



**Centre for Animal Rights
Directorate of Distance Education
NALSAR University of Law, Hyderabad**

Course Material

**ADVANCED DIPLOMA IN
ANIMAL PROTECTION LAWS**

1.1.1. INTRODUCTION TO LAW

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(For private circulation only)

a) Legal Methods:

Readings

1. Laws Relating to Animal Welfare- Chapter 1, Vivek Mukherjee
2. Laws Relating to Animal Welfare- Chapter 2, Vivek Mukherjee
3. Part III, Living Property: A New Status For Animals Within The Legal System, Marquette Law Review Volume 93, Issue 3, David Farver.
4. *The voices of culture, conservation and in the media event around bullfight 'Jallikattu' in Tamil Nadu, India*, Journal of Media and Communication Studies, Jayashree B. et
5. *Jallikattu: Post-Humanistic Coefficients and Coloniality in South Asia's Ergic Sport* South Asian Review, Vol. 38, Issue 1 (2018)
6. The Past and Present of Jallikattu: An Overview , The Bridge, K.A. Sahapedia

Cases

- *AWBI v. A. Nagaraja and Ors* (2014) 7 SCC 547
- *Chief Secretary to the Govt., Chennai Tamil Nadu and Ors. v. AWBI* AIR 2016 SC 5522
- *Compassion Unlimited Plus Action v. Union of India* (2016) 3 SCC 85
- *AWBI and Ors. v. Union of India and Ors.* (2018) 2 SCC 645
- *E Seshan v. The Secretary, The Department of Law Government of Tamil Nadu and Ors.* W.P. No. 2999 of 2020

b) The Judiciary

Readings

1. A qualitative analysis of the Indian Supreme Court (JELS 2013)- N. Robinson
2. Delays in Indian Courts (1992)- Robert Moog

Laws Relating to Animal Welfare:

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Chapter 1

Introduction to Animal Laws and General Principles of Law

Simply put, any legal issue involving animals would come under the ambit of animal laws. Until not long ago, animal rights and animal right activists were dismissed as fringe and never given appropriate media attention. However, with changing times animal welfare issues have started to take a more prominent place in the media and are being given far more importance by the courts as well as the legislature. There exist various legislations in India to protect animal welfare, such as – Prevention of Cruelty to Animals Act 1960, The Wildlife Protection Act 1972 at the central level and different cattle protection, cow slaughter protection legislations at different states , each seeking to deter cruelty against animals and to provide the protections to animals enshrined in the Constitution of India, Article 51(G):

“It shall be the duty of every citizen of India to protect and improve the natural environmental including forests, lakes, rivers and wild life, and to have compassion for living creatures.”

The Indian Penal Code, 1860 is another legislation, Section 428 and 429 of the code punish any mischief (i.e., killing, poisoning, maiming or rendering useless) committed towards animals/pets. In a perfect world, laws to protect animals would eliminate cruelty in its entirety and provide strict directions for animal welfare to take place, however, change tends to take place gradually and it would be safe to say that the same is taking place in India. The aforementioned legislations were enacted to prevent any unnecessary pain or suffering on animals, to provide them protection from poaching, smuggling, etc and similar legislations continue to be enacted. That said, despite specific statutes there also exists protection for animals under other general concepts of law such as tort law, constitutional laws, etc and this chapter seeks to explore the same in depth.

Definition, Nature, Scope and Development of Law

For centuries, philosophers have debated the quintessential question of “*What is Law?*” and yet there is no single and commonly accepted definition of it. This study of legal philosophy is what is referred to as **Jurisprudence**. One of the forefathers of Jurisprudence, **John Salmond** says that “*the law may be defined as body of principles recognised and applied by the state in the administration of justice*”. There exist various schools of thought that have contributed to the jurisprudence of the Indian legal system.

Natural law School

Natural law philosophers argue that *law is that which reflects, or is premised on, the built-in sense of right and wrong that each individual has within themselves*, what we also call instinct or sense of morality. This sense of morality which is also derived from one’s conscience gives each person the ability to discover their own moral truth, some believing that this is God-given,

and others believing that this is an intrinsic part of the human nature. The belief of natural law philosophers is that inherent moral goodness is distinct and independent of the institutional views of good and evil, as a result of which no government can make an evil (morally) law to be good or a good (morally) law to be evil. This inherent morality sets a standard to which positive law should be measured, this is also known as the internal morality of law, i.e., what it ought to be. For e.g., In South Africa, during the apartheid regime, although the government had the power to enact racially discriminatory laws, these laws weren't truly lawful because they were morally reprehensible.

This theory of Natural Law was very influential in 17th (Seventeenth) and 18th (Eighteenth) century Europe, and revolutionaries were very attracted to it because it established a philosophical foundation for political reform. Various philosophers used it as a framework to criticize and reform positive laws, the attempt throughout time to establish the concepts of natural law in human existence, and to understand natural law to be premised on the fact that there is a higher law that can't be amended even by the sovereign. The issue however that arises with Natural law is that if there is no consensus in society on what is morally right and wrong, it loses its effectiveness as the basis of law. E.g., societal stances on issues such as Abortion, Euthanasia, Death Penalty, etc.

There has been a remarkable influence of natural law in the Indian legal scenario, which is especially visible in the Indian Constitution. Part III of the Constitution which provides for Fundamental Rights accounts for the natural law element in it, although it is not just the fundamental rights portion that has natural law influences, the basic structure of the Indian Constitution is the light bearer of natural law. The Supreme Court in 1973 in the case of *Kesavananda Bharti v. State of Kerala* came up with the doctrine of basic structure, preventing the executive and the legislature from altering the fundamental structure of the Constitution, displaying hints of natural law influence wherein even the supreme bodies of the country that are responsible for making and implementing the laws cannot override some laws that are to be taken as laws by the gods.

Historical Jurisprudence School

This school of thought is preferred by most aristocrats because it provides for a justification for preserving status quo and allowing the preferential treatment of elites in the society. Historical philosophy of law perpetuates the notion that law consists of the will of the sovereign along with *the spirit of the people*.

Law is only valid to the extent that the will of the sovereign is compatible with long-standing social practices, customs, and values. Law, according to this view, could not be arbitrarily imposed by legislators whose legal source was “right” reasoning. Instead, the historical school insisted that only practices that have withstood the test of time could be thought of as law. Further, these philosophers believed that law changes slowly and invisibly as human conduct changes.

A major advantage of historical jurisprudence is that it promotes stability in law. In fact, much law is largely grounded in judicially approved custom.

An excerpt from the book “An Introduction to the law and legal system”, by Frank August Schubert, at pg. 2.

This is something we see very clearly in personal laws in India, where the influence of custom is what has defined the law and given it its legitimacy. There exists a very obvious problem with this, which is of determining at what point does a practice become a custom, the standard used in India is of the practice having been in continuous use for 50 years, however, such a determination is always subject to court discretion.

Utilitarian Law School

This school of law focusses on the social usefulness of a legislation rather than the purposes of justice it seeks to serve. Utilitarianism is the belief that promotes maximization of happiness and welfare for the majority of the society, legal philosophers that followed this school of thought believed that the government is responsible for enacting laws that promotes happiness of the general public at large. Laws should be drafted in such a manner that they provide people with the incentive to maximize their pleasure and minimize their pain.

