertaining 'truth,' indigenous dispute resolving institutions promote justice with notorious informality through village or caste notables who know the disputants personally. The adversary systems ... of the state law seeks to individualize justice; village law and justice seek collectivized justice. Village law and justice seek social group harmony through consensus, where both sides engage in give and take whereas state law, followed to its end, rests on 'winner-take-it-all' principle. [FN32]
As long as recourse continued to be made to non-state institutions for the resolution of local disputes, the values and norms the state wished to advance were undercut.
The persistence of some non-state dispute institutions ... sets some real limits to directed social changes along the lines of the constitutionally desired social order. This would certainly be the case where these systems derive legitimation from belief-systems which are not congruent with those investing state legal systems with legitimacy. [FN33]
The constitutionally desired ... social order seeks to foster ... equality ***400** whereas the Hindu caste system is based on ... the principles of hierarchy, religiously and 'culturally' sanctified and legitimated.... Adoption of constitutional values naturally calls for sacrifices of personal or group interests, which are clearly not acceptable to those in position of higher class, status or power. [FN34]
The state could realize the social and economic equality envisioned in the Constitution by promoting both legal aid and strategic public interest litigation, and by creating forums more similar to traditional dispute resolution forums. It could thereby work to shatter the oppressive hierarchies dominating village life. The reforms would "indigenize" the official judicial system, while revolutionizing and liberating the countryside.
Finally, the push for legal aid and expanded experimentation with alternative methods for dispute resolution grew out of a shared awareness that the Indian legal system was in crisis. [FN35] Scholars reported a serious threat to the legitimacy of the state's legal authority. They argued that the legal system was ineffective, and useless to the majority of the population; the extremely crowded and slow-moving dockets frustrated any of its possible benefits. Alternative forums that could reach and appeal to the village

population would bolster the state's legitimacy by easing the mounting tensions caused by the "litigation explosion" and by substituting the state's own norms and values for those of the non-state legal systems.

Following still other committee reports, in 1976 legal aid was made a Constitutional Directive in Article 39A, entitled "Equal Justice and Free Legal Aid:"

The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid by suitable legislation or scheme or in any other way, to ensure that opportunities for securing justice are not denied to any citizens by reasons of economic or other disabilities. [FN36]

In 1978 Assam became the first state to establish the constitutionally mandated legal aid scheme. Other states soon followed.

The national and state committee reports culminated in 1978 with the Government of India report on legal aid entitled "National Juridicare: Equal Justice--Social Justice." The Report advocated a new philosophy of legal aid that would not only encompass the provision of ***401** traditional legal services, like free legal aid and advice, but would aim to eradicate poverty by creating access to the legal system. [FN37] The Report declared:

As the removal of poverty depends upon radical transformation of the present socio-economic structure, the legal services programme should aim at ... elimination of all those unjust institutions which generate and perpetuate poverty and the creation of a new socio-economic order based upon liberty, equality and dignity of man. [FN38]

The Committee presented a draft of the National Legal Services Bill, which established an infrastructure and purpose for the Legal Services Programme. As in Justice Iyer's report, the Committee proposed extensive use of N.P.s and "Lok Nyayalayas/Adalats" as a way to promote conciliation.

Because the Government "found the steps taken by States too inadequate to meet what was recommended by the National Juridicare Report," [FN39] the Committee for Implementing Legal Aid Schemes (CILAS) was established in 1980, under the chairmanship of then Supreme Court Judge Bhagwati, to organize, finance, and monitor legal aid schemes throughout the country, and to advise the Government on further steps to be taken to institutionalize the program.

The Committee has been set up ... for the purpose of formulating and implementing comprehensive legal aid schemes in different parts of the country on a uniform basis, monitoring such schemes in different parts of the country on a uniform basis, ... with a view to ensuring their effective functioning as a means to secure social justice. [FN40]

The Committee would set up in each state and union territory a distinct and independent Legal Aid and Advice Board with Legal Aid Committees at different levels, for the purpose of giving legal advice and aid to the poor. "The composition of the Legal Aid and Advice Board and the Legal Aid Committees will depend to some extent on factors and considerations which may vary from State to State but the broad model would be settled and decided upon by the Committee." [FN41]

At its inception, CILAS was intended to serve, more than anything else, the preventive and strategic ends of the legal aid program that Justices Bhagwati and Iyer envisioned. Justice Bhagwati often expressed his ***402** designs for the national legal aid program in the CILAS newsletter, which was originally intended to be a bimonthly:

The legal aid programme envisaged by the Committee is not merely a court-oriented programme confined to giving legal aid to those who need legal assistance for litigation.... [T]he Committee believes that the traditional legal aid programme which is purely litigation-oriented cannot meet the specific needs of the poor in the country. [FN42]

The strategic arm of CILAS would work to coordinate the efforts of private voluntary organizations pursuing public interest litigation. The preventive arm would educate and empower disadvantaged sectors of society about their legal rights and prevent litigation by emphasizing conciliation through the efforts of paralegals and social workers.

As a national legal aid coordinating body, CILAS was designed to function as a service organization and to shape a particular vision of social and legal reform. Its creation was influenced by the efforts of the Ford Foundation, which by the late 1970s had invested a

great deal of money and research in promoting activist legal aid programs.
It was felt that the disadvantaged could only find turnaround solutions in the Indian legal system if they acquired the right kind of institutional skills. Proposals were made to set up a central information agency and support groups which would service all kinds of activists groups. The proposals have been accompanied by the funding of some activist groups. The new gift ... is about 'fighting for rights' on the basis of an American prototype as adapted to India. [FN43]
CILAS proposed an ambitious program both for itself and for the state legal aid programs. Both CILAS and the state local aid programs would perform a wide range of services, with emphasis on delivering grass-roots legal education. CILAS' functions would include:
1. Creating a directory of state Legal Aid Institutions, including information on the services offered and sources of funding, and state welfare legislation and welfare administration departments.
2. Preparing Legal Aid Manuals which would identify categories (women, children, tribals, scheduled castes, and unorganized labor) of people to be targeted for legal assistance, recommending strategies for dispensing legal services.
3. Organizing "Legal Aid lessons" in general education and professional*403 training, including legal literacy for high school students, government officials, and social workers.
4. Publishing a legal aid newsletter in all languages, in addition to the bimonthly newsletter.
5. Training paralegals who would be employed to run the various legal aid programs, including legal literacy camps and conciliation centers.
6. Incorporating a "Legal Aid Cell" in the Planning Commission and Law Ministry, to better coordinate the policies of CILAS with these two government branches.
7. Promoting clinical legal education in law schools by involving law students in the various legal aid programs.
8. Involving the legal profession by encouraging volunteer services in the administration of legal aid.
9. Organizing "Legal Aid Camps" that would administer "door step legal services" and educate the local population about their legal rights.
10. Establishing a "National College for Judicial Officers" to promote research on poverty law and to inculcate a new judiciary with the "proper social justice perspective."
11. Promoting "Community Mobilization and Rights Enforcement" through public interest litigation. [FN44]
Legal aid schemes based loosely on the CILAS model were instituted in fourteen states and union territories: Madhya Pradesh, Bihar, Karnataka, Andhra Pradesh, Gujarat, Maharashtra, Meghalaya, Orissa Himachal Pradesh, Rajasthan, Uttar Pradesh, Delhi, Pondicherry, and Tamil Nadu. Kerala and West Bengal adopted legal aid programs different from the CILAS model. [FN45]
Although these states spoke of plans to implement the various strategic and preventive aspects of CILAS' scheme, most focused their efforts on providing funds for free legal assistance to those whose incomes fell below a certain amount. In addition, sporadic efforts were made to organize legal literacy camps. Prompted by the goal of providing justice without lawyers, various states recruited law students for participation in these camps, while others held paralegal training sessions to staff legal aid offices.
By the middle of 1983, CILAS provided grants for legal aid camps, clinics, and legal literacy programs, paralegal training, public interest litigation*404 organizations, and rural/urban entitlement centers. The idea of establishing informal conciliation courts (which later became L.A. courts) as part of the national legal aid scheme did not arise until much later.
At first, states independently experimented with L.A. courts and similar reconciliation procedures. A small number of states had already instituted "Motor Vehicle Accidents Claim Tribunals" as forums where injured parties and insurance companies could reach quick settlements. [FN46] Some states attempted direct conciliation at the legal aid

camps. [FN47] A few trials with mobile courts in Chindwara were made up of judges and officers of the Court of the District Magistrate, where a collector executed orders and decisions, mostly in revenue cases. The courts were known for "shedding off their rigidity, formalities, unapproachability, and coming down to the people." However, they were not well received among legal aid staff and the village population. [FN48]
Gujarat was the first state to formally call its experiment a "lok adalat;" it established the first L.A. court in 1982, which was inaugurated by then Supreme Court Judge Desai. [FN49] Gujarat had long been a leader among states in the legal aid movement; it had first introduced a legal aid scheme project in 1972 based on Bhagwati's famous Gujarat Committee report, and had extended the project to the entire state by 1976. [FN50]
Gujarat's L.A. court experiment was first mentioned in the May-August 1982 edition of the CILAS newsletter, in an article entitled The Legal Aid Ambulance (Lok Adalat) Scheme in Gujarat. [FN51] The scheme is described as consisting of a team of "women lawyers, women social workers, social workers, a couple of socially aware members of the Bar with appropriate orientation and a number of retired judges and sitting judges informed with a spirit of service and adept in bringing about rapprochement between parties by appropriate guidance and persuasion." [FN52] The Legal Aid Ambulance worked out of a van, visiting preselected towns. It gave free legal advice and thereby attracted potential litigants; it then tried to persuade parties involved in a village dispute to reach a quick settlement. The CILAS article describes a typical hearing:
***405** After listening to both the sides for a couple of minutes, they suggest a formula for a just settlement. By a little persuasion a compromise formula is evolved by making a commonsense approach which aims at a practicable solution which puts an end to the dispute with little give and take on both the sides. [FN53]
Gujarat was the first state to attempt this type of proceeding; it had already been the site of a well-documented and studied private experiment with informal dispute resolution, also called a lok adalat, at an Ashram in Rangpur. [FN54] The lok adalat at Rangpur had evolved silently, mainly through the initiative of the Ashram's founder, Harivallabh Parikh. It functioned literally as a people's court, where Harivallabh and representatives of the disputants would render a decision subject to the local assembly's approval. [FN55] It heard mainly intra-village disputes and had managed to take over many of the functions of the local panchayat. [FN56]
Yet the lok adalat at the Rangpur Ashram was not the ideal model of institutionalized informalism. Indeed, its vitality evidently revolved around the community's acceptance of Harivallabh's leadership of the Ashram. Harivallabh "began to be called ... Prabhu (God)," [FN57] and actually decided most of the cases that came to the lok adalat alone.
It may be hypothesized that even unto this day people bring their disputes to Rangpur because of Bhai [Harivallabh], rather than because of the lok adalat.... to the extent it is proved correct, the lok adalat cannot be said to have been 'institutionalized.' [T]he dedication, charisma, and the indefatigable work by Harivallabh have made it generally a single personality oriented institution. [FN58]
Interestingly, the study, which emphasized Rangpur's lok adalat existence as a non-state legal institution, reveals that the lok adalat relied on popular dislike for the official courts as incentive to appear before it. A summons to appear would read, "you surely know ... that expensive and frequent visits to law courts are not in the interests of us poor farmers." [FN59]
The Rangpur experiment appears to have been a model for Gujarat's experimentation with L.A. courts. The Ashram's success perhaps ***406** encouraged hopes that the state could also establish such popular informal forums for dispute resolution.
News of the success of the lok adalat at Rangpur spread through the CILAS Newsletter. Soon after reports came in of Gujarat's successful experiments with L.A. courts, other states began holding their own L.A. courts in conjunction with legal aid camps with great fanfare and publicity. Rajasthan was the first to follow Gujarat, and soon became a leader in the L.A. movement. In 1984 Maharashtra introduced lok nyayalayas, another name for L.A. courts, also patterned after the Gujarat model. Kerala reported holding its first two-day L.A. court "styled by its originator Justice Krishna Iyer," and attended by