One of the foundations of our society is the belief that the nation and all its subjects are committed to the rule of law, and this is enshrined in the Constitution as well. Law is used to regulate people’s relationships with themselves, other beings, and their relationship with the government. It reflects every society’s aspirations, cultures, political, and economic beliefs.

They believed that the desire to maximize pleasure and minimize pain is what motivates people, and that legislatures were responsible for inducing people to act in socially desirable ways through a legislated system of incentives and disincentives. For example, if the pain imposed by a criminal sentence exceeds the gain realized by an offender in committing the offense, future criminal actions will be deterred. Additionally, they thought that law should focus on providing people with security and equality of opportunity. They maintained that property rights should be protected because security of property is crucial to attaining happiness. People, they thought, should perform their contracts because increased commercial activity and economic growth produce socially beneficial increases in employment.

Utilitarian influence can be found in legislative enactments that require the nation's broadcasters to operate "in the public interest," in "lemon laws," and in other consumer protection legislation. A major problem with utilitarianism is that not every- one agrees about what is pleasurable and what is painful. And many, if not most, political scientists would dispute that legislators actually make decisions according to the pleasure-pain principle.

An excerpt from the book "An Introduction to the law and legal system", by Frank August Schubert, at pg. 3.

Analytical Law School

This school of thought aims to create a system through which law exists as a scientifically valid system, by analysing legal concepts and ideas on the basis of scientific and empirical methods. It came as a reaction to the Natural Law school of thought and is also known as the positive or imperative school of jurisprudence. Scholars of this school, such as **Jeremy Bentham** (1748-1832) and **John Austin** (1790-1859) rejected Natural Law for being vague and abstract. The idea of positivism as under this school makes a distinction between law and morality and emphasizes on the separation between them, insisting on the belief that law is man-made or enacted by the legislature. Thus, the fundamental difference between Natural law proponents and proponents of this school is that – Natural law proponents believe that if a law is not moral, no one is under the obligation to follow it, however, analytical thinkers/positivists believe that a law that has been duly enacted, remains law and should be so obeyed until it is changed. **Austin** argues that law is the command of the sovereign that is backed by the threat of a penalty

or punishment, natural law tends to blur the distinction between law and morality, and law is the '*species of command of sovereign*'. The aforementioned idea of command and punishment is the defining characteristic of positive law.

This school of thought has been rejected by jurists such as **Ronal Dworkin, Fuller, and Finnis** for giving too much emphasis on law as a command and ignoring morality and custom as a source of law.

The criminal law code such as Indian Penal Code, 1890 is a stellar example of the influence of this school of thought wherein the command of the sovereign which is the state is the law of the land and needs to be obeyed and failure to do so results in punishment. However, the code also contains influence of Natural Law and thus seeks to strike a balance between the various schools of thought.

Sociological School

Scholars of this school look at law as a social phenomenon, as a tool that can be used to bring about social change, visualizing it from the perceptions of the people in society. It is based on balancing the conflicting interests prevalent in society and premised on the belief that law exists to serve the needs of the society.

Early sociologists were interested in examining jurisprudence from a social-scientific perspective. They focused on what they called the living law—not just the law declared by legislatures and courts, but the informal rules that actually influence social behaviour. The sociological school maintains that law can only be understood when the formal system of rules is considered in conjunction with social realities (or facts). In this sense, it is similar to the historical school. However, the historical school approached time in terms of centuries, whereas the sociological school focused on ten- or twenty-year segments.

An excerpt from the book "An Introduction to the law and legal system", by Frank August Schubert, at pg. 5

According to **Roscoe Pound**, a scholar of this school, the main features of the school are that it highlights the purpose and function of law rather than its content, that law is effectively a social institution that is designed for social need, and that it is a tool that can be used to balance the conflicting interests of society. However, one of the biggest criticisms of this school is that it overlooked the importance of the state.

Realist School

Realists consider the law made by judges to be the real law, and do not give due importance to the traditional rules, statutes and concepts as real sources of law. It is understood as a combination of sociological jurisprudence and analytical positivism. The scholars of this school place a lot of emphasis on the judges in the system for the implementation, interpretation and development of law. They believe that social, economic and psychological backgrounds of judge influence their decision making. **Karl Llewellyn** propounded that the main features of this school of thought is that case laws are far more important than legislative law and the court room is effectively the laboratory of law. This school argues that law that is on paper is far different from what is actually implemented and understood in society, thus the only true understanding of what the law is comes from judicial interpretation. We see an enormous influence of this school in the common law system that we follow, wherein supreme importance is given to judicial precedent to understand the development and true meaning of the law at hand.

Development of Law In India

Law in India has evolved tremendously over the years, from religious prescriptions such as the Vedas, Upanishads, etc, to the current constitutional and legal system, the legal system has come a long way and continues to improve upon itself. India's recorded legal history starts from the Vedic ages and also indicates the presence of some sort of civil legal system in the Bronze Age as well as the Indus Valley Civilization. Secular law in India varied from region to region as well as according to the ruler, however, court systems (both civil and criminal) were essential elements of the ruling dynasties of Ancient India as well. Evolving from law in the ancient times, the colonisation of India by the British brought about significant changes in the legal system. To understand development of law in India, we can divide it into two periods:

1. Law in British Ruled India

The common law system – which is a legal system that develops based on recorded judicial precedents, was brought to India with the advent of the British East India Company ("**company**") in our country. King George I granted charter to the company in 1726 to establish "Mayor's courts" in Bombay, Calcutta, and Madras. Post the Company's victory in the Battle

of Plassey, their judicial functions expanded substantially and by 1772 the company had courts in various other locations as well. In this process, the Company slowly and gradually replaced the existing Mughal legal system. After the first war of Indian Independence of 1857, the Queen's Proclamation of 1858 was brought about and the control of Company territories passed to the British Crown. This shift in the legal system brought about numerous other changes – Supreme Courts replaced the mayoral courts. These courts were first converted to the first High Courts as authorized under the Indian High Courts Act, 1862. These High Courts also had superintendence of lower courts and the enrolment of law practitioners was made the responsibility of the respective courts. At the time of the British rule, the Privy Council was the highest court of appeal, cases before the council were adjudicated by the lords of the House of Lords. Similar to how the state sues and is sued now, at the time it was in the name of the British sovereign in their capacity as Empress of India. Indian Practitioners were barred entry to the newly created Supreme Courts as the right of audience was available only to English, Irish and Scottish professional bodies. Various rules and statutes came about subsequently, eventually giving way to the Legal Practitioners Act, 1846 which opened the profession to everybody – regardless of nationality or religion.

Soon enough coding of law began with the formation of the first Law Commission. Under the leadership of Thomas Macaulay, the Indian Penal Code was drafted, enacted and given force in 1862. It was followed by the Code of Criminal Procedure by the same commission and various others Acts such as the Evidence Act, 1872 and the Contracts Act, 1872 were also brought about.