several High Court judges, the media, and important members of the bar. [FN60]
It is unclear when CILAS first took notice of the L.A. courts and decided to implement and endorse the informal courts as a part of the national legal aid strategy, because CILAS published only one newsletter between November 1984 and August 1986. That issue introduced L.A. courts as a new feature of legal aid, "that will henceforth become a permanent feature of the Newsletter," [FN61] and proposed guidelines "till such time these Lok Adalats receive a statutory base." [FN62]
At the Third Meeting of the State Law Ministers and Executive Chairmen of the State Legal Aid and Advice Boards in June of 1986, guidelines for the L.A. courts were first established. The guidelines focused primarily on who would be allowed to hold and administer L.A. courts. Noting the growing popularity of these "innovative forms of legal aid camps, ... [that are] an alternative forum for dispute resolution," CILAS "decided that the Lok Adalats be monitored and overseen by the State Legal Aid and Advice Boards." CILAS agreed to allow "voluntary organizations and social action groups" to hold their own L.A. courts "if they have been given financial assistance and/or sponsored by the CILAS or State Legal Aid Board." [FN63]
The guidelines reflected a desire to bring the L.A. courts under administrative and procedural control, but were cautious about the effect of that control on the informality and flexibility of the courts. They recommended that judges for the L.A. courts be "drawn from retired judges, public spirited lawyers and law teachers, selected on the basis of their reputation in the community, professional integrity and aptitude for social work," and be trained with the "object and methods" of the L.A. ***407** courts. [FN64]
They offered procedures to "provide some degree of uniformity in approach and methods," for notice, preparation, and coordination with local courts. [FN65]
Additionally, an "orientation programme in which lawyers with legal aid and Lok Adalat experience may speak with reference to the law applicable" was proposed, with the proviso that "it should be remembered that Lok Adalats are not intended to replace the existing adjudicatory system through courts but to supplement it by providing an alternate cheap and expeditious forum for litigants to get their legitimate due." [FN66]
Finally, the guidelines hinted at greater regulation in the future:
It may be necessary to give this programme ... statutory authority to summon parties, witnesses and documents. Involvement of the judiciary, the profession and the Government may be attempted at. The duties, qualifications for the conciliators (judges), lawyers, retired judges or law teachers ... may be prescribed. A code of conduct may be evolved to maintain the professional integrity and privileged communications. [FN67]
The 1986 meeting closed with a call that the movement be "implemented with greater vigor in several states," requesting state legal aid boards to "concentrate on holding Lok Adalats, ... at least one ... per week in different parts of the state...." [FN68]
The introduction of L.A. courts as a formal part of the national legal aid program coincided with key shifts in CILAS' administration. In August 1986 Justice R.N. Misra took over as CILAS' Executive Chairman, and Bhagwati, who had been promoted to Chief Justice, stepped aside to hold the newly created position of Patron-in-Chief. By May 1987 Bhagwati resigned from CILAS entirely, and Justice Pathak, who replaced Bhagwati as Chief Justice, became the new Patron-in-Chief.
With this shift in administration in late 1986 came a substantial change in the orientation of the legal aid program. Specifically, the L.A. court movement, as a state-administered program of informal dispute resolution, became the primary focus of the legal aid program. While Bhagwati headed the legal aid program, he had emphasized the need to use poverty law to transform the socio-economic status of the poor and ***408** oppressed, and had advocated expansive legal literacy, group legal action, and public interest litigation campaigns.
Under Misra's leadership, however, the emphasis shifted to promoting alternative and appropriate legal forums to better meet the true needs of the population. A call for quick, informal, and traditional dispute resolution for the rural and urban poor replaced the call for strategic and preventive justice programs. "The weaker sections of society do

not have the staying power which the affluent and the well-to-do possess. Speedier avenues of justice must be found for them and there must be greater opportunity for resorting to them," wrote Misra. "[The] Lok Adalat [movement] is a welcome innovation in that direction. [I]t operates on the principle that a settlement or compromise is to be preferred between the parties. There are no winners and no losers.... Nor does any question arise of prolonging the litigation by recourse to appeal or revision." [FN69]
The arguments in support of the L.A. courts echoed many of the sentiments commonly heard in the debates over the Indian legal system. L.A. courts were promoted as as an "extension of this age-old form of justice," where "disputes were settled with the aid of a mediator, who trie[s] to reconcile two parties, who in turn had to be prepared for compromise," [FN70] and thus more natural forums for dispute resolution. Unlike the official courts where artifice and formality reign, the L.A. court "seeks to resolve legal disputes between parties, by negotiation, conciliation and by adopting a persuasive, commonsensical and humane approach to their problems, with the assistance of a specially-oriented and experienced team of conciliators." [FN71] Furthermore, by promoting conciliation, the L.A. courts could fulfill constitutional and legal mandates urging "mutual settlement of disputes, ... preferable to long-drawn out litigation." [FN72]
In a decidedly paternalistic turn, CILAS and other promoters argued that the L.A. courts better served the interests of the poor than the formal courts. Indeed, the advocates of L.A. groups argued that "it is the only alternative." [FN73]
It is not that poor people deserve only 'second-class' justice or courts have very little use for them. On the contrary, given the cost, delay and uncertainty of the judicial process, litigation for solving every problem of the poor might result in aggravating their sufferings while ***409** denying them the benefits through unending legal battles. [FN74]
The benefit to the state would include not only the expenses saved from litigation kept out of the costly judicial system, but also a more pleasant polity. [FN75]
Between 1986 and 1988, the L.A. court movement was promoted on an unprecedented scale. States reported holding L.A. courts with greater and greater frequency, and tallied astounding numbers of conciliated cases. [FN76] By August of 1987 Justice Misra reported that "about 1500 lok adalats have so far been held all over the country in which over 860,000 ***410** cases have been settled." [FN77] The number of cases reported settled at a single L.A. session ranges between 169 cases to an unbelievable 2,543 cases. [FN78] The averaged numbers of cases may have been affected by counting settlements individually where an extremely large number of plaintiffs sued, such as a class suffering an industrial injury. [FN79] The sometimes inconsistent state reports make the figures unreliable.
State legal aid boards were given great incentive to promote L.A. courts, despite the resistance of local judges and bar councils. Although states were required to fund their own state legal aid boards, CILAS granted special federal funds for the promotion of the L.A. courts. Additionally, members of the state courts and bars quickly perceived the political advantages to be gained by supporting a movement that was primarily the design of Supreme Court Justices. Bhagwati, Pathak, and Misra would visit state legal aid programs personally. Eventually the promotion of the lok adalats became a political necessity. [FN80]
L.A. courts also provided an opportunity for local politicians to gather support and to voice their opinions on this popular new development. In Bihar, for example, top dignitaries, including the Chief Justice of the High Court, other high court justices, and the Union Minister of Law and Justice made a conspicuous appearance at the first L.A. court. The event appears to have been more a formal gathering of political elite, where "in their respective addresses, [the speakers] apprised the audience, including the lawyers, litigants and the elites of the town, of the importance of Lok Adalat, [and] its purpose in bringing mutual trust and cooperation among the people of the society." [FN81] The Central Government made a large effort to promote L.A. courts in regions where they had still not been organized by state boards by 1987. The northeastern region was referred to frequently as an area where L.A. courts were needed but had not

yet been held. In some areas, the Central Legal Authority*411 would set up the L.A. court camp itself. [FN82]

In certain instances, however, CILAS would concede to local authorities who resisted the L.A. courts. In Arunachal Pradesh, for example, CILAS described the "system of dispensation of justice by the Village/Tribal Councils" as one "which has been in existence from time immemorial," and operated in a "predominantly tribal population;" [FN83] it thereby suggested that L.A. innovation was not always needed. [FN84] In 1985, at a Joint Conference of Chief Justices of High Courts, Chief Ministers and Law Ministers of the States, the attendees gave unanimous approval to establishing L.A. courts, but made an exception for the northeastern states, "where different conditions prevail." [FN85]

Nevertheless, the general success of the L.A. courts continued. The November 1987-May 1988 edition of the CILAS Newsletter opened with a statement by Justice Pathak filled with praise for the movement, the tremendous strides it had made, and the respect it had garnered from academics and lawyers. [FN86] By August 1988, L.A. courts were promoted as a project separate from legal aid. The CILAS Newsletter described its legal aid program as the "Legal Aid and Advice System and the Lok Adalat movement." [FN87]

The procedures of the L.A. courts played a part in their early success. Hearings at L.A. courts are described as idyllic, harmonious "parajudicial" events where parties reach mutually satisfactory settlements in extremely brief periods of time (sometimes within minutes) with the help of a gentle conciliator. State legal aid boards offer potential plaintiffs who approach them for legal advice (usually at a legal aid camp), the option of first appearing before a L.A. court. Sometimes, lower district courts offer parties who have already filed formal suits, particularly in divorce or maintenance cases, the option to transfer to a L.A. court in order to attempt a conciliated settlement. A hearing is thus said to proceed only on the full desire and consent of the parties. [FN88]

*412 Initially, L.A. courts had no jurisdictional limitation; all kinds of cases were heard. Some states passed rules and procedures limiting their jurisdiction to particular kinds of issues, typically involving disputes over land, matrimonial status, inheritance, succession, and guardianship. Additionally, the L.A. courts addressed minor criminal cases, motor vehicle accident compensation cases, industrial and labor disputes, and small civil suits.

Motor vehicle accident claims were the most prevalent cases in the L.A. courts, proving popular with both claimants and insurance companies; the L.A. courts provided the ideal forum for haggling over the amount of compensation, the only issue in dispute. An injured party could collect her compensation almost immediately, which was significantly shorter than the time required to receive compensation in a formal court. "The local branch of a nationalised bank is requested to open a counter at the site of the lok adalat so that money distributed is advanced on the spot, in the form of bank drafts." [FN89]

Notably absent before L.A. courts are commercial litigants. Given the quick settlement advantages of L.A. courts, one would expect the business sector to have made full use of the forums. One would also expect private parties with claims against insurance companies to have voluntarily taken their cases to L.A. courts.

Unfortunately, neither private nor business litigants presented their cases to L.A. courts. The promotion of L.A. courts primarily at legal aid camps or for matters involving family disputes may partially explain their absence. Additionally, such parties may simply not have had access to the L.A. courts. [FN90]

*413 Because of the ease and speed with which compensation disputes were being settled, litigants who did use the courts made demands for specialized L.A. courts. For example, state boards created L.A. courts that dealt exclusively with motor vehicle compensation claims. [FN91] Despite the existence of specialized formal tribunals, plaintiffs increasingly turned to L.A. courts designed exclusively for compensation. [FN92]

The procedure for settling compensation amounts began to resemble American style settlement negotiations between attorneys, which was an uncommon practice in India.

Tamil Nadu's Legal Aid Board encouraged such negotiations:
[The L.A. courts should] comprise cases where no elaborate legal issues are required to be settled, but only the quantum has to be settled.... The preliminary stage of preparation for the adalat should provide an opportunity for a prior discussion between the parties assisted by their lawyers and the representatives of the Insurance companies. At this discussion, an estimate for the quantum should be arrived at by consensus. Only where there is difference, it will be left for the adalat's decision. [FN93]
As the popularity of the L.A. courts peaked, commentators urged that the courts be vested with statutory authority in order to better formalize their proceedings. Although such authority would promote recognition of the L.A. courts, it could also undermine their informality, flexibility, and voluntary nature. Nevertheless, CILAS and the state legal aid boards urged the national government to act:
It is felt by state governments that some sort of statutory authority, including the power to summon witnesses and documents would considerably help the scheme, giving it more teeth. Suitable amendments to the Criminal Procedure Code and Civil Procedure Code, and the Arbitration Act, ... whereby courts are given the discretion to refer ***414** any or all disputes to alternate bodies for compulsory conciliation or arbitration, would help.... [FN94]
In 1987, in response to demands for some sort of legislation on legal aid and L.A. courts, Parliament passed the National Legal Services Authorities Act (the Legal Services Act), which authorized the central, state, and district level governments to establish Legal Services Authorities and conferred statutory status to the L.A. courts. [FN95] Most of the provisions of the Legal Services Act were implemented while it was pending as a bill.
The Legal Services Act mandated the Supreme Court's permanent participation in the National Legal Services Authority, ordered the Chief Justice of India to serve as its Patron-in-Chief, and a serving or retired Judge of the Supreme Court to serve as Executive Chairman. [FN96] It further ordered the Government to fund the Central Authority in order to establish a National Legal Aid Fund, which would be used to provide grants to State Legal Aid Boards. [FN97]
The Legal Services Act provided statutory recognition for the L.A. courts, allowing state or district authorities to organize the courts as they saw fit. [FN98] It also gave L.A. courts the jurisdiction to "determine and arrive at a compromise or settlement between the parties to a dispute in respect of any matter falling within the jurisdiction of any civil, criminal, or revenue court or any tribunal constituted under any law for the time being in force in the area for which the Lok Adalat is organized." [FN99]
Procedurally, the Legal Services Act provided that pending cases be transferred to L.A. courts by direct application of the parties either to the District Authority or to the judge in whose court the case was pending. [FN100] If the parties could not reach a compromise or settlement, they could reinitiate litigation "from the stage at which it was before the suit or proceeding was transferred to the Lok Adalat." [FN101] The Act's only procedural guideline required "utmost expedition to arrive at a compromise or settlement between the parties and shall be guided by legal principles and the principles of justice, equity and fair play;" [FN102] every L.A. ***415** court was to formulate its own procedure "for the determination of any dispute." [FN103]
L.A. courts were given the authority to issue awards "deemed to be a decree of a civil court, or order of any other court or tribunal...." [FN104] More importantly, the Act provided that "every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award." [FN105] This finality made settlement before a L.A. court risky, given the speed with which parties were urged to settle their disputes.
L.A. courts were also given the same powers as civil courts under the Code of Civil Procedure, including the power to summon and enforce attendance of witnesses, order discovery, receive evidence on affidavits, and "such other matters as may be prescribed." Finally, most of the 1986 CILAS guidelines, including those requiring state administration of the courts and limiting decision-making to state personnel, were