2. Law After Independence

Post - Independence, the Indian parliament was in the process of drafting the constitution to form the bedrock of the nation. The members of the constituent assembly devoted an exemplary amount of energy into forming a constitution of *unprecedented magnitude in both scope and length*. This document has ended up being the guiding light in all matters of the country, be it executive, legislative, or judicial in nature. It turned the direction of the whole system towards social welfare rather than the earlier perpetuation of colonial and imperial interests. It seeks to empower the weakest members of the society by way of judicial interpretation, thus showing the influence of the utilitarian school of thought.

As a consequence of being a common law country and having adopted the common law system, India has an organic law. Through legislative action as well as judicial pronouncements, it has worked very well in achieving the objectives that the drafters of the Constitution intended the legal system to. By a network of courts and a large number of legislations, the Indian legal system strives to move the country towards a socially just paradigm and ensure welfare for all.

Sources of Law

The main sources of law in India are the Constitution, statutes (legislation), customary law and case law. India being a common law country places significant reliance on case law precedent

for the development of the law and jurisprudence. Statutes are enacted by the Parliament for the entire country, by the State legislatures for respective States, and by the Union Territory legislatures for respective Union Territories. There also is a vast body of laws which are the subordinate legislation comprising of rules, regulations as well as the bye-laws made by Central/State governments and local authorities, e.g., municipal corporations, municipalities, gram panchayats and other local bodies. The subordinate legislations are made under the authority conferred or delegated either by Parliament or State or Union Territory legislatures concerned or statutory bodies created by statutes such as Insolvency and Bankruptcy Board of India. Judicial decisions of higher courts like the Supreme Court and various High Courts are important sources of law, given the common law nature of our system. Their binding nature being strict on lower courts, i.e., decisions of Supreme Court are binding on all courts within the territory of India, the decisions of High Courts are binding on all lower courts, and so on. Given the diversity of religions and cultures in India, some personal laws, local customs and conventions which are not against statute, morality, public policy, and larger social welfare are also recognised to have a legal character and are taken into account by courts while administering justice. **Salmond** classified the prevalent sources of law in two categories:

1. Formal Sources of Law: comprise the sources from which law derives its force and validity. E.g., Laws enacted by the state.
2. Material Sources of Law: refers to the matters where laws are derived from. E.g., customs.

Most legal systems are based on legislations, but there exists a significant influence of religious texts and customs on laws in India along with legislations. There exist three major sources of law in any modern society:

1. Custom

Customs are basically *long-established practices that have acquired binding or an obligatory character*. However, the key element for a custom to be valid is that it must've been observed for a very long time without any interruption. It must also be supported by the general public opinion as well as the prevalent notion of morality. E.g., Although the Hindu Marriages Act, 1955 prohibits marriages which fall within the prohibited degrees of relationships, such marriages are still allowed and found valid under the law if there is a proven custom within a community.

In ancient societies, custom was considered as one of the most important sources of law, however, with the advent of time, it's importance diminished giving way to judicial precedents and legislation. There exists considerable debate over whether customs constitute law or not but given the belief that real source of law is actually the will of the people and it is always reflected in the custom and traditions of society, customs are a main source of law. Jurists and courts have laid out the essentials of a valid custom for them to be recognized as valid sources of law, the essentials being:

- a. Antiquity: The custom should've been in existence for a long period of time. There exists no specific time period in India to determine this and is generally left to judicial discretion.
- b. Continuous: The custom should've been in continuous practice, without any interruption. Any disrupted practice or long intervals between practice raise doubts on the validity of the custom.
- c. Exercised as a Matter of Right: it must be openly enjoyed and should be in the knowledge of the respective community. It must also be exercised as a matter of right.
- d. Reasonableness: it must be reasonable and conform to the accepted norms of justice and public usage. If the custom would possibly lead to inconvenience and mischief, it would not be valid.
- e. Morality: an immoral custom or one that is opposed to public policy would not be valid.

Custom was one of the most important sources of law in ancient India, so much so that even the British adopted a non - interventionist policy in the personal law related matters of the society. Even after independence and the enactment of the Constitution, the constitution provided for a positive environment for social changes in the country. Although, the importance of custom has diminished over time, it still remains an integral influence and a large part of Indian law, especially personal laws.

2. Judicial Precedent

This, as the term implies, is effectively previously decided judgments of superior courts, namely the High Courts and the Supreme court which inferior courts are bound to follow and hold the decisions to be the law. Given the hierarchy of courts in India (which is elaborated upon a little further into this chapter), this binding character of judicial decisions is important to the development of our legal system. It is an important source of law and contains influence from the English legal system.

THE DOCTRINE OF PRECEDENT IN INDIA

PRE-INDEPENDENCE

Section 212 of the Government of India Act, 1919 provided that the law laid down by Federal Courts and judgments given by the Privy Council would be binding upon all courts in British India. Privy Council at the time was the supreme judicial authority.

POST-INDEPENDENCE

The British Courts found themselves replaced by the Indian Courts, and Supreme Court of India became the supreme judicial authority. India established its own streamlined system of courts, but retained the doctrine of precedent. The structure of binding value of these precedents based on the respective courts is as follows:

1. Supreme Court

- Binding on all courts in India
- Not bound by its own decisions of smaller benches or decisions made by the Federal Courts or the Privy Council

2. High Courts

- Binding on all inferior courts within its jurisdiction and only persuasive for courts outside its jurisdiction
- In cases of conflict with decisions of the same court with a similar bench, the matter is referred to a higher bench
- Federal Court and Privy Council decisions are binding as long as they're not in conflict with the decisions of the Supreme Court

3. Lower Courts

- Bound by the decisions of higher courts in their own states, and decisions by high courts from outside states are only persuasive in nature.

Judicial decisions are divided into two parts for better reading and understanding, these two parts are:

1. **Ratio Decidendi** (reason of decision) → it refers to the binding part of a particular judgment, translated to English it means the reasons given for the said decision. It is taken to be the general principle derived from a judgment that is deduced by the courts

when deciding the particular case based on the facts. This is the part of the judgment that forms judicial precedent and becomes binding on lower courts.

2. **Obiter Dicta** (Said by the way) → it refers to those parts of judicial decisions which are general observations of the judge in the case and have only persuasive, not any binding authority.

Given these aspects of judicial decisions, it increases the importance of the system of hierarchy of courts in India.

3. Legislation

One of the most modern sources of law, it is also considered the most important one. The word “legislation” has been derived from the Latin word *legis* which translates to “**law**” and *latum* which translates to “**to make**” or “**set**”, thus the word roughly means *the making of law*. Its importance can be estimated from the fact that it is brought about by the sovereign and backed by its authority. In the strict sense, legislations are laws enacted by the sovereign or any other body of authority authorized to do so by the sovereign.

There exist two fundamental types of legislations:

- Supreme Legislation: These are laws directly enacted by the sovereign, and are known as supreme because no other authority apart from the sovereign can control or check them. Laws enacted by the Indian Parliament fall under this category, although in India powers of the Parliament are checked and controlled by the Constitution, laws enacted by it are not under the control of any other legislative body.
- Subordinate Legislation: They are the laws that are made by an authority that is subordinate to the supreme/sovereign authority and has been delegated the authority to draft the laws. The validity, origin and existence of these laws depends entirely on the will of the said sovereign. Further, subordinate legislations can be of the following types:
 - a. Autonomous Law: laws made by a body that is constituted of a group of individuals recognized under a law and has been conferred with the power to make rules and regulations, are autonomous laws. e.g., Laws made by Universities, incorporated companies, etc.
 - b. Judicial Rules: Some countries confer the judiciary with the power to make rules to govern their administrative procedures. The courts in India have such power conferred to them under the Constitution.
 - c. Local Laws: Laws made by local bodies that have been recognized and conferred with law making powers. Local bodies like Panchayats and Municipal Corporations in India have been recognized under the Constitution by way of the 73rd and 74th Amendments and have the power to make local laws in the forms of rules and bye-laws.
 - d. Laws made by the Executive: Given the separation of powers in India, the three organs of the state are vested with three different functions. Although

the primary responsibility of drafting legislations lies with the legislature, on occasion some of this responsibility is delegated to executive organs of the state, these are called delegated legislation and form a class of subordinate legislation.

Difference Between Substantive and Procedural Law

Substantive law is the law that provides for the rights and obligations of the parties concerned, whereas Procedural law is the law that provides for the practice, procedure and machinery for the imposition and implementation of the rights and duties. The fundamental differences between the two are as follows:

SUBSTANTIVE LAW	PROCEDURAL LAW
It alludes to the law that deals with the subject matter of the case and asserts the rights and obligations of the parties concerned.	It alludes to the law that prescribes the methods, procedure and machinery for the enforcement of rights and obligations that substantive law seeks to protect.
It regulates the conduct of an individual or group or government agency.	It regulates the manner in which a legal remedy can be attained from the judicial system.
It can only be applied to legal matters, and not to non-legal matters.	It can be applied to both legal and non-legal matters.
It is governed by the Acts of Parliament.	Statutory law regulates it.
It pertains to the rights and duties of the parties and provides for punishments upon contravention of the same. Personifies the idea that violating laws would lead to a penalty.	It provides for the procedure for the initiation and prosecution of civil and criminal proceedings.
It relates to matters outside the court.	It relates to matters inside the court.

SELF ASSESSMENT QUESTIONS

1. What are the different schools of thought that influenced the existent legal system in India? Can you think of specific laws and legislations that show clear influences of these schools of thought? Which school do you believe is the most beneficial to be applied to a legal system and why?
2. What are the major sources of law in India? Do you think given the historical background, customs and traditions should be given far more importance than legislations? Can you think of situations where the court has sided with customs and situations where the court has strived to move away from them for better social welfare?

Can you think of incidents where judicial precedent has actually contributed to a change in the written law(legislation that is)?

3. Sort the following legislations into
 1. Supreme and subordinate legislations
 2. Substantive or Procedural law

S. No.	LEGISLATION
1.	Aadhar (Targeted Delivery of Financial and other subsidies, benefits and services) Act, 2016
2.	Advocates Act, 1961
3.	Code of Civil Procedure, 1908
4.	Punjab Land Revenue Act, 1887
5.	Arbitration and Conciliation Act, 1996
6.	Code of Criminal Procedure, 1965
7.	Prevention of Cruelty to Animals Act, 1960
8.	Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013
9.	Indian Wireless Telegraph Rules, 1973
10.	Indian Evidence Act, 1872

Chapter 2

Basic Legal Terminologies

a) What is an FIR?

First information Report police (FIR) is a written document prepared by the police when they receive information about the commission of a cognizable offence. It is a report of information that reaches the police first in point of time and that is why it is called the First Information Report. It is generally a complaint lodged with the police by the victim of a cognizable offence or by someone on his/her behalf.

Anyone can report the commission of a cognizable offence either orally or in writing to the police. Even a telephonic message can be treated as an FIR.

- Cognizable Offence: A cognizable offence is one in which the police may arrest a person without warrant. They are authorized to start investigation into a cognizable case on their own and do not require any orders from the court to do so.
- Non- Cognizable Offence: A non-cognizable offence is an offence in which a police officer has no authority to arrest without warrant. The police cannot investigate such an offence without the court's permission.

Why is FIR important?

An FIR is an important document as it sets the process of criminal justice in motion. It is only after the FIR is registered in the police station that the police take up investigation of the case.

Who can lodge an FIR?

Anyone who knows about the commission of a cognizable offence can file an FIR. It is not necessary that only the victim of the crime should file an FIR. A police officer who comes to know about a cognizable offence can file himself.

A person can file a FIR if:

- If he is the person against whom the offence has been committed:
- If the person knows about an offence which has been committed:
- If the person has witnessed the offence being committed.

Things You Should Not Do:

- One should never file a false complaint or give wrong information to the police. He/ she can be prosecuted for giving wrong information for misleading the police. (Section 203 Indian Penal Code, 1860)

- Never exaggerate or distort facts.
- Never make vague or unclear statements.

What is the Procedure of Filing an FIR?

- The procedure of filing an FIR is prescribed in Section 154 of the Criminal Procedure Code, 1973.
- When information about the commission of a cognizable offence is given orally, the police must write it down.
- It is the right of the individual giving information or making complaint to demand that the information recorded by the police is read over.
- Once the information has been recorded by the police, it must be signed by the person giving the information. One should sign the report after verifying that the information recorded by the police is as per the details given by the complainant.
- People who cannot read or write must put their left thumb impression on the document after being satisfied that it is a correct record.
- One should always ask for a copy of the FIR, if the police deny giving the FIR, it is the right to get it free of cost.

What Should One Mention in the FIR?

- Name and address;
- Date, time and location of the incident one is reporting;
- The true facts of the incident as they occurred;
- Names and descriptions of the person involved in the incident.

What Can one Do if the FIR is Not Registered?

- He/ she can meet the Station House Officer who is directly and personally responsible for all that occurs in his jurisdictions and the police station. He is also the head of the police station and can authorise immediate registration of the FIR or other higher officers like Superintendent of police, Deputy Inspector General of Police and Inspector General of Police bring complaint to the person's notice.
- The person can send the complaint in writing by post to the Superintendent of police concerned. If the Superintendent of police is satisfied with the complaint, he shall either investigate the case himself or order an investigation to be made.
- One can file a private complaint before the court having jurisdiction.

b) What is a writ?

It is a provision to make the Right to Constitutional Remedies available to every citizen, this right is the guarantor of all other rights and thus is one of the most crucial rights to be protected by the justice system. The Supreme Court is empowered by the Constitution of India to issue writs in order to enforce the fundamental rights provided under Part III of the Constitution, the court can be approached under Article 32. The parliament can also confer on the supreme

court's power to issue writs for purposes as they may deem fit. Furthermore, High Courts under Article 226 of the Constitution are also capable of issuing writs for enforcing rights conferred under Part III. There exist 5 types of writs:

1. *Habeas Corpus* – literally translating to produce the body. It is a writ issued to produce a person who has been detained before a court and for the person to be released if the detainment is found to be illegal.

Such a writ can be filed in cases where:

- the detained person has not been produced before the magistrate within 24 hours of detainment
- a person has been arrested without any violation of law
- a person has been arrested under an unconstitutional law
- the detention is with a malafide intention

E.g., If an individual has been detained by the law enforcement machinery without having given any details of the arrest to the next of kin, a Habeas Corpus writ can be filed to compel them to produce the individual before the court.