reiterated in the Legal Services Act.
Critics voiced opposition to the Legal Services Act, particularly to its provisions for the L.A. courts. They felt that it defeated the spirit and purpose of L.A. courts as informal, grass-roots courts that existed almost apart from state authority, and pointed out that L.A. courts had evolved naturally as a result of popular desire to resolve disputes through conciliation, without the intervention of official courts.
Justice Iyer, founder of the L.A. courts movement, became the most vocal critic of the newly designed L.A. courts; he attacked the Legal Services Act in his book, Legal Services Authorities Act--A Critique:
What is contemplated ... is another kind of Court with jurisdiction and jurisprudence of its own.... A dilatory machinery, which can hijack cases from the Courts in the name of cognisance by lok adalats and a stay of proceedings, defeats the whole purpose of speedy justice.... [They are] clumsy imitations of Courts, not social mobilization schemes.... [A]nother strange, futile court is offered ...! [FN106]
Iyer disapproved of the Act's insistence that judicial officers and lawyers have primary responsibility for the L.A. courts, and that decisions be made according to principles of common law.
In many places, Lok Adalats are transfigured as People's Festivals of Justice. The participants are not merely judicial officers or lawyers ... ***416** or justice, equality, and fair play and the settlements are not necessarily according to legal principles, but with an eye on social goals like ending feuds, restoring family peace, and providing for distitutes, law or no law. Social workers, welfare activists, village elders, and respected intellectuals, apart from law persons, must be involved in these melas. [FN107]
Finally, Iyer reproached the Legal Services Act for its "monopolization" of the functions of an originally non-state legal institution:
It is disastrous to monopolise Lok Adalats by the state as the scheme of the Statute proposes. When conciliations through Lok Adalats materialize, the award so made is invested with the force of a decree. This added value which facilitates execution and carries other advantages attaches only to State-organized Lok Adalats. Voluntary bodies with considerable credibility, creativity, and experience have been conducting Lok Adalats in the past. To exclude such organizations merely because they are not state-run is to defeat the broad objective of promoting settlement of cases through voluntary bodies of stature and standing. [FN108]

II. OBSERVATIONS FROM THE FIELD: THE FUNCTIONING OF L.A. COURTS

Despite the passage of the Legal Services Act in 1987, reports and observations indicate that L.A. courts have experienced a tremendous decline since the end of 1987. Even Rajasthan, the leader of the L.A. court movement, reported holding only seven sessions in 1987, in comparison to a peak of 154 sessions in 1986. Furthermore, L.A. courts continue to be used almost exclusively for motor vehicle compensation and matrimonial cases.
Officials have not acknowledged this decline. Indeed, CILAS continues to speak of the L.A. movement as the novelty of the national legal aid program. What explains this decline, despite the tremendous efforts made to promote the courts as the most promising new development in the Indian legal scene? An examination of four state legal aid programs and a comparison of L.A. courts to their predecessor N.P.s provide some answers.

A. Rajasthan

Rajasthan established its L.A. court program in November 1985, ***417** soon after Gujarat presented reports of its own successful experiments. Rajasthan was heralded as the leader of the L.A. movement; it held more L.A. court sessions than any other state. Between the inception of the program in November 1985 to July 1989, Rajasthan reported holding 252 L.A. courts which disposed of 345,154 cases, and averaged an astounding 1,369 cases per camp. In contrast to other states' L.A. courts, only a small number of these cases were Motor Accident Claims cases.

According to the Rajasthan Evaluation Committee's reports, settled cases represented almost fifty-six percent of cases submitted to the L.A. courts. Twenty-two percent of the settled cases involved disputes of members of scheduled castes or tribes--the largest group of legal aid beneficiaries. The majority of the cases involved land dispute and revenue cases.

Unique among states, however, was Rajasthan's extensive use of L.A. courts for criminal [FN109] or state offense cases [FN110] under the Motor Vehicle, Wireless, Municipal, and Police Acts. While their criminal jurisdiction encompassed all non-compoundable offenses (offenses with limited sentences), they were forbidden from hearing "economic offenses against the state, because the white collar criminals should not be allowed to get the benefit of L.A. courts." [FN111]

As a hybrid form of plea-bargaining, rewarding a quick confession with a shortened sentence, the use of L.A. courts generated cost savings for the state's prosecution and prison systems. However, the Evaluation Committee recommended that such cases be "excluded ... from the purview of Lok Adalat, [because] these cases are not decided amicably by the parties and the punishment is invariably awarded for the offense." [FN112]

Compensation cases, the favorites of the L.A. court program, had comparatively little success in Rajasthan. Only 2178 motor accident claims cases, 1875 labor cases, 318 matrimonial cases, and 456 maintenance cases were settled. Many of the family law cases were handled directly by the state Family Courts, which at one point were called Reconciliation Courts. Rajasthan made efforts to promote use of the L.A. courts in these matters, but was unable to entice parties to transfer their cases to the L.A. courts. However, Rajasthan state legal aid officials and judges repeatedly cited motor accident claims cases as the most successful feature of L.A. courts.

***418** Rajasthan used L.A. courts extensively as a means of transferring pending litigation in smaller cases out of the local district courts. While L.A. courts were never held on any fixed schedule, a date for each session would be fixed eight to ten weeks in advance. The Legal Aid Committee would select cases for referral to the upcoming session from a list of locally pending cases.

The Legal Aid Committee relied a great deal on the participation of the local political administration and private voluntary organizations to settle the selected cases even before they reached the L.A. court. Soon after the list of selected cases was prepared, it would be distributed to

education institutions, local bodies including zila parishads, panchayat samitis, social institutions, and ... those interested in the working of the lok adalat. As soon as lists are received by the various agencies and through the motivation of the program they also act as conciliators at the village level and try to settle the matter there. [FN113]

Cases thus arrived at L.A. courts only if village officials or volunteer organizations had not been able to persuade the parties to settle. Once in the L.A. courts, judges from local courts would again attempt to persuade the parties to reconcile:

As soon as the matters are settled, the compromise is submitted to the Court for verification and for passing the necessary orders. The cases which cannot be settled at the village level are referred to the lok adalat on the date of concluding session ... where motivation starts by delivering talks ... by honorable judges of the high court, district judges, and some other persons. [FN114]

Officers of the court would then review the settlements to insure none were contrary to the law.

Participants readily acknowledged that the popularity of the L.A. courts stemmed less from their intrinsic merit than from popular dissatisfaction with the time and cost of litigating in regular courts. [FN115] The Evaluation Committee reported that a party's costs before a L.A. court averaged 38 rupees, in contrast to the 955 rupees spent in litigation. [FN116] The state spent a remarkably low sum of 1.4 rupees per L.A. case. [FN117] While parties spent an average of 14.6 days before a court, a L.A. court ***419** decision took an average of 1.2 days. [FN118]

Participants in the L.A. courts also expressed satisfaction with the popular features of

the L.A. court system, including, for example, "speedy justice," "promotion of mutual understanding," "conciliation," and "fraternity," all in contrast to the adversarial system of the official courts. Furthermore, some argued that because most of the decisions and settlements were arrived at before a village assembly, parties were less likely to fabricate facts (reportedly a common feature at judicial courts).

Lawyers had a different reaction. They originally resisted representing parties before the L.A. courts because such representation cut into their fees. In India, fees are traditionally charged per court appearance. In order to appease the lawyers, the state established fixed fees for lawyers appearing before the L.A. courts (which amounted, in some cases, to a percentage of the settled sum). A sample study conducted by the Evaluation Committee reported that eighty-five percent of respondents who had hired attorneys had paid the pre-agreed fee in full, even though the case had been settled in the L.A. court. [FN119]

The Chairman of the state program noted the success of the L.A. courts in facilitating the resolution of religious disputes and in providing a forum for the peaceful arbitration of community quarrels that had often led to violence in the past. In particular, he cited two case studies carried out by the Rajasthan State Evaluation Organisation.

The first study involved a dispute between Sanatan Dharmis and Jains in the town of Siwana, in the Barmer District of Rajasthan. The dispute arose when the Dharmis cremated a monkey on land sold to the Jain Community, and on which Jains performed their religious custom of feeding pigeons. The Dharmis objected to the land sale and built a religious shrine on the site. Following the cremation, tensions between the two communities increased, and local police intervened. After failed negotiations, the Dharmis first instituted a vegetable and dairy boycott against the Jains, and then filed a suit to prevent the destruction of the shrine.

Nearby, a L.A. court camp chaired by three judges from the Rajasthan High Court was being held. The judges took it upon themselves to persuade the leaders of both communities to attempt to conciliate at the L.A. court. (Interestingly, two of the judges were Jains and the third was ***420*** a Sanatan Dharmi.) [FN120]

The judges became extensively involved in the negotiations; they "camped in the Dak Bungalow and refused to accept the hospitality till an amicable solution of the problem was arrived." [FN121] Eventually, the Jains agreed to allow the shrine to remain in return for another plot of land where a platform for feeding pigeons would be built.

In this case, the L.A. court essentially performed functions normally executed by the village panchayat. The "conciliation" seems to have been more the result of the dedication and authority of the three judges than of anything inherently unique in the structure of L.A. courts. Indeed, the Committee conceded this:

[T]he endurance of the compromise will depend on the persons called upon to play the reconciliating mediators. They have to be respected persons.... the efforts of compromise at the official level yielded no results but the intervention by the three High Court Judges made all the difference. [FN122]

The second study featured a dispute between Muslims and Hindus over a mosque in the town of Rajaldesar in the Churu District. Approximately seventy-five percent of the population were Hindu, and about ten percent were Muslim. [FN123] The Muslims applied for permission from the Municipal Board to build a second mosque on newly donated land, but were denied permission. Subsequently, Hindus in the community protested that despite the Board's denial, religious services were being carried out on the property. The Board referred the dispute to the court.

The conflict was resolved initially through negotiations; the Hindus agreed to allow the Muslims to build the mosque as long as the Muslims adhered to a number of restrictions, including a refrain from using loudspeakers to call for prayers at the mosque. The settlement was entered as a court judgement.

Six years later, however, the Muslims violated the agreement by installing a loudspeaker on one of the minarets of the mosque. The Hindus responded by filing suit. Community leaders urged the parties to resolve the dispute at a nearby L.A. court; within a short time, they reached a new compromise limiting the use of the loudspeaker. Although the

leaders negotiated the dispute amongst themselves, they used the L.A. court *421 forum, where three High Court judges gave "valuable assistance." [FN124]
The Evaluation Committee credited the L.A. court with resolving the conflict. As with the first case, however, the village panchayat could have provided an identical forum for such negotiations. Again, the presence of judicial authority played the greatest role in facilitating the solution.
While these cases demonstrate the value and advantage of a negotiated settlement over a one-sided victory in an adversarial setting, it is not clear that such settlements could not have been reached outside the L.A. court context. Perhaps the traditional approach to litigation in India precludes judicially supervised negotiations in court. Possibly, the village panchayats have been ineffective in facilitating negotiations between conflicting groups. The L.A. courts, however, do not necessarily create this possibility, unless they include the extensive involvement of judges or other respected community leaders.
The success of Rajasthan's L.A. courts apparently peaked in 1986. While 154 L.A. court sessions were held in 1986, none were held from January to August of 1987. Neither state evaluation reports or reports submitted to the CILAS Newsletter offer a reason for this decline. By 1988, no L.A. courts were held.
In an interview, the Chairman of the State Legal Aid Board, Mr. Nathawat, explained that part of the reason for the decline was a critical shortage of staff. [FN125]
Previously, judicial clerks had handled all the preparations necessary for referring a case to a L.A. court, and then reviewed and recorded the settlements. The clerks began to complain about the increased workload, and finally refused to handle L.A. court cases. The Board, already understaffed, was overwhelmed by the responsibility of organizing legal aid, legal literacy camps, and marital reconciliation courts. They demanded that the L.A. courts provide their own clerks and officers, but the government refused to provide the funding for the additional staff.
Those involved with the L.A. courts also complained that their work had no legal sanction. They argued for formalization of the L.A. courts, and binding authority for L.A. settlements. Evidently, parties ignored a large number of the settlement orders and refiled their cases in the official courts. Despite the passage of the Legal Services Act and state rules for the L.A. courts, the provisions granting L.A. courts statutory *422 authority had not been implemented. [FN126]

B. Maharashtra

The chairman of the Maharashtra Legal Aid Board described poverty and reconciliation as the two linchpins of their legal aid program: "[U]nlike the United States where three hundred million dollars is given away per year, we have to manage on a small budget.... Between CILAS and the state funding, we receive forty lakhs per year." [FN127]
Legal aid applicants in Maharashtra are required to attempt reconciliation before any legal assistance or even an appearance before a LA court is provided. They must first appeal for aid from the Counseling Center. The Center is reportedly run entirely by lawyers who are paid by the state board to listen to grievants' legal problems. [FN128]
The lawyers then represent grievants whose income meets the qualification levels. Before litigation or transfer to a L.A. court, the lawyer takes a statement from the adversary party, "so that the petitioner's statement can be verified" and "to put two sides of the stories together." [FN129] It usually takes between two to three months for the Center to arrange a meeting of both parties, where most cases are usually settled.
No traditional lawyer/client relationship exists between a legal aid lawyer and client at the Counseling Center. One lawyer openly admitted that the lawyers act as judges. While conciliation is voluntary, the lawyer acts at his or her own discretion in mediating an agreement and following up on reconciled cases. For instance, one lawyer said there was a six-month post-reconciliation follow-up in marital reconciliation cases, while another said no follow-up was done. None of the materials in the Maharashtra State Legal Aid and Advice Scheme describe follow-up procedures.
Many women's organizations in a number of states expressed concern about the state-run marital conciliation proceedings. Most of the women seeking legal aid did so in order

to obtain a divorce or to receive maintenance from their husbands. One Bombay women's organization, the Nahila Dahenita Sanita, a shelter for battered women, insists on *423 monitoring marital reconciliation hearings by sending a representative to every hearing. [FN130] The group felt this was necessary to protect the women's interests because the state seemed overly intent on "achieving reconciliation at all costs, often pressuring the wife to accept all terms." [FN131]

The justification for urging reconciliation in matrimonial disputes is found in the language of the Hindu Marriage Act, which specifically calls on Family Courts to encourage marital reconciliation. Women in India choose divorce as a last resort; there is tremendous social and religious pressure for women to remain married whatever the circumstances of their troubled marriage. Some judges believed, however, that women sometimes used divorce petitions only to harass or threaten their spouses, or sought divorce because of trivial conflicts, and that the women had a naive misunderstanding of the consequences they would face as divorcees.