2. *Certiorari* – literally translating to be certified. It is a writ which can be issued by again either court in order to quash an order given by a lower court/tribunal/quasi-judicial authority. There are three conditions essential for this writ to be passed:

- There should be a court/tribunal or an officer with legal authority to determine the question and it should be with a duty to act judicially
- The body must have passed an order acting without jurisdiction or in excess of its jurisdiction
- The order could be against Natural Justice principles or could contain an error.

E.g., If a civil court passes an order in a criminal case, or a civil court passes an order in a civil case where it does not have the authority to do so, it would amount to it acting without jurisdiction and the order can be asked to be set aside by filing a writ of Certiorari.

3. *Mandamus* – literally translating to we command. It is an order that can be issued by either the Supreme Court or High Court to a lower court/tribunal/authority such public official, corporation, etc to direct them to perform a public/statutory duty. It is issued when public authorities have a function/public duty to perform but fail to do so. It cannot be issued against the following bodies:

- Private individual/body
- If the duty being brought into question was discretionary and not mandatory
- Against president or governors of a state
- Against a working chief justice of a court
- To enforce a private contract

E.g., Say a child custody order needs immediate enforcement, failure of which would result in the removal of the child from the jurisdiction, in such a case this writ can be filed.

4. *Prohibition* – popularly known as the stay order. It is generally issued when a lower court/body overshoots its limits or acts in excess of its powers to prevent them from continuing the proceedings when they have no power to try it in the first place.

E.g., Continuing the earlier child custody example, say a court exceeded their authority or granted custody to the wrong parent, a writ of Prohibition can be filed to prevent the proceedings from being continued.

5. *Quo Warranto* – literally translating to by what warrants. It is a writ issued to prevent a person from holding a public office that he/she is not entitled to. It forces them to have to explain to the court by what authority they happen to hold office. While issuing this writ, the court just makes a public declaration of the illegality of the appointment and does not consider other factors that become relevant when issuing a writ of *Certiorari*. E.g., If a person has been wrongfully appointed to a position or is refusing to vacate office, this writ can be filed to compel them to comply with the law.

Writs are generally used by Animal Right activists to prevent public bodies from taking steps that could be harmful to Animal welfare, or to request the court to direct public bodies to take steps to ensure Animal welfare.

E.g., In the case of *Narayan Dutt Bhatt v. Union of India* (Writ Petition (PIL) No. 43 of 2014), the petitioner filed a writ petition to seek direction against the Union to restrict movement of horse carts/ tongas from Nepal to India and India to Nepal.

c) What is a PIL?

PIL stands for Public Interest Litigation and it is effectively the use of law to advance human rights and equality in the society. Originally known as social action litigation, it came about as a judicial tool that could be used to ensure social welfare in society. Under a PIL, the strict rule of *locus standi* which is a must in private matters is relaxed considerably, a much more encompassing rule is brought about giving the right of *locus standi* (the right or the capacity to bring an action before the court) to any citizen that has sufficient interest in bringing forth an action to reduce a wrong. It serves several functions, such as:

- Helps clarify the law
- Holds public bodies accountable, ensuring that they act fairly and transparently, within the remit of their powers and make appropriate decisions
- Helps in development of the law by bringing about opportunities for varied interpretations of the law
- Gives vulnerable people an avenue and a voice to bring forth their grievances before the court
- Helps raise awareness over important issues, encourages public debate and media coverage.

Some of the landmark PIL cases that brought about a significant change in our judicial system's functioning are:

- *Vishaka v. State of Rajasthan* → the PIL was filed to challenge sexual harassment in the workplace. The judgment recognized sexual harassment as a clear violation of fundamental rights and lay down guidelines for institutions and workplaces to follow to prevent harassment, and complaint procedures to put in place for employees to utilise.
- *Hussainara Khatoon v. State of Bihar* → this is almost regarded as the first PIL case in India, it brought attention to the issue of undertrial prisoners in India, who had been detained in prisons for far longer periods than the maximum sentences for the crimes committed by them provided for even. The court established the right to speedy trial by way of this judgment and passed the general order for the release of over 40,000 under-trial prisoners.

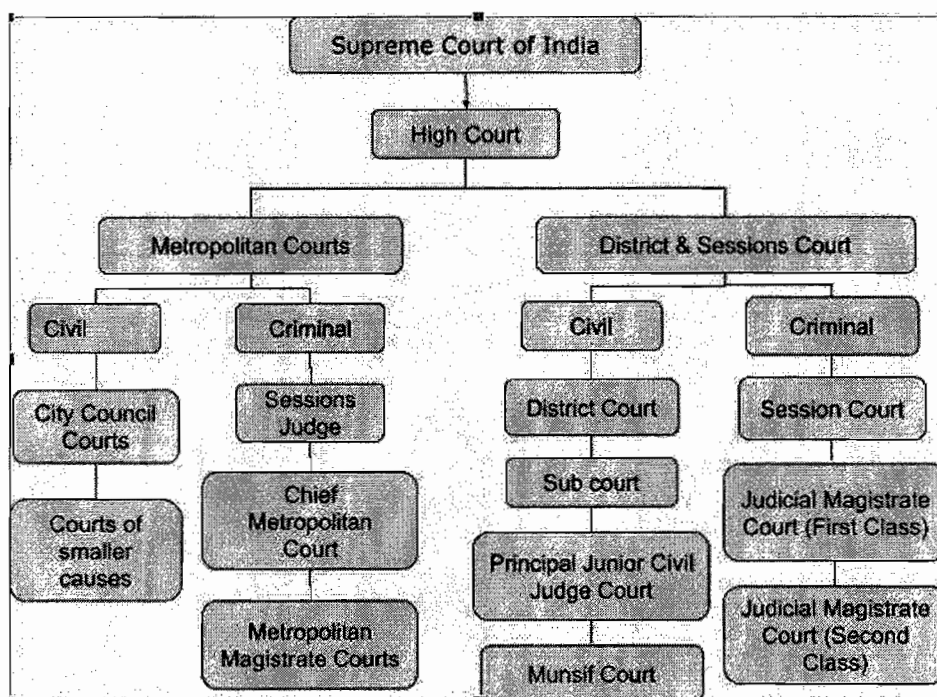
d) Structure of the Indian Judiciary (Courts)

One of the sacred notions of the Indian Legal System is that of judicial independence, it's also one of the most fundamental features and courts strive supremely hard to protect the same. No interference by the executive or legislative branches of the state into the judiciary is tolerated. Governance in India follows a strict principle of separation of powers (Legislative, Executive and Judiciary) and the independence of judiciary is an element of such governance, however, this begs the question of how each branch of governance is kept in check. The judiciary does this by way of exercising the **doctrine of Judicial Review** – by using this the judiciary has the power to review the actions of the executive and legislative to check whether they're in compliance with the laws of our country.