The Bombay women's group also voiced objections to the authority of the lawyers at the Counseling Center, who held "many misconceptions about a woman's role in the family," were "ill-trained and educated to conduct such hearings," and had "an overly paternalistic attitude towards women." [FN132] At least one report bore these points out. Attempting to show the success of L.A. judges in reconciling parties, one lawyer recounted the following story:

After three and four attempts to reconcile the parties, the wife still refused to accept her husbands terms, and still demanded a divorce. After the fourth failed attempt, the judge took her aside, and with a few words, got her to reconcile with her husband within moments. He told her, holding up a pen: 'Do you see this pen? When I buy it new from the market, it is worth ten rupees. If I try to sell it tomorrow, it will be worth only two rupees. [FN133]

The women's group said they often filed objections when a court pressed a woman to reconcile despite evidence that her husband had beaten and abused her.

Despite the complaints of women's groups, Maharashtra's legal aid directors were very proud of their L.A. court program, which they call "lok nyayalayas" (L.N. courts). From 1984 through 1985, the State reported 77 L.N. courts which settled 1,562 cases. From 1985 to 1986, 170 L.N. courts settled 7,013 cases. Of these, fourteen L.N. courts exclusively*424 heard motor vehicle compensation claims cases. Between April 1986 and March 1987, 184 L.N. courts were organized, 15,981 cases were heard, and 7,655 cases were settled. Of these, sixteen were specialized motor accident claims courts.

Maharashtra passed its own State Lok Nayalaya Rules in 1986, which regulated the procedure of the L.A. courts and gave statutory recognition to L.A. court settlements. "Each [L.N. court] panel consists of 3 conciliators ... such as advocates, retired judges, social workers, law teachers, etc. The panels for matrimonial matters usually consist of lady conciliators." [FN134]

Immediately after a compromise is reached, it is recorded, signed, and transferred to a judicial officer, who signs it as a final decree or order. A hearing reportedly lasts "between five to seven minutes." "Due to the aforesaid procedure the parties hardly get any chance to change their minds and thus the compromise is effected finally." [FN135] No appeal is allowed from the settlement.

The procedural rule allowing immediate judicial approval and disposal of settled cases without the possibility of appeal created great enthusiasm among those involved with the L.N. courts, who had petitioned for their formal recognition. The Director of the State Legal Aid Board explained that "allowing parties to change their minds" after a settlement was reached was "a bad idea" because parties would be subject to the opinions of relatives, neighbors, and friends, who could encourage rejection of a settlement and litigation. This would defeat a primary purpose of the L.N. courts--lightening the caseload of the official courts. The Director insisted that the parties preferred final compromises.

The Maharashtra L.N. courts appeared to achieve the best of all worlds for the state. They faciliated the quick and cheap resolution of disputes, kept cases out of the official

system, avoided the delay and encumbrance of procedural or evidentiary rules, and had full legal sanction.
CILAS Newsletters frequently reported Maharashtra's success in holding specialized Motor Vehicle Claims L.N. courts (M.V.C.L.N. courts). While set up as a legal aid program, the popularity of the M.V.C.L.N. courts led the legal aid board to open them up to all applicants. At the M.V.C.L.N. courts, state-owned insurance companies could quickly resolve the compensation to be paid to an injured party.
Observations at a M.V.C.L.N. court session indicated that the proceedings merely provided a haggling forum. Neither side was very interested*425 in the bargaining process itself; the compensation was usually predetermined by insurance company schedules. The hearings often lasted less than five minutes; the injured party often sat at one side of the room and watched the attorneys discuss the matter. The role of the L.N. judge was negligible. The entire proceedings were reminiscent of pretrial settlement negotiations.
Despite the traditional fee system that pays attorneys per court appearance, lawyers are able to obtain sizeable fees from the M.V.C.L.N. court hearings although they may appear only once. A de facto system of percentage compensation has been arranged, where an attorney can get anywhere from ten to thirty percent of the settlement. Although the director of the legal aid program argued that the L.N. courts "kept the money out of lawyer's pockets," they actually offer lawyers higher fees than traditional litigation. [FN136]

C. Himachal Pradesh
The state of Himachal Pradesh (H.P.) stands out as an example of an alternative to the L.A. court movement. Its unique Conciliation Courts attempt to achieve conciliation within the formal court structure. H.P.'s experiment has been modest, but figures show that it has succeeded in reconciling seven to eight percent of all cases filed. From September 1984 to May 1989, 22,937 cases were conciliated. The state boasted that "it is remarkable in this scheme that not a single case has come to the High Court in appeal or revision against the [reconciliation] decree of the lower courts." [FN137] Unlike the L.A. courts in other states, Conciliation Courts continue to be steadily used to the present day. Discussions with district judges, legal aid officials, and lawyers indicate that the experiment has been carefully monitored and administered.
The Chief Justice of H.P., Shri P.D. Desai, established the Conciliation Courts in 1984 as alternatives to the L.A. courts. The court authorities justified their creation as within the intent of the Code of Civil Procedure, which enjoins courts to assist parties in settling certain types of suits and proceedings, and within the intent of similar provisions in the Hindu Marriage Act. [FN138] H.P. initiated the project partially because *426 they opposed the L.A. courts. Because of the political popularity of the L.A. courts, however, they could advocate the successes of their system only discreetly, with quiet reminders that they were "not outside the existing legal framework." [FN139]
Participants in the Conciliation Courts, however, more openly criticized the L.A. movement. Many felt that L.A. courts used parties as part of a "political show," and built little faith in the judicial system. The Conciliation Courts were "far superior" because unlike L.A. courts, they were permanently accessible, and not held on an ad hoc basis. Conciliation Court judges came from the district, spoke the regional language, and had a better grasp of local conflicts. In comparison, the touring L.A. court judges were often from the city. Finally, Conciliation Court judges were experienced, practicing judges, not the hodgepodge of social workers, law students, and housewives who often served as L.A. court judges.
The matters referred to the Conciliation Courts pertain to petitions under the H.P. Rent Control Act, the Hindu Marriage Act, family disputes, water disputes, easement rights, maintenance claims, and motor accident claims. [FN140]
Conciliation Court procedures are similar to judicially-supervised settlement negotiations. After clerks identify cases that meet the requisite guidelines, the cases are sent to a regular lower court which serves as a Conciliation Court for a few days each

month.
The conciliation court ... goes through the facts of the cases, taking the help of the lawyers and the parties to the extent possible, [and] endeavors to evolve a fair and just formula.... The judge explains to the parties [the] prima facie merits of the case, [the] nature of evidence required, [the] approximate time involved, and the chances of success of either party.... Parties are thereafter left free to exercise their own judgment. In case a settlement is arrived at a consent decree is passed, ***427** and court fees are refunded ... [FN141]
The Registrar of the H.P. High Court, O.P. Verma, notes that there are procedural safeguards which ensure that parties are not forced to attempt reconciliation. Before a case is channeled to a Conciliation Court, the district judge with original jurisdiction consults with the parties to offer them an opportunity to settle the matter through reconciliation. The case is transferred only if both parties consent.
Recent proposals, however, suggest vesting the Conciliation Courts with authority to sanction parties who fail to appear by dismissing their cases with prejudice or issuing ex parte judgements. Critics of the proposal fear that such an expression of judicial muscle would upset the informal atmosphere of the Courts.
Whether or not parties give true voluntary consent to reconciliation remains unclear. While judges are certainly justified in warning litigants of the time and expense of litigation, some participants feel they cannot refuse a district judge's advice to work things out at a Conciliation Court. A litigant who refuses a transfer to a Conciliation Court must pursue his or her case in front of the same district judge, and risks annoying him.

III. LOK ADALATS AND NYAYA PANCHAYATS: AN ENCORE

The experiment with L.A. courts has largely had the same results as the preceding experiment with N.P. courts. Both offered the Indian population an attempt to resolve disputes in forums believed to be most imitative of the indigenous mechanisms for dispute resolution. Both were criticized as blatant examples of the state's monopolization of autonomous bodies of dispute resolution. The great number of similarities between the ideologies, practice, and history of the L.A. courts and the ill-fated N.P.s suggest that L.A. courts grew out of a desire to revive N.P.s under a new name, with even greater central control.
The use of the Hindi term adalats, to refer to local judicial tribunals, immediately preceded the implementation of the N.P. system. In the late 1800s, the British used the local panchayat adalati as part of their "efforts to decentralize and reorganize local self-government using the institutional-form of panchayats (representative bodies)." [FN142]
Although these local courts were neglected and eventually abandoned, the rhetoric of ***428** promoting local self-government through judicial self-administration lasted well into modern times.
N.P.s, developed and implemented in the 1950s and 1960s, were justified as a constitutional imperative; Article 40 of the Constitution calls for government efforts to foster local self-rule, and for the eventual decentralization of most major governmental functions. [FN143] Like the locally elected village panchayats which would govern each village, the N.P.s would administer the laws and resolve legal disputes locally.
The central government also sought to establish judicial panchayats in order to fulfill the Constitutional Directive Principle of Article 50, which called for the separation of the judiciary from the executive. [FN144] While the original plans called for one village panchayat to fulfill both functions, increased responsibilities made this infeasible. "As panchayat institutions were reorganized and oriented to a wider range of functions, it was felt that considerations of efficiency in performance of the assigned developmental and governmental tasks required relief from the judicial workload." [FN145]
The organization of the N.P.s was simple. Panchas (judges) were elected indirectly from the general village or district panchayat. An N.P. would hear small civil and criminal cases refered by three to ten village councils, but had no enforcement powers. While they could fine parties up to one hundred rupees, the emphasis was to be on

compromise. Lawyers could not represent parties in N.P.s, and no claims by or against the Government could be brought there. A district magistrate reviewed the N.P. decisions, and parties could seek transfer to a regular court if they charged the N.P. with bias or prejudice.

Among other things, the N.P.s represented the new state's desire to exercise judicial authority over the villages, and to provide the village population with legal access. The N.P.s were "intended to combine the virtues of traditional legal institutions (accessibility, informality, economy of time and money, and familiarity of legal norms) with those of the state legal system (impartiality, uniformity of law and procedures, and legitimacy)." [FN146].

"N.P.s [were] endorsed on the ground that they would remove many of the defects of the British system of administration of justice ***429** 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." [FN147]

On the other hand, N.P.s could implement the new laws mandating equality between men, women, and members of different castes. They could provide the village population with a forum in which to exercise their rights under the Indian Constitution. [FN148]

The N.P.s thus had two conflicting goals. On the one hand, they were to promote local self-rule, implying the application of local values and traditional customs. On the other hand, they were to promote the laws and values of the new and progressive Indian state. The national government intended to abolish the pre-existing caste panchayats, whose command and influence over village life was perceived as undermining the goals of the new polity. [FN149]

Academics writing on N.P.s in the late 1960s and 1970s recognized the rhetoric in the Government's argument that the N.P.s were designed only to restore indigenous methods of dispute resolution. "N.P.s cannot be considered to be revivals of older institutions. It may be that they are not like other courts in India ... but they are, nonetheless, courts. As such they are fundamentally different from panchayats, totally new institutionswithout ***430** any counterpart in previous cultural history." [FN150]

Comparing panchayats to the modernization of Indian medicine, Galanter explains that "this revival [was] really another stream of modernization,"-- "traditionalization," [FN151] which Galanter describes as a movement that uses traditional symbols and pursues traditional values, but engages in technological and organizational modernization. [FN152]

Despite warnings about their true purposes and effects, the N.P.s hardly merited apprehension; they were far from successful. Filings in the N.P.s fell to a tenth of their original number in the course of twenty years. [FN153] Eventually the entire program failed.

Observers blamed the decline of the N.P.s in part on their structural weakness, including their limited jurisdiction and authority, small budgets, and barely educated panchas. One study of N.P.s revealed "dwindling caseloads, protracted dispositions, inadequate financial and administrative support, lack of insulation from village politics, and general apathy." [FN154]

The N.P.s could hardly fulfill their promise to extend the norms and laws mandated by the Constitution. "In the discharge of their statutory functions, the nyaya panchayats are to administer justice according to the law; but the law they are to administer requires basic training which they ***431** do not have." [FN155] They also failed in their attempt to adopt traditional panchayat symbolism without the weaknesses of traditional panchayat practices. The N.P.s could not avoid the partiality of the traditional panchayat. [FN156] Yet they also did not succeed in fostering the panchayat virtues of providing a forum for informal reconciliation. [FN157] "Instead, nyaya panchayats seem in large measure to have achieved a rather unpalatable combination of the mechanical formalism of the courts with the political malleability of traditional dispute processing." [FN158]

Despite the practical failure of the N.P.s, the central government and the academic community remained dedicated to the panchayat ideology: "a belief in the efficacy of the

panchayat in resolving disputes in rural areas in the face of strongly inconsistent evidence." [FN159] Government studies, including the Bhagwati/Iyer National Juridicare Report, continued to recommend larger budgets and enhanced jurisdiction for the N.P.s. Their supporters hoped to reform the institutions so they could **432* play a key role in the legal aid movement. The recommendations that Iyer's Expert Committee made for N.P.s emphasized extreme informality coupled with formal authority:

Intelligent informality, consistent with natural justice, must inform the methodology of these [N.P.] lay courts. Powers of interim relief and interlocutory procedure exercised by civil courts must be available to them.... The Indian Evidence Act should not be applied.... Elaborate reasons need not be given in the judgments ... but brief grounds may be indicated.... These courts should not be allowed to be bypassed and so must have exclusive jurisdiction.... Execution of decrees and orders and sentence must be made by the panchayat court itself ... [I]t shall have the discretion to suggest a just settlement ... and if rejected by one party ... there must be power to impose penal costs.... Lawyers will not ordinarily be allowed to appear.... [FN160]

The recommendations included staffing the N.P.s with retired judges and staff with at least rudimentary legal training, implying that the N.P.s were "no longer commended as an embodiment of traditional values." [FN161] Such staffing, however, would keep the N.P.s "outside the villages; panchas would become strangers; powers would not be enhanced. If the N.P. were impartial, they might be preferable to more partisan local bodies, but their weak powers of enforcement and limited jurisdiction would militate against their use." [FN162]

No state adopted the recommendations for reforming the N.P.s; some states abolished N.P.s completely. Instead, the recommendations for reforming the N.P.s were used in new experiments with L.A. courts.

IV. LOK ADALATS: AN ASSESSMENT OF THE EXPERIMENT WITH INFORMAL DISPUTE RESOLUTION

L.A. courts promised to operate informally and to achieve results superior to the official courts. They offered the possibility of conciliated **433* settlements that would leave all parties happy. They would be unburdened by the procedures and rules of formal courts, and accessible to even the least educated villager. They would be true "people's courts." At the same time, by inducing the population to resolve disputes within state forums, they would extend the rights and values of the state.

This Article first presented the history of the legal aid movement to provide an understanding of the motivations behind this experiment in informal dispute resolution. Second, the Article evaluated available data on the actual practice of L.A. courts. Third, it explained the history of N.P.s in order to reveal recurring themes and issues in the behavior of the L.A. courts. In this final section, the Article assesses the experience of L.A. courts in light of western critiques of movements for legal informalism.

Theorists studying state experiments with informal dispute resolution often describe them as a thinly veiled effort to extend state control into areas where the formal legal system has had little success. Commenting on the American experience, for example, Steven Spitzer notes the paradox in current proposals for informal justice. They are rationalized by advocates of "delegalization" and "decentralization" as a means to promote the strength and autonomy of local social units; they do not recognize, however, that this dispersion of control is an effective expansion of centrally organized and managed social control, "thinning the mesh and widening the net" of the central authority. [FN163] As Foucault argued, informal justice actually increases state power by allowing its control to escape the walls of the highly visible centers of coercion, such as courts, prisons, mental hospitals, and schools. [FN164]

Both the N.P. and L.A. courts used the rhetoric of promoting local self-rule, where justice is administered before social peers. Unlike the establishment of village panchayats, which made uniform the structure of government that each village or tribe would use, N.P. and L.A. courts provided far more than a uniform structure for the administration of justice. They also impose the state's laws and constitution, and thus serve as conduits for the

extension of rules which are often very foreign to local ways and customs.
L.A. courts represent an even greater displacement of local rule than N.P.s because its judges or "conciliators" are often not even from the local community, as was the case with N.P.s. Instead, prominent ***434** social figures, social workers, and retired judges pass through local communities to staff the L.A. courts. The recommendations for reforming the N.P.s, later implemented in the L.A. courts, urged that judges be detached from the local community to avoid the problems of partiality. Instead, they sought to rely on the values and understandings of relative strangers in order to resolve local disputes.
Critics argue that this extension of state power also "undermines extrastate modes of informal control." [FN165]
Informal justice purports to devolve state authority on nonstate institutions, to delegate social control ... But in fact informalism expands the grasp of the state at the expense of other sources of authority that appear to be potential competitors. Indeed a precondition for the survival of informal justice in civil society appears to be the inaccessibility of competing state institutions. When the official state legal system, formal and informal, is highly remote and inhospitable, then true informal justice thrives outside it. Reforms that increase access to state control--of which informalism is an example--draw clients away from nonstate institutions and distort the processes of the latter." [FN166]
Both the L.A. courts and the N.P.s encouraged parties to approach the state forums instead of the competing non-state legal systems of caste, community and tribal-based panchayats, whose authority was considered inimical to the goals of the state. By creating forums with features considered appealing by the village population, the state hoped to divert and control conflicts in its own forums.
The L.A. court movement explicitly endorsed this goal. The Legal Services Act, in accord with CILAS' guidelines, prohibited non-state organizations or groups from administering independent L.A. courts. All L.A. courts required state approval, cooperation, or financing. The Legal Services Act also required that L.A. court judges associate closely with the state. Only retired judges, lawyers, and social workers were allowed to serve as L.A. court judges. As one commentator explained, "[S]tate informalism not only expropriates conflict from the parties but also reduces participation by other citizens in the handling of disputes. State informal institutions substitute paraprofessional state employees for citizen jurors." [FN167]
"If ... the growth of informal legal institutions extends state social control, this does not mean that [it is] necessarily effective." [FN168] The central***435** government's promotion of its own legal system throughout the country was designed to uniformally extend its laws and constitutional values, and to displace potentially conflicting local customs and practices. [FN169]
As with the N.P. courts, however, the very informality and flexibility of the courts have militated against any uniform extension of norms and values. Without procedural and evidentiary rules, consistent recordkeeping, or adherence to statutes and precedents, uniformity could hardly be assured.
The very notion that the L.A. courts offered relief from the complex and impractical legal process implies that the courts promoted something other than the rule of law. If "lawyer's law" is "the enterprise of subjecting human conduct to the governance of rules" where rules are "formal, explicit and deliberately instituted," [FN170] L.A. courts, as "anti-rule, anti-lawyer's law" forums, may indeed not have been the best way to govern. What L.A. courts offered in the place of "lawyer's law" remains unclear. Unlike N.P.s, L.A. courts have not attempted to encourage the resolution of disputes by local judges according to local customs and rules. L.A. court judges, who only occasionally come from the area and have some legal experience, have offered only ad hoc opinions designed only to terminate disputes as quickly as possible. As Judge Iyer described the L.A. courts shortly after passage of the Legal Services Act, they are "neither fish, nor flesh, nor good red herring!" [FN171]
Some evidence suggests that L.A. court judges have influenced settlements***436** according to their own personal values and beliefs, particularly in matrimonial cases. At other times, the high level of politicization has apparently subjected the L.A. court to the

influence of local leaders. The dangers of such influence have been widely commented on:

[T]he whole point of much modern legislation in India ... has been to 'conflict' with preexisting local views of justice. Given the inherent clash between a legal framework that promotes legal values and a culture that has not put a high premium on such values, the importance of forums as immune as possible from the influence of local elites is clear. [FN172]

The limited success of the L.A. courts in achieving lasting conciliation between parties, [FN173] and in establishing popular forums for dispute settlement can in part be explained by the relationships of the parties appearing before them. Often, disputants have a long history of caste or tribal conflict. Additionally, the types of cases, particularly matrimonial cases, heard by the L.A. courts may have made success difficult, a common difficulty that informal institutions face:

Contemporary informal institutions devote substantial energies to precisely those situations ... conflict between intimates expressing deep-rooted emotions ... [which] they are least able to resolve. [FN174]

One rationale urges that diverting such problems to informal courts where matters are amicably settled could minimize the tension traditionally associated with bringing private matters to official courts. In response to critics who objected to the extension of courts into family matters, for example, Iyer gave a qualified defense for legal aid in matrimonial matters:

It is for the substantive law to lay down the conditions under which a marriage might be dissolved. Once it recognizes the desirability of divorce by permitting it in certain conditions, ..., it would not be correct for the legal aid machinery to interpose an obstacle in the way of securing a right which the legislature had considered desirable to confer upon the parties in order to avoid suffering and hardship.

... However, ... to ensure that as far as possible, family matters are not brought to the Court, we recommend that Legal Aid should not normally be given for the institution of any proceedings for divorce ... or for the custody of children, unless an attempt has been made by the ***437** Legal Aid Committee to effect ... reconciliation between the parties, and the aforesaid person agrees to a reasonable settlement. [FN175]

Iyer's statement captures the tension between a national vision of rights based on equality and justice and local visions based on hierarchy and tradition. This tension is similar to the tension between the constitutional promise of social liberation and the promise for decentralized judicial administration, local self-rule, and popular justice free from the artifice and deceit associated with the formal courts.

The legal aid movement expressed these tensions by pursuing two different goals at once. One goal, spearheaded by Justice Bhagwati, sought to provide the socially and economically oppressed masses with access to the formal legal system through free legal assistance and widescale public interest litigation.

The second goal sought to create an informal system of dispute resolution, aimed primarily at the problems and disputes of the poor who had been frustrated by the formal system. Local conflicts would be deflected away from central authority and hopefully dissipated through reconciliation. The delay, cost, and oppression of the formal system would be avoided.

Weber explains such simultaneous movements in the legal system for formalization and informalization as expressive of the friction between substantive and procedural law, and as part of the dialectic between law and justice. Democratic societies offer justice in the shape of equality before the law and legal guarantees in formal and rule-bound judicial systems, as opposed to the arbitrary and rampant discretion of the chambers of absolute rulers. [FN176] Yet the "ethos" of the democratic masses, sometimes born out of irrational sentiment, often calls for substantive justice of a different sort in individual cases, and collides with the cool and calculable bureaucratic administration of the law. [FN177] Bourgeois laws hardly appear just to the propertyless masses, for example, when they serve to evict an elderly woman from her tenement apartment. [FN178] Popular justice, Weber explains, must be informal if it is to accepted as ethical. [FN179]

***438** The translation of this debate into the formal/informal division is related to a desire to see one's vision of social justice fulfilled. Following Weber's comments, Spitzer notes that as the rhetoric for equality before the law and formal, rule-bound systems increases, the law is transformed into an "unassailable, abstract and reified tool" of the ruling, propertied elite; [FN180] calls for social justice and challenges to legal authority by the masses, most victimized by the system, appear irrational and more and more unattainable. [FN181]

The legal aid movement sought to vindicate the rights of the poor through the formal courts, where equality under the Constitution would guarantee victories, and where the weight of unequal bargaining positions could be alleviated. However, the formal system had a negative impact because of its inordinate cost and delays, inflexibility, and inapproachability. To avoid these harms, the legal aid movement advocated an informal alternative as part of its overall program.

Soon, however, public interest litigation shrunk from the agenda of the national legal aid movement, depending instead on the impetus of private organizations who sought reform through high impact litigation. The informal movement embodied in the L.A. courts became CILAS' main focus.

The success and popularity of L.A. courts, however, prompted calls for greater formality and statutory recognition. Officials involved with the L.A. courts argued for expanded jurisdiction, official sanction to settlements, and authority to levy fines. The Legal Services Act fulfilled these requests. The L.A. courts were professionalized and excluded non-professionals by requiring that only lawyers or retired judges serve as judges. Thus, the advocates for informality succeeded in formalizing the courts as much as possible. Critics explain such reciprocal movements away from informalism as a natural development in the bureaucratization of any state body.