The Indian judiciary is divided into various levels and is highly fragmented. A product of decentralisation governance, the fragmentation of the judiciary was brought about in order to be able to address issues from the grassroot level and have specialized courts for matters. The structure is as follows:

Supreme Court

It is the highest judicial body in India and is also known as the Apex court. It came into power on 28th January 1950. It is the guardian of the constitution and is the highest court of appeal. Articles 124-147 of the constitution lay down the jurisdiction of the court and its composition. The apex court enjoys both Original and Appellate jurisdiction, i.e., it can entertain both original suits filed before it as well as suits brought by way of an appeal. Although State High Court Judgments are conclusive in most matters, they can be appealed before the Apex court either by granting of leave under Article 132 or 133 or by special leave under Article 136 of the Constitution. It comprises of the Chief justice of India along with 25 other judges, who together form the Supreme Court of India.



High Courts

There are 25 high courts in India, and they are the highest judicial body at the state level. Article 141 of the constitution mandates that all high courts are bound by decisions given by the apex court by precedence. These courts are instituted as constitutional courts under Part VI, Chapter V, Article 214 of the Constitution. Although they are the principal civil courts of original jurisdiction, they exercise such jurisdiction (civil or criminal) only if the subordinate courts in the state are not competent to try such matters due to lack of pecuniary or territorial jurisdiction and they primarily exercise their appellate jurisdiction consisting of appeals from lower courts as well as writ petitions filed under Article 226 of the Constitution. The High Courts also have the duty to ensure that Courts and Tribunals subordinate to them act within their jurisdictional limits, this is mandated on them under Article 227, these courts are also responsible for the administration of justice in the respective states. The judges are appointed by the President of India after consultation with the Chief justice of India, Chief Justice of the High Court and the Governor of the State.

District Courts

These courts are established by the State Governments of India for every district or for multiple districts together based on the number of cases and population distribution in the districts. They are under the administration control of the High Court of the respective state and administer justice at the district level, their decisions subject to the appellate jurisdiction of the high court and the high court's decisions having binding value of the district courts. The court is president over by one judge appointed by the state government, based on the workload Additional District Judges and Assistant District Judges are also appointed. District courts comprise of various other courts amongst it, the organization of the subordinate courts is uniform across

the country. Every district has two types of law courts: 1. Civil Courts; 2. Criminal Courts., these courts are the highest civil court in a district and exercise both judicial and administrative powers. They have the power of superintendence over the courts under their control. The court is generally located at the district headquarters and had the power to try both civil and criminal cases, which is why the judges are designated as either District Judges (Civil cases) or Sessions Judges (Criminal cases). Below these courts are the courts of Sub-Judge, Additional Sub-Judge and Munsif courts which are generally located in the sub-divisional and district headquarters. Most civil cases are filed in the Munsif court, appeals from this court can then be taken to the Sub-Judge's court or the Additional Sub-Judge. Appeals from these courts then lie in the District court and so on and so forth till the Supreme Court.

Lok Adalats

These are subordinate courts that are also known as village courts, nyaya panchayat, etc. It composes a system for alternate dispute resolution in villages. Recognized through the 1888 Madras Village Court Act, it was then developed into various provinces and states within the country.

Hierarchy of courts aside, the Constitution under Articles 323A and 323B gives government to power to set up special Tribunals to aid in administration of justice by dealing with cases in special areas, e.g., Tax tribunals to deal with Tax cases, Land Tribunals to deal with property cases specifically. These special courts are given and exercise large powers in their respective areas. There also exist other special forums such as the Consumer Courts, Electricity Regulatory Commissions, Telecom Disputes Tribunals and so on, each with their own detailed setup and consisting of an Appellate Forum.

Civil Court

Civil courts deal with the civil wrongs which are the wrong done by an individual against the other individual. Individual here includes natural person as well as legal entity. The civil court has the power to award damages or compensation to the party whose rights has been infringed. Section 9 gives jurisdiction to civil courts to try all suits of civil nature excepting those which are expressly or impliedly barred by any other law in force. The jurisdiction of the courts to try all suits of civil nature is very expansive this is because of the principle ***ubi jus ibi remedium (for every wrong the law provides remedy)***. It is only where cognizance of a specified type of suit is barred by a statute either expressly or impliedly that the jurisdiction of the Civil Court would be ousted to entertain such a suit. The general principle is that a statute excluding the jurisdiction of Civil Courts should be construed strictly (Dhruv Green Field Ltd. Hukam Singh, (2002) 6 SCC 416(419,420). When only a part of the relief can be granted by a civil court it has jurisdiction to entertain suit (Satyapromoda v. Gurrayya, A 1982AP 24). The manner in which a dispute is to be adjudicated upon is decided by procedural laws, which are enacted from time to time. It is because of the enactment of the Code of Civil Procedure Code that normally all disputes between the parties of civil nature is adjudicated by the civil courts.

The Civil Process and Functioning of Civil Courts

The Code of Civil Procedure (CPC) is a procedural law; it neither creates nor takes away any right. It is intended to regulate the procedure to be followed by civil courts. In other words, the CPC regulates the functioning of civil courts. Civil case is such that it is not criminal in nature. It is generally on property, business, personal domestic problems, divorces and such types where ones constitutional and personal rights are breached. In brief, it lays down the Procedure of filing a civil case; Powers of court to pass various orders; Court fees and stamps involved in filing of a case; Rights of the parties to a case (plaintiff & defendant); Jurisdiction and parameters of civil courts functioning; Specific rules for proceedings of a case; Right of Appeals, review or reference. In fact, the first uniform Code of Civil Procedure was enacted in 1859.

The Civil Court Structure

Disputes relating to property, breach of contracts, wrongs committed in money transactions, minor omissions etc., are categorized as civil wrongs and could be subject to a civil process. In such cases civil suits should be instituted by the aggrieved persons. Courts of law administer justice by considering the nature of the wrong done. Civil wrongs are redressed before civil courts by granting injunctions or by payment of damages or compensation to the aggrieved party. As a matter of fact, every suit should be instituted before the court of lowest jurisdiction. In the civil side the Munsiff's Court is the court of lowest jurisdiction. If the value of the subject matter of the suit is worth rupees one lakh or below, the Munsiff's Court is the competent court to try the suit. If the value exceeds above rupees one lakh the suit should be filed before the Subordinate Judge's Court (Sub Court). An appeal from the decision of the Munsiff court is filed before the District Court. Appeals from the decisions of the Subordinate Court are filed before the District Court if the subject matter of the suit is valued up to rupees two lakhs. If the value is above rupees two lakhs, the appeal should be filed before the High Court and next to the Supreme Court. An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies-(a) that the case involves a substantial question of law of general importance; and (b) that in the opinion of the High Court the said question needs to be decided by the Supreme Court.

Civil Court has been categorized on the basis of Jurisdiction:

- **Subject Matter Jurisdiction:** It can be defined as the authority vested in the court to try and hear cases of particular type and pertaining to particular subject matter.
- **Territorial Jurisdiction:** The court can decide within the geographical limits of a court's authority and it can exercise authority beyond that territorial and geographical limits.
- **Pecuniary Jurisdictions:** Pecuniary Jurisdiction is related to money, whether a court can try cases and suits of monetary value/ amount of the case or suit in question.

- **Appellate Jurisdiction:** It refers to the authority of a court to rehear or review a case that has already been decided by a lower court. Appellate Jurisdiction is generally vested in higher courts. In India, both the High Courts and the Supreme Court have appellate jurisdiction to hear matters which are brought in the form of appeal before them. They can either overrule the judgement of the lower court or uphold it.