Once the alternatives are in business, their staff develop a 'professional' stake in increasing caseload.... The professional staff in informal institutions may seek to enhance their status and authority by adopting the trappings of formalism: ... [I]nformalism depends on levels of moral enthusiasm, consensus, and suasion that are very difficult to sustain; rather than constantly struggling to revivify commitment, legal institutions may fall back on more coercive, hierarchical means of social control and dispute settlement. [FN182]

***439** The formalization of the L.A. courts affected not only their procedure, but also solidified full state control by prohibiting non-state organizations from holding L.A. courts themselves. "The state [felt] threatened by the existence of autonomous informal institutions and actively suppressed them." [FN183]

State legal aid boards came to rely more and more on their capacity to coerce those applying for legal aid to appear before conciliation boards. Some states, like Maharashtra, made acceptance of the informal courts a condition for receiving legal aid.

Perhaps the most serious criticism of movements that advocate conciliation is the negative effect they have on the rights of the parties to the conciliation. Western feminists have long been skeptical of the use of conciliation and mediation in family disputes. The promotion of family mediation is seen as a product of an "essentially romantic view of marriage ... premised on the notions that families should be protected from the intrusiveness of the justice system, and that problems within families are best solved through informal remedies that help the parties to communicate more effectively." [FN184] However, shifting these disputes outside of the formal system also shifts the rights of women out of the public adgenda:

Mediation trivializes family law issues by relegating them to a lesser forum. It diminishes the public perception of the relative importance of laws addressing women's and children's rights in the family by placing these rights outside society's key institutional system of dispute resolution--the legal system--while continuing to allow corporate and other 'important' matters to have unfettered access to that system. [FN185]

In a review of mediation of wife-abuse cases, for example, Lisa Lerman notes that informal mediation substitutes reconciliation and compromise for the redress that the institution has no authority to grant. The abused woman's complaint is destablized and

trivialized, because the mediator examines it in the context of the "grievances" of both sides, and prepares the woman to accept the solution: compromise. Informalism offers a way out of clashing norms, "clothed in forms of consent," but at a heavy cost to the grievant, who "relinquishes something valuable and valued." [FN186]

***440** In India, the entire conciliation effort has been directed through the state legal aid programs. It has aimed entirely at urging the poor, who are mainly women, members of scheduled castes and tribes, and small landowners, and who are most in need of the protections their legal rights offer them, to compromise their rights.

The same problems identified with mediation of family disputes in the West are widely prevalent in India's L.A. courts. Justice Iyer soothed conservative fears by promising that reconciliation would always precede litigation in matrimonial affairs. Women's organizations in all four Indian states examined have recorded their opposition to such reconciliation; they overwhelmingly noted that L.A. courts put too much pressure on women seeking divorce to reconcile instead.

The negative effects of conciliation-oriented institutions on collective rights undermine one of the original aims of the legal aid movement: vindication of the rights of the poor and oppressed through class action or public interest litigation. By instructing each party to resolve controversies alone, informal institutions disorganize the grievances of the dominated and stifle collective responses. [FN187] They measure their success in the numbers of cases they resolve, rather than in their impact on the community or attainment of any substantive goals. [FN188]

Baxi notes the danger of India's reliance on conciliation for dispute resolution. Instead of heightening the citizens' sense of rights, and refining laws to serve group interests, conciliation simply offers an unprincipled method of handling disputes; compromise and bargaining encourage old rules and prejudices to flourish, and subvert the progressive legislation designed to combat these prejudices. [FN189]

Commentators note that the lack of procedural formality also imperils the hard-won rights of the poor. The blind application of formal rules often create "pockets of leverage" for the disadvantaged to challenge oppressive relationships. [FN190] Indeed, the distance and legitimate antagonistic behavior between parties characteristic of procedural formality may encourage such challenges. [FN191] Informal procedures create a more flexible and precise instrument for the goals of the privileged, and eliminate any possible leverage that the disadvantaged can gain from the rigidity***441** of the formal system. [FN192] Instead of distance, they promote a false sense of integration with hierarchy, and of a common cause in compromise. [FN193]

In India, the emphasis on conciliation and the thrust of the informal movement grew out of the politically powerful elite's presumptions about the poor and oppressed. They justified the L.A. courts not as mechanisms to serve state interests (which were said to only incidentally benefit), but as courts designed to serve the interests of those excluded from the formal legal system.

Critics have frequently noted that informal systems commonly dress up the interests of the dominant groups as the wishes of the dominated. Informalists point to the economic crises of overcrowded courts, and describe some cases as "inappropriate" for litigation. Rather than adapting existing courts, certain matters are pushed into alternative institutions. They claim to speak for the "people," who are dissatisfied with the courts and prefer speedy, cheap, and more personal institutions. [FN194]

Yet segregating "smaller cases" to alternative institutions only accentuates and verifies the perception that courts serve only corporate interests. "The people" must choose between efficiency or justice; they must accept a "compromise that purports to restore a peace that never really existed" and give up "the leverage of state power to obtain the redress that is theirs by right." [FN195]

The L.A. courts regularly offered such justifications for shifting disputes to its own forums. However, recent evidence challenges these beliefs about the relationship of the poor to the Indian legal system. Indeed, the traditional understandings about the failure of the formal legal system to meet the needs of the poor and rural population appears to be based more on myth than actual experience.

Most mythical of these beliefs is the argument that the formal system is foreign and inaccessible to the general population. However, a growing body of evidence challenges this notion. Some of the very arguments used to promote conciliation, such as the problems with overloaded courts and an overly litigious society, indicate that the formal system is being used by the population. Whether the system is disproportionately used by the middle and upper classes and whether it is effective are two entirely different issues. As one researcher commented, ***442** "whether appropriate or not, [the system is] very well entrenched." [FN196] "While these systems may have once been 'Western,' they are now clearly indigenous. The question is no longer whether they are appropriate, but to what end they are working." [FN197]

Much of the disapproval of the formal legal system has actually focused on the way the village population "misused" the system to manipulate the courts for ends unrelated to the legal dispute at issue. Nevertheless, it is clear that the courts have been used to serve interests identified by the population itself:

Even though there are inadequacies of procedure and scope for chicanery and cheating ... the present court system is not an alien or imposed institution but part of the life of the village. Looked at from the perspective of the lawyer's law and that of the judges and higher civil servants, the ability of some peasants to use the court for their own ends would appear a perversion of the system. However, looked at from the ground up it would appear that many in the rural areas have learned to use the courts for their own ends often with astuteness and effectiveness. [FN198]

Despite the complexity of the laws and beliefs that the formal system is culturally irrelevant for the vast majority of Indians, actual field studies reveal that there has been success in interpreting and adapting the courts to meet individual and local needs. R.S. Khare, in his examination of the actual workings of "lawyer's law" in Indian indigenous culture, concluded that villagers and city-residents had adapted effectively to the formal legal system through the development of local "touts," who serve as liasons and translators to lawyers and their local clients. This network of communication has incorporated the formal system as a credible and useful tool for the resolution of socio-economic disputes in villages across India, despite the bureaucratic complexities. [FN199]

A more recent survey of legal aid in India critiqued the notion that the legal system is particularly alien or mysterious to the rural Indian poor because it is an imported system; instead, they noted that complex legal systems universally baffle the general public. [FN200]

Finally, in contrast to the legal informalists, some researchers have argued that the best kind of legal aid for the poor is the direct legal services of a lawyer. "Legal representation, backed by a threat to go to court, ***443** could help the lower jatis in securing numerous benefits guaranteed by government." [FN201] Such assistance could go a long way towards integrating the formal system, insofar as it leads to a quick realization on the part of the "have-nots" that the legal process could be used for securing rights from other villagers. [FN202]

While unequal bargaining positions may influence outcomes even in the formal system, the procedural safeguards of the formal system offer security that an informal system does not. "A lower jati disputant may well be at a disadvantage in an Indian court because of the disparities in socio-economic status between him and his opponent ... such disadvantages, however, are inevitably magnified in an informal dispute settlement situation." [FN203]

Indeed, some theorists argue that litigation substantively reduces the costs of social and economic inequalities. "Adversarial contest may lead to a long-run improvement in personal relations, a kind of Hegelian 'reintegration at a higher level' in which struggle makes it possible for the parties to reconcile with a sense of dignity and mutual respect that would formerly have been impossible." [FN204]

The same arguments used to justify informal legal institutions in the interests of the poor seem intended to relieve the crisis of the formal legal system, and thus serve the immediate interests of the state. The flood of litigation and the tremendously publicized costs and delays of the official courts have put tremendous pressure on the state to

reform the judicial system.
With the expanding use of the courts by the masses, and a legal aid program that at least promised to expand access even further, the crisis promised to grow. By directing a large number of litigants into alternative courts, some of the strain on the formal system could be relieved. Particularly in family disputes or claims for compensation in industrial or motor vehicle accident claims, which were considered unimportant, the government could meet its obligations inexpensively and quickly.
The expansion of free legal services, social welfare legislation, and civil rights in the the 1960s and 1970s in the United States caused similar ***444** results and responses. As the problems of the poor and previously unrepresented flooded the courtrooms, business and traditional users of the system found it more difficult to use the system. [FN205] Their discontent stimulated a movement to shove these new cases into alternative forums, "institutionalizing the informal legal practices the courts had followed when the poor were unrepresented." [FN206] Viewed as too trivial and costly for full due process rights, the poor moved their cases to forums heard by "nonjudicial hearing officers, unfamiliar with evidentiary and procedural rules, ... in trials so brief they can be measured with an egg timer." [FN207]
Such egg timer hearings, while boasted about by L.A. court officials, are seen as further evidence by critics that the L.A. courts are merely second-class forums of justice for the poor. It is no accident that L.A. courts were promoted through the legal aid program. It is unbelievable that any other sector of society could accept such a recipe for justice.
The L.A. courts were intended to legitimize the state judicial system by creating accessible and approachable forums that displaced non-state systems, and thereby integrate a wider range of the population into the state's authority. Additionally, the LA courts would reduce the pressure on the formal system, whose collapse was deemed imminent.
However, the L.A. courts may have magnified the legal crisis, by reminding litigants that they have no chance for justice in the formal courts. Commenting on the Lok Adalat at Rangpur, Baxi notes that one of the latent effects of the L.A. court dispute resolution is not only an exposure of the formal courts as a failed and inappropriate system, but also an acquiescence to the failure. The very success of the L.A. court system pacifies and dulls the urgent demand of those who call for an immediate reform of the state judicial system, and limits the pressure on the government for self-correction. [FN208] Despite the aim of L.A. courts to fashion a new system of dispute resolution, they perpetuate the defects of the formal legal system. [FN209]
The expenditure of money and energy on L.A. courts causes concern to the extent that the legal system may be better off correcting the deficiencies of the formal system, by increasing the number of courts and judges and by reforming court procedures which allow delays and abuses. To the extent the evidence suggests that the L.A. court experiment,***445** like the N.P.s, has failed, we need not fear that they can indefinitely be used to avoid the crisis. Perhaps we need only worry that a new alternative will be developed to provide yet another opportunity to avoid the crisis of the formal system.

[FNa]. Associate, Cleary, Gottlieb, Steen & Hamilton, New York, N.Y.; J.D., Harvard Law School, 1991; B.A., University of California, Berkeley, 1988. The author has recently participated in the Harvard Study Team's studies of the impact of the war on civilian casualties in Iraq.

[FN1]. Catherine Meschievitz & Marc Galanter, In Search of Nyaya Panchayats: The Politics of a Moribund Institution, in 2 THE POLITICS OF INFORMAL JUSTICE 44-77. (Richard Abel ed., 1982). The article describes how nyaya panchayats, the judicial branch of the state instituted local organization schemes, had become "moribund" despite continued ideological loyalty to the institution. Meschievitz and Galanter first used this term to describe nyaya panchayats, the failed experiment with informal local courts that immediately preceded L.A. courts.

[FN2]. In 1989, I had the opportunity to work with the Center for Implementing Legal Aid Schemes (CILAS), which is the national legal aid supervisory agent, and to visit the legal aid programs of four states: Maharashstra, Rajasthan, Himachal Pradesh and Delhi. In each state, I met with the directors and staff of the state legal aid programs, the states and district judges who monitored and participated in the legal aid programs, members of the bar associations, lawyers, judges, academics, and litigants. Fortunately, Aditi Pratap accompanied me at almost all times, and served to interpret from Hindi some interviews with litigants.

[FN3]. Oliver G. Koppell, Legal Aid in India, 8 J. OF THE INDIAN L. INST. 224, 225 (1966). Bhagwati was then a judge of the Bombay High Court.

[FN4]. GOV'T OF MADHYA PRADESH, REPORT OF THE PREPARATORY COMMITTEE FOR LEGAL AID SCHEME, A PROTECTING ARM OF THE STATE 10 (1975) [hereinafter GOV'T OF MADHYA PRADESH].

[FN5]. LAW COMMISSION OF INDIA, FOURTEENTH REPORT--REFORM OF JUDICIAL ADMINISTRATION 589 (1958).

[FN6]. Id. at 587.

[FN7]. Koppel, supra note 3, at 225.

[FN8]. Id. at 226.

[FN9]. Id. at 228-31.

[FN10]. MINISTRY OF LAW, JUSTICE & COMPANY AFFAIRS, GOV'T OF INDIA, REPORT OF THE EXPERT COMMITTEE ON LEGAL AID: PROCESSUAL JUSTICE TO THE PEOPLE 4 (1973) [hereinafter GOV'T OF INDIA].

[FN11]. Madhava N.R. Menon, Legal Aid and Justice for the Poor, in LAW AND POVERTY: CRITICAL ESSAYS 352 (Upendra Baxi ed., 1988).

[FN12]. See generally GOV'T OF INDIA, supra note 10.

[FN13]. Id. at 17.

[FN14]. See id. at 62-63.

[FN15]. Id. at 39-58.

[FN16]. Id. at 58.

[FN17]. Richard Abel, Introduction, in 1 THE POLITICS OF INFORMAL JUSTICE, supra note 1, at 2-7.

[FN18]. Upendra Baxi, Understanding the Traffic of 'Ideas' Between America and India, in THE TRAFFIC OF IDEAS BETWEEN INDIA AND AMERICA (Robert M. Crunden ed., 1985).

[FN19]. V.R. KRISHNA IYER, LEGAL SERVICES AUTHORITIES ACT--A CRITIQUE 19 (Madurai: Society for Community Organization Trust ed., 1988).

[FN20]. Id. at 23.

[FN21]. Bernard Cohn, Some Notes on Law and Change in Northern India, 8 ECON. DEV.

& CULTURAL CHANGE 79, 90 (1959).

[FN22]. Id.

[FN23]. R.S. Khare, Indigenous Culture and Lawyer's Law in India, 14 COMP. STUD. IN SOC'Y & HIST. 71, 79 (1972).

[FN24]. Bernard Cohn, Anthropological Notes on Disputes and Law in India, 67 AM. ANTHROPOLOGIST 82, 105 (special publication) (1965).

[FN25]. Id. 105-06.

[FN26]. Cohn, supra note 21, at 91.

[FN27]. Khare, supra note 23, at 80.

[FN28]. Id. at 81.

[FN29]. Id. at 85.

[FN30]. Id. at 83.

[FN31]. Upendra Baxi, From Takrar to Karar: The Lok Adalat at Rangpur--A Preliminary Study, 10 J. CONST. & PARLIAMENTARY STUD. 52, 94 (1976).

[FN32]. UPENDRA BAXI, THE CRISIS OF THE INDIAN LEGAL SYSTEM 337 (1982) [hereinafter THE CRISIS OF THE INDIAN LEGAL SYSTEM].

[FN33]. Baxi, supra note 31, at 95.

[FN34]. THE CRISIS OF THE INDIAN LEGAL SYSTEM, supra note 32, at 339-43.

[FN35]. There was no shortage of doomsayers among scholars and the judiciary. Negative forecasts can be found in almost any piece of writing on the Indian legal system. For a particularly alarming report see id. at 32.

[FN36]. GOV'T OF MADHYA PRADESH, supra note 4, at 17.

[FN37]. Menon, supra note 11, at 352.

[FN38]. Id.

[FN39]. Id. at 366.

[FN40]. 1 CENTER FOR IMPLEMENTING LEGAL AID SCHEMES NEWSL., Sep. 1981-Mar. 1982, pts. 3, 4, at 2 [hereinafter CILAS NEWSL.].

[FN41]. 1 CILAS NEWSL., May 1981, at 12.

[FN42]. Id. at 2.

[FN43]. Rajeev Dhavan, Borrowed Ideas: On the Impact of American Scholarship on Indian Law, in THE TRAFFIC OF IDEAS BETWEEN INDIA AND AMERICA, supra note 17, at 308-09.

[FN44]. Legal Aid: Plan, Policies and Programmes, 1 CILAS NEWSL., May 1981, pt. 1, at

12-18.

[FN45]. Menon, supra note 11, at 369.

[FN46]. CILAS NEWSL., May-Aug. 1982, at 8.

[FN47]. CILAS NEWSL., May-Aug. 1983, at 22.

[FN48]. Id. at 15-16.

[FN49]. Shiraz Sidhva, Lok Adalats: Quick, Informal Nyaya, LEX ET JURIS 38 (1986).

[FN50]. CILAS NEWSL., Aug. 1986, at 2.

[FN51]. CILAS NEWSL., May-Aug. 1982, at 2.

[FN52]. Id. at 4.

[FN53]. Id.

[FN54]. Upendra Baxi had written on the Lok Adalat in Rangpur as a study on non-state institutions for dispute resolution. See THE CRISIS OF THE INDIAN LEGAL SYSTEM, supra note 31.

[FN55]. Id. at 61-64.

[FN56]. Id. at 62-63.

[FN57]. Id. at 59.

[FN58]. Id. at 62, 91.

[FN59]. Id. at 84.

[FN60]. CILAS NEWSL., May-Aug. 1984, at 5.

[FN61]. CILAS NEWSL., Nov. 1984-Aug. 1986, at 1.

[FN62]. Id. at 38.

[FN63]. Id.

[FN64]. Id. at 38-40.

[FN65]. Id.

[FN66]. Id. at 40.

[FN67]. Id.

[FN68]. Id. at 8.

[FN69]. CILAS NEWSL., May-Aug. 1987, at 1.

[FN70]. Sidhva, supra note 49, at 38.

[FN71]. Id.

[FN72]. Id.

[FN73]. Id. at 39.

[FN74]. CILAS NEWSL., Nov. 1983-Dec. 1984, at 10.

[FN75]. Justice Misra explained that:
Besides the truncated budget, and unnecessary expenditure entailed in moving the courts, public time is saved, and bitterness and tension in the life of the litigant, and on a larger scale, in society, is no more there, which leaves scope for better personality growth, and eventually, appropriate citizenship development.
Sidhva, supra note 49, at 39.
In an inaugural address held at the seventh Lok Adalat held in Delhi, Chief Justice Pathak voiced his own support for L.A. courts:
There are areas of litigation and categories of cases which lend themselves readily to simpler procedures than those we have been accustomed to. The need to recognize their relevance has become increasingly greater with the overwhelming accumulation of pending cases.... [W]e must turn to innovative techniques, and within recognizable limits adopt changes of orientation.... there can be no objection to this so long as the basic principles of the Rule of Law are observed and true justice can be ensured.
CILAS NEWSL. May-Aug. 1987, at 3.
Pathak appeared cautious about the unmonitored and procedureless use of these informal courts, however:
So long as the two cardinal features of judicial proceeding are guaranteed, that is to say, firstly, ensuring an awareness in the litigant of his rights and obligations, and secondly, promoting a settlement reached through the free and willing consent of the parties, we have a system which should receive the approval of all concerned with procedures of dispute settlement.
Id.

[FN76]. For example, unverified figures reported to CILAS on Lok Adalat courts held and cases settled show the following:

State	Number of Lok Adalats Held	Cases Settled
Assam	2	244
Bihar	1	1345
Delhi	10	1800
Gujarat	176	21,025 (1985-87)
Haryana	91	36,019
Madhya Pradesh	57	235,860
Maharashtra	1124	16,230
Orissa	19	2,111
Rajasthan	252	345,154
Uttar Pradesh	247	149,312

[FN77]. CILAS NEWSL. May-Aug. 1987, at 2.

[FN78]. Gujarat reported 19,353 cases settled at 114 L.A. courts (average: 169) between November 1985 and August 1986. See CILAS NEWSL. Nov. 1985-Aug. 1986; Rajasthan reported settling 94,102 cases at 37 L.A. courts held between December 1985 and May 1986 (average: 2543). Sidhva, supra note 49, at 38.

[FN79]. For example, Andhra Pradesh reported settling the suit of 22,000 mass claimants in a suit for land lost to the government when it acquired a steel plant. Madhya Pradesh similarly gave notice of a L.A. ready to settle over 30,000 compensation claims "in respect of lands acquired for Visakhapatnam Steel Plant." CILAS NEWSL., Feb. 1988, at

17.

[FN80]. The state of Haryana put it bluntly: "People feel elated that the Judges of the Supreme Court, High court and the members of lower judiciary come to their villages." CILAS NEWSL., Aug. 1988, at 4.

[FN81]. Id. at 2.

[FN82]. As it did in Assam in 1987. CILAS NEWSL., Feb. 1988, at 15.

[FN83]. CILAS NEWSL., Aug. 1988, at 2.

[FN84]. Id.

[FN85]. Id.

[FN86]. CILAS NEWSL., Nov. 1987-May 1988, at 1.

[FN87]. CILAS NEWSL., Aug. 1988, at 1.

[FN88]. Lok Adalat is in the nature of an impromptu court presided over by respectable citizens of a locality assisted by a lawyer to hear disputes voluntarily taken before it by the parties and to give fair settlements according to legal rights and obligations. The approach is informal, conciliatory and confidence-gathering. Though there is no legal sanctions as such in the settlement reached, parties tend to abide by it. Menon, supra note 11, at 344.
When a particular matter is called up for hearing, either the petitioner or the lawyer representing him can explain his problem. The case is discussed informally, and the mediators can intervene at any point in the proceedings, as can the opposite party. Issues are clarified, and it is aimed to arrive at a fair settlement. [The judge's] task is merely to clarify the law, and by methods of persuasion, make each party realize how he stands to benefit from a particular settlement arrived at. On some occasions, the compensation amount is made available to the parties on the same day, thereby making the lok adalats popular. Sidhva, supra note 49, at 40-41.
[I]t is not ... an exhibition of organized power of a state agency or a Panchayat under a village chieftain. It is an amorphous crowd of concerned citizens animated by a common desire for justice and willing to experiment with consensual models of dispute resolution in the interests of themselves as well as the rest of society. Id. at 39.

[FN89]. Id. at 40.

[FN90]. Tamil Nadu's experience with private, non-legal-aid litigants, however, raises questions about this explanation:
At a conference with the Adalat members, it was decided that if the Insurance Industry cooperate, there could be a preliminary discussion of the cases, before the Secretary of the Board with the lawyers for the claimants and Insurance lawyers. The insurance lawyers cooperated and the quantum was discussed and the differences narrowed down, and in most of the cases, agreements were tentatively reached. This was however possible only in Legal Aid Board's cases ... The lawyers in the private cases did not cooperate in the discussion and elected for discussion with the insurance lawyers themselves.
In non-assisted cases, only parties in eleven cases out of a total of about one hundred appeared before the adalat. Later on, ... hundreds of cases, (non-assisted) in which lawyers held parleys with the insurance lawyers, were settled before the regular tribunals. The Board has had no control over these award monies.
CILAS NEWSL., Aug. 1988, at 21.

[FN91]. Sidvha, supra note 49, at 39.

[FN92]. For example, Rajasthan established exclusive pension lok adalats.

[FN93]. CILAS NEWSL., Aug. 1988, at 21. Members of the bar originally objected to the use of L.A. courts, because the L.A. courts decreased attorneys fees traditionally earned by charging for each appearance in prolonged bouts of litigation.

[FN94]. Sidhva, supra note 49, at 38.

[FN95]. National Legal Services Authorities Act, 1987 (India).

[FN96]. CILAS NEWSL., Nov. 1987-Feb. 1988, at 4.

[FN97]. Id. However, national funding for state legal aid projects had long been provided through CILAS.

[FN98]. CILAS NEWSL., Nov. 1987-Feb. 1988, at 9.

[FN99]. Id.

[FN100]. Id. at 10.

[FN101]. Id.

[FN102]. Id. at 9.

[FN103]. Id.

[FN104]. Id. at 10.

[FN105]. Id.

[FN106]. IYER, supra note 19, at 47.

[FN107]. Id. at 14 (emphasis added).

[FN108]. Id. at 96-97.

[FN109]. Criminal cases make up 21% of L.A. court cases.

[FN110]. State offense cases make up 20% of L.A. court cases.

[FN111]. Interview with Mr. Nathawat, State Legal Aid Program Director (July 26, 1989).

[FN112]. EVALUATION ORGANIZATION, GOV'T OF RAJASTHAN, WORKING OF LOK ADALATS IN RAJASTHAN, Study No. 123, at 15 [hereinafter WORKING OF LOK ADALATS].

[FN113]. CILAS NEWSL., Nov. 1986, at 18. See also Nathawat, supra note 111.

[FN114]. Id.

[FN115]. Litigants were regularly told that "everyone will be a loser in court." Nathawat, supra note 111.

[FN116]. WORKING OF LOK ADALATS, supra note 112, at 1050.

[FN117]. Id.

[FN118]. Id.

[FN119]. Id. at 27.

[FN120]. EVALUATION ORGANIZATION, GOV'T OF RAJASTHAN, ROLE OF LOK ADALATS IN EASING OF COMMUNAL TANSION, Study No. 102, at 17.

[FN121]. Id. at 18.

[FN122]. Id. at 20.

[FN123]. Id. at 21.

[FN124]. Id. at 29.

[FN125]. Nathawat, supra note 111.