Short Definitions

Civil Courts: The court of the district judges is the highest civil court in a district. It exercises both judicial and administrative powers. It has the power of superintendence over the courts under its control. The court of the District judge is located at the district headquarters. He combines in himself the powers of trying both civil as well as criminal cases. Thus he is designated as the District and Sessions Judge.

Below the court of the District Judge are the courts of Sub-judge, Additional Sub-Judge and Munsif Courts, which are located in the sub-divisional and district headquarters. Most of the civil cases are filed in the court of the Munsif. A case can be taken in appeal from the court of the Munsif to the court of the sub-Judge or the Additional Sub-Judge. Appeals from the courts of the sub- Judges and Additional sub-Judges shall lie in the District-Court. The Court of the District Judge has both original and appellate jurisdiction. Against the decision of the District judge an appeal-shall lie in the High Court.

Criminal Courts: The different Criminal Courts are as follows:

Magistrate Court

The District Courts of India are presided over by a judge. They administer justice in India at a district level. These courts are under administrative and judicial control of the High Court of the State to which the district concerned belongs.

Section 11 of CrPC states that in every district (not being a metropolitan area), there shall be established as many Courts of Judicial Magistrates of the first class and of the second class and at such places, as the State Government may after consultation with the High Court, by notification specify. Courts of Judicial Magistrate of First Class are at the second lowest level of the Criminal Court structure in India. According to Section 15 of the CrPC, a Judicial Magistrate is under the general control of the Sessions Judge and is subordinate to the Chief Judicial Magistrate. In terms of Section 29 of the CrPC, a Judicial Magistrate of First Class may pass a sentence of imprisonment for a term not exceeding three years, or of fine not exceeding five thousand rupees or of both.

Chief Judicial Magistrate and Additional Chief Judicial Magistrate, etc.

In every district (not being a metropolitan area), the High Court shall appoint a Judicial Magistrate of the First Class to be the Chief Judicial Magistrate. A Chief Judicial Magistrate may impose a sentence except (a) sentence of death, (b) imprisonment of life, or (c) imprisonment for a term exceeding seven years. A Chief Judicial Magistrate shall be

subordinate to the Sessions Judge; and every other Judicial Magistrate shall, subject to the general control of the Sessions Judge, be subordinate to the Chief Judicial Magistrate.

Metropolitan Magistrates

The Courts of Metropolitan Magistrates were created by Section 16 of the Criminal Procedure Code. The Court of Chief Metropolitan Magistrate and those of The Additional Chief Metropolitan Magistrates were created by Section 17 of the Code. Section 18 of the Code also provided for Special Metropolitan Magistrates. The towns having population exceeding one million could be declared as Metropolitan Areas. A Metropolitan magistrate is under the general control of the Sessions Judge and is subordinate to the Chief Metropolitan Magistrate.

Executive Magistrates

In every district and in every metropolitan area, the State Government may appoint as many persons as it thinks fit to be Executive Magistrates and shall appoint one of them to be the District Magistrate. The State Government may appoint any Executive Magistrate to be an Additional District Magistrate and such Magistrate shall have such of the powers of a District Magistrate under this 179 Code or under any other law for the time being in force as may be directed by the State Government.

Special Executive Magistrates

Under Section 21 of the CrPC, the State Government may appoint, Executive Magistrates, to be known as Special Executive Magistrates, for particular areas or for the performance of particular functions and confer on such Special Executive Magistrates such of the powers as are conferrable under this Code on Executive Magistrates, as it may deem fit.

The Court at the lowest level is called Judicial Magistrate of the Second Class. This Court is competent to try the case if the offence is punishable with imprisonment for a term not exceeding one year, or with fine not exceeding five thousand rupees, or with both. The First Class Magistrate is competent to try offences punishable with imprisonment for a term not exceeding three years or with fine up to ten thousand rupees. In States such as Kerala, the Second and the First Class Magistrate Courts have been unified. The Chief Judicial Magistrate can impose any fine and impose punishment up to seven years of imprisonment. The Assistant Sessions Judge is competent to impose punishments up to ten years imprisonment and impose any fine. The Sessions Judge can impose any punishment authorized by law, but the sentence of death passed by him should be subject to the confirmation by the High Court. (See for details Sections 28 and 29 of CrPC).

Role of the Magistrate Court

A magistrate hears evidence and decides whether a person is guilty or not guilty to an offence as charged. A magistrate imposes a penalty on those who are either found guilty or plead guilty to offences. The magistrate role is to ensure that justice is administered fairly and impartially.

Structure of Magistrate's Courts

First Class Magistrates are at the grassroots level in the judicial structure. Sections 12 and 17 of the Code of Criminal Procedure (CrPC), 1973 define the role of the Chief Judicial Magistrate (CJM) and the Chief Metropolitan Magistrate (CMM), respectively. In terms of powers and superintendence over magistrates, both the CJM and the CMM enjoy equal status, with the only difference being the area in which they operate. According to Section 8 of the CrPC, the state government may notify any city or town to be a metropolitan area when its population exceeds 10 lakhs.

Hence, in a metropolitan area the term CMM is used, and in the remaining areas, the term CJM is used. According to CrPC, the High Court has the power to appoint any First Class Magistrate to be the CJM or the CMM for a given area. In terms of hierarchy all judicial magistrates are subordinate to the CJM or the CMM (as the case may be), who are in turn subordinate to the Sessions Judge. As per Sections 17 and 19 of the CrPC, the CJM and the CMM, respectively, have the power to make rules and distribute business amongst the judicial magistrates subordinate to them.

Courts of Judicial Magistrate of Second Class are at the lowest hierarchy of the Criminal Court structure in India. According to Section 11 of the Crpc(Criminal Procedure Code) , a Court of Judicial Magistrate of Second Class may be established by the State Government in consultation with the High Court of the respective state at such places in the district and in any number by a notification.

Sentences Which Magistrates May Pass

Section 29 of the Criminal Procedure Code lays down the quantum of punishment which different categories of Magistrates are empowered to impose. The powers of the individual classes of the Magistrates to pass sentence are as follows.

- According to Section 29(1) The Court of the Chief Judicial Magistrate may pass any sentence as authorised by the law except that of a sentence of death or imprisonment for life or imprisonment for a term exceeding more than seven years.
- According to Section 29(2) of the CrPc The Magistrate of the first class may pass a sentence of imprisonment for a term not exceeding more than three years or of a fine not exceeding more than Five Thousand Rupees or of both.
- According to Section 29(3) of the Crpc , The Judicial Magistrate of the second class may pass a sentence of imprisonment for a term not exceeding one year, or of penalty not exceeding One Thousand Rupees or of both.
- The Chief Metropolitan Magistrate shall have all the powers of the Court of a Chief Judicial Magistrate and that of the Metropolitan Magistrate and the powers of the Court of the Magistrate of the First Class.¹

¹ http://dakshindia.org/Daksh_Justice_in_India/23_chapter_02.xhtml

SELF ASSESSMENT QUESTIONS

1. Which document grants the right to file writs before a Court? Under which provision can you file a writ before – a. the Supreme Court, b. High Courts? Which writ would you file in the following situations?
 - a. A local butcher has been arrested on suspicions of selling beef, however, the police has refused to divulge any more information and his whereabouts are unknown for the past one week.
 - b. An individual without the requisite qualifications has been appointed as the head of a public department.
 - c. A court having civil jurisdiction over matters not exceeding Rs. 10,000 has decided on a matter worth over Rs. 10,00,000.
 - d. The Municipal body in your district is refusing to carry out their duties and has neglected to perform the same for quite a while.
2. What was the origin of PILs? What are the basic functions they seek to serve? Can you think of a few situations where PILs have helped in bringing about social justice? Can you think of any current social situations where PILs will prove useful?
3. What is the structure of the judiciary in India? Which courts have both original and appellate jurisdiction? Which courts can entertain writs or PILs?