[FN126]. Mr. Nathawat also hinted at the decreased political pressure to hold the courts after 1987. Id. supra note 111.

[FN127]. Interview with Judge Desai, Executive Chairman of the Maharashtra State Legal Aid Board (July 4, 1989).

[FN128]. At one session of the counseling center I attended, four "counselors" were present at a preliminary complaint, none of whom was a lawyer. Outside, over fifty applicants stood in line for their turn.

[FN129]. Interview with lawyer at Rajasthan Legal Aid Counseling Center in Bombay (July 5, 1989).

[FN130]. Interview with Mrs. Sidhvi Kavkanis, chairwoman of Nahila Dakehita Sanita Woman's Organization (July 5, 1989).

[FN131]. Id.

[FN132]. Id.

[FN133]. Interview with lawyer in Himachal Pradesh (June 27, 1989).

[FN134]. CILAS NEWSL., Aug. 1987, at 15.

[FN135]. Id.

[FN136]. Some critics of the L.N. system charge that lawyers pressured their clients into accepting a meager settlement, persuading them that they would have to wait years to get anything out of litigation. There are no studies comparing compensation in settled cases and litigated cases.

[FN137]. CILAS NEWSL., Aug. 1987, at 17.

[FN138]. The Hindu Marriage Act of 1955 similarly urges judges to attempt reconciliation

before granting a divorce.

[FN139]. CILAS NEWSL., Aug. 1987, at 17. One writer reviewing the H.P. experiment commented:
There is a difference between Lok Adalat and conciliation courts as in conciliation courts the matters are tried just after the parties put in appearance in pursuance of summons during the trials and even at the appellate stage. There is a sanctity of the court stamp ... and the matter is decided in equitable and rational and dispassionate manner. There is full cooperation from the lawyers as well as the litigant public to implement this scheme of conciliation.... The only disadvantage of the scheme is that the Judge has to be a man of endless patience and perseverance.
R.K. Mahajan, Practical Evaluation of Himchal Pradesh Experiment, JOURNAL 135, 138 (1988).

[FN140]. Mahajan, supra note 167, at 139.

[FN141]. CILAS NEWSL., Aug. 1987, at 16-17.

[FN142]. Meschievitz & Galanter, supra note 1, at 50.

[FN143]. R.S. Robins, Comment, India: Judicial Panchayats in Uttar Pradesh, 11 AM.J.COMP.L. 239 (1962).

[FN144]. Upendra Baxi & Marc Galanter, PANCHAYAT JUSTICE: AN INDIAN EXPERIMENT IN LEGAL ACCESS, in 3 ACCESS TO JUSTICE 343, 347 (M. Cappelletti & B. Garth eds., 1979).

[FN145]. Id. at 68.

[FN146]. Meschievitz & Galanter, supra note 1, at 47-48.

[FN147]. Marc Galanter, Indian Law as an Indigenous Conceptual System, in LAW AND SOCIETY IN MODERN INDIA 97 (1989). The benefits of the N.P.s were similar to the purposes of the L.A. courts. One commentator explained the potential benefits of N.P.s:
It is hoped that, being part of the community, public opinion will operate to ensure their impartiality ... [and] that the intimate knowledge of the area and its customs which the panches enjoy will make it extremely difficult for plaintiffs to manufacture evidence or engage in vexatious suits. The fact that the proceedings are informal and take place in the villager's own area and before people of his own type, should ... permit plaintiffs to explain their grievance more accurately In this way, justice may be brought to the villager, and it may no longer be necessary for him to travel miles at great expense to get a claim settled or a case tried.
Robins, supra note 143, at 239.

[FN148]. "As part of the state judicial system, NP ... were to displace existing indigenous institutions ... and carry state power and a constitutionalist vision of India into the rural areas." Meschievitz & Galanter, supra note 1, at 56.

[FN149]. [T]he nyaya panchayats, consciously or otherwise, represent the extension of [the] state legal system in rural areas. Eventual eclipse or displacement of community dispute institutions, and eventual spread of the ideology and values of the new socially desired order, through the nyaya panchayats may seem to be one desired result, contributing to the motivation for the creation and maintenance of the nyaya panchayats. Extension of state law, of course, means extension of political systems; the formal polity with its hegemonial tendencies, seeks to intrude upon and minimize the impact of, informal polity--a process in which the nyaya panchayat would be important instruments.

THE CRISIS OF THE INDIAN LEGAL SYSTEM, supra note 32, at 325.

[FN150]. Robert M. Hayden, Fact Discretion and Normative Implications: The Nature of Argument in a Caste Panchayat, Paper prepared for the Conference on The Career and Prospects of Law in Modern India, Madison, Wisconsin, at 29 (June 7-10, 1982).
There is little reason to think of panchayats as a reassertion of local legal norms or institutions. [A]dministrative panchayats have tended to act as downward channels for the dissemination of official policies rather than as forums for the assertion of local interests as locally conceived. It is submitted that this is the case with judicial panchayats too. Rather than inspiring a resurgence of indigenous local law, they may serve as agencies for disseminating official norms and procedures and further displacing traditional local law by official law within the village.
Marc Galanter, The Aborted Restoration of Indigenous Law in India, 14 COMP. STUDIES IN SOC. & HIST. 45, 53 (1972) [hereinafter The Aborted Restoration of Indigenous Law in India].

[FN151]. The Aborted Restoration of Indigenous Law in India, supra note 150, at 53.

[FN152]. Id.
[T]he traditional panchayat symbolism and values of harmonious reconciliation and local control and participation are combined with many organizational and technical features borrowed from the modern legal system-- statutory rules, specified jurisdiction, fixed personnel, salaries, elections, written records, etc. The movement to panchayats then is not a restoration of traditional law, but its containment and absorption; not an abandonment of the modern legal system, but its extension in the guise of tradition.
Id.

[FN153]. See Baxi & Galanter, supra note 144.

[FN154]. Meschievitz & Galanter, supra note 1, at 55.

[FN155]. Baxi & Galanter, supra note 144, at 89.

[FN156]. Robins, supra note 143, at 245.

[FN157]. Meschievitz & Galanter, supra note 1, at 69.

[FN158]. Baxi & Galanter, supra note 144, at 90.
The principal accusation has been that of partiality ... Because the social and political life of rural India revolves around caste and religious community the impartiality of any citizen is difficult to maintain, and even where maintained, is always suspect. .... The problem becomes more acute when it is recalled that the members of the nyaya panchayats are political leaders in their area ... Another difficulty ... is that the panches are known, and frequently distantly related, to the plaintiffs. There can seldom be that impersonality that is considered so essential to justice according to conventional canons. On the contrary, the system is deliberately designed to encourage the personal knowledge of plaintiff and judge.
Robins, supra note 143, at 245.
What was to be a neutral, unbiased body of local leaders helping to negotiate and mediate petty disputes has either become a stronghold of landed elites and dominant castes or, in other localities, been stillborn. NP are perceived by villagers as alien institutions and therefore are used no more than the regular courts. Indeed, they have manifested the worst attributes of traditional and more modern legal institutions. Those with access to the state courts gain little by returning to the rural setting and using NP. Those without such resources must assess their opportunities within the village before challenging the dominant faction by going to the NP.... The decline in caseloads suggests

that people originally used NP as an alternative forum but have since found them less satisfactory. Increases in regular court use, on the other hand, indicate that these institutions remain viable and suggest that those who are willing and able to abandon local institutions will bypass NP and go to the state courts.
Meschievitz & Galanter, supra note 1, at 69.
The pathos of the NP is that they have achieved neither the impartiality of the regular courts (at their best) nor the intimacy, informality and ability to conciliate of traditional panchayats (at their best).
Baxi & Galanter, supra note 144, at 90.

[FN159]. Meschievitz & Galanter, supra note 1, at 56.

[FN160]. GOV'T OF MADHYA PRADESH, supra note 4, at 187. The study by Meschievitz and Galanter revealed that this "panchayat ideology" was shared with the village population, who remained devoted to NPs. Villagers defended NPs as closer to their homes and less expensive than formal courts, while criticizing local courts for "delays, expense, and bad decisions." The villagers, however, "admitted they had never gone to either." Meschievitz & Galanter, supra note 1, at 57. The continued expressions of support for NPs among the village population is explained by Meschievitz and Galanter as support for access to merely one more dispute forum where conflict and negotiation could be waged. Id. at 68.

[FN161]. Id. at 70. Meschievitz and Galanter assessed these recommendations in terms of enhancing the potential of NPs as alternatives to formal courts.

[FN162]. Id.

[FN163]. Steven Spitzer, Dialectics of Formal and Informal Control, in 2 THE POLITICS OF INFORMAL JUSTICE, supra note 1, at 187-190.

[FN164]. Quoted in Abel, supra note 17, at 6.

[FN165]. Id. at 277.

[FN166]. Id. at 275.

[FN167]. Id. at 277.

[FN168]. Id. at 278.

[FN169]. Some commentators have objected to even such a goal: "Do we want a world in which there is perfect penetration of norms downward through the pyramid so that all disputes are resolved by application of the authoritative norms propounded by the courts? .... uniformity of meaning across time and space is an achievement purchased at substantial cost." Marc Galanter, Justice in Many Rooms: Courts, Private Ordering, and Indigenous Law, 19 J. OF LEGAL PLURALISM & UNOFFICIAL L. 1, 4-5 (1981).

[FN170]. Richard Abel, supra note 17, at 6, quoting Fuller (1964). One commentator described the system as having accomplished this unity of laws:
The modern legal system may be viewed as an important unifying element. While previously there were wider networks of marriage, ritual activity, pilgrimage and economic and military activity, until the advent of the modern system, law and justice were in good part purely local concerns. Today, while India has no single nation-wide system of caste, kinship, religion or land-tenure, there is an all-India legal system which handles local disputes in accordance with uniform national standards. This ... provides not only a common textual tradition but also a machinery for insuring that this tradition is

applied in all localities in accordance with nationally prescribed rules and procedures rather than dissolved into local interpretations.
Marc Galanter, The Displacement of Traditional Law in Modern India, 24 J. OF SOCIAL ISSUES 65, 26 (1968).

[FN171]. IYER, supra note 19, at 49.

[FN172]. Richard K. Gordon, Jr. & Jonathon M. Lindsay, Law and the Poor in Rural India: The Prospects for Legal Aid 141 (1989) (publication pending).

[FN173]. No state reported more than a twenty percent success rate in lasting conciliation.

[FN174]. Abel, supra note 17, at 278.

[FN175]. GOV'T OF INDIA, supra note 10, at 61.

[FN176]. Spitzer, supra note 163, at 171-72.

[FN177]. Id.

[FN178]. Id.

[FN179]. Id. "They tend not to handle problems more susceptible to a quick, superficial remedy--conflict between relative strangers over a narrow issue with a shallow history.... The pressure to confront such problems is far less strong ... and they are far less equipped to handle such problems: They lack sufficient power to compel the parties to participate or to comply with the agreement...." Id.

[FN180]. Id. at 171.

[FN181]. Id.

[FN182]. Abel, supra note 17, at 4-5.

[FN183]. Id. at 5.

[FN184]. Lisa Lerman, Mediation of Wife-Abuse Cases: The Adverse Impact of Informal Dispute Resolution on Women, 7 HARV.WOMEN'S L.J. 57, 61 (1984).

[FN185]. Laurie Woods, Mediation: A Backlash to Women's Progress on Family Law Issues, 19 CLEARINGHOUSE REVIEW 431, 432 (1985).

[FN186]. Abel supra note 17, at 293.

[FN187]. Id. at 6-7.

[FN188]. Id.

[FN189]. THE CRISIS OF THE INDIAN LEGAL SYSTEM, supra note 32, at 347.

[FN190]. William H. Simon, Legal Informality and Redistributive Politics, 19 CLEARINGHOUSE REV. 384, 385 (1985).

[FN191]. Id.

[FN192]. Id.

[FN193]. Id.

[FN194]. Abel, supra note 17, at 8.

[FN195]. Id.

[FN196]. Gordon & Lindsay, supra note 172, at 139.

[FN197]. Id.

[FN198]. Cohn, supra note 24, at 108-09.

[FN199]. Khare, supra note 23, at 94.

[FN200]. Gordon & Lindsay, supra note 172, at 138.

[FN201]. Id. at 128.

[FN202]. Id. at 138.

[FN203]. Id. at 140.

[FN204]. Simon, supra note 190, at 388. "The prevalence of the so-called tradition of consensus in India needs very critical examination. On most vital issues, the appearance of consensus may well be a mask for domination. The style of consensual decision-making, cleverly manipulated, may legitimate a decision which, in substance, only serves dominant interests." THE CRISIS OF THE INDIAN LEGAL SYSTEM, supra note 32, at 338.

[FN205]. Mark H. Lazerson, In the Halls of Justice, the Only Justice is in the Halls, in 1 POLITICS OF INFORMAL JUSTICE, supra note 1, at 120.

[FN206]. Id.

[FN207]. Id.

[FN208]. Baxi, supra note 31, at 91.

[FN209]. Id.

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