Living Property: A New Status for Animals Within the Legal System

David Favre

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III. THE ALLOCATION OF LEGAL RIGHTS

The present schemes for describing legal rights are inadequate to the task of identifying the path that is being followed for the creation of legal rights for animals. As will be explained, animals already exist as individuals within our legal system, but not in a systematic, focused way that is accessible to traditional writers of jurisprudence. To best grasp what our legal system has been doing, there must be a focus on the separation between the possession of a legal right and the exercise of the right. Animals are like infant children in that they can be recognized as legal persons, but do not have the capacity to understand or knowingly exercise any legal rights allocated to them. This has been particularly difficult for the animals as, unlike children, they are property and one of the legal mantras often repeated is that property cannot be the holder of legal rights. Yet, at least some animals can and have gathered legal rights. This has occurred despite the mantra asserting the contrary and obscuring the view of most observers of the reality of legal events in the United States.

A. *A Card Game*

To help visualize what has happened and what might happen in the future, consider the granting and using of legal rights as a multi-layered card game. Legal rights are represented by cards. Cards have different values, and without possessing cards, you cannot play. Further, just because someone has cards does not mean the cards will be well played. The government is the dealer of the cards, deciding both who gets the cards and what values the cards represent. One unusual aspect of The Rights Game is that those with cards can vote to direct the dealer to either give them more cards or take away cards already given out, or most importantly, to give cards to individuals who previously had no cards. (One complexity that we will not deal with here is that we have three levels of government: federal, state, and local. So, cards can be received from at least three different dealers.) In this game there is no limit to the number of players who can hold cards, or play cards, or number of cards that might be created. A critical aspect of this game is that cards can and often must be played by someone other than the original possessor of the card. Parents might hold and play cards allocated to their children, and with the right legal document, e.g., a power of attorney, children might hold and

kills, maims, mutilates, tortures or disfigures any *dog or cat*, whether belonging to himself or otherwise.

Id. (emphasis added). The same act has three levels of punishment depending not upon the species of animal or even the market value of the animal, but upon the category of animal—pet, zoo animal, or those animals within a general “other” category. This is not rational from the perspective of the animals. It only makes sense in the context of what is politically important or acceptable within human legislatures.

play the cards allocated to their parents. Of course, the government (legislature) can deal itself cards for playing. Not every card that the government seeks to distribute is a lawful card, as the courts have the power to force the dealer to collect and destroy cards if the courts find that the government was without authorization, under the rulebook of the Constitution, to create the particular card. All of this is enough to suggest the context for the following, more focused discussion about animals in particular.

An animal, under the theory of this Article, has the capacity to be a player, a holder of cards. Two possible cards are: (1) the right to be free from pain (FFP) inflicted by the intentional acts of a human, and (2) the right to receive food adequate for a healthy life (Food). For the animals of New York, these cards were initially distributed by the New York legislature under the previously described New York anti-cruelty law.³⁸ Perhaps the value for the cards was low, but they were cards nevertheless. Humans also have FFP cards, but adult humans do not have the Food card held by animals and children. The government itself does not possess either a FFP or a Food card.

Now, what makes this game interesting and complex is that the cards come in three colors, with the color denoting not who can hold a card, but who can play a card. The colors are red, blue, and green. Red cards can be played only by government players (prosecutors), blue cards can be played by human players, and green cards can be played by non-human animals (by attorneys appointed to represent particular animals). Consider the FFP cards held by humans. They come in two colors: The red FFP card has to be given to a government player (a prosecutor) who will decide whether to play it by bringing criminal charges against the actor. Or, harmed humans may use the blue card to play themselves (as plaintiffs) in a civil law suit. The vast majority of the cards held by animals today are red and are created by a state's criminal anti-cruelty laws. Animals have legal rights, but cannot assert or play the cards themselves. Rather, the government has to be willing to reach over and take an animal's card and play it on the animal's behalf. So, those animals that possess red FFP cards are dependent upon the government player-prosecutors. Sometimes the government will play these red FFP cards, sometimes it does not. That the government does not play a card does not mean that an animal does not possess a card.

B. Card Characteristics

To give some descriptive characterization to the cards, consider the red cards as representing weak legal rights, in that they can be played only by

38. See *supra* notes 22, 28–29 and accompanying text.

government entities. Blue cards are strong legal rights and can be played by humans or some non-governmental group of humans (perhaps humane societies). They are stronger in the sense that legal action for protection of animal interests may be carried out by private parties, even in the absence of action by the government. Green cards represent preferred legal rights and can be played by animals directly.³⁹ This third category is what is traditionally considered the fullest realization of a legal right, but this is too narrow of a view. In the broader sense of the term, a legal right exists when a court is willing and able to consider a specific interest of a particular being.

1. Red Cards—Weak Legal Rights

Under the Michigan anti-cruelty laws, a number of red cards have been given to many of the animals within the state:

- The right not to be tortured.
- The right not to be killed without just cause.⁴⁰
- The right to be provided with food, water, and shelter.
- The right to be provided with veterinary care.⁴¹

But, not all domestic animals in Michigan receive these red cards. For example, farm animals are specifically exempted from the state law if the action is a standard agricultural practice.⁴² In Michigan, for unexplained reasons, zoo animals do not receive the red cards requiring proper care but do get the red cards to be free from torture.⁴³ Wild animals in Michigan receive the red cards for FFP, but not the Food card.⁴⁴ For perhaps understandable reasons, animal pests such as rats do not receive the red cards as well, depending upon the context in which the rat lives.⁴⁵ Under the Michigan law, these red cards are, by the statutory definition of “animal,” limited to vertebrate animals.⁴⁶ So, if an individual decides to torture a jellyfish or a zebra mussel, these animals have no cards for anyone to play. It is also true that farm animals do not receive any red cards from the Michigan law, or indeed, from the federal government under the federal Animal Welfare Act. Chickens commercially raised in the United States have nowhere near the

39. Do not confuse the substance of this right with the practical procedural issues of how the right would be asserted.

40. MICH. COMP. LAWS ANN. § 750.50b (West Supp. 2009) (“[A] person shall not do any of the following without just cause: Knowingly kill, torture, mutilate, maim, or disfigure an animal.”).

41. *Id.* § 750.50.

42. *Id.* §§ 750.50(8)(f), 750.50b(7).

43. *Id.* § 750.50(8)(d); *see also* § 750.50b.

44. *See id.* §§ 750.50–750.50b.

45. *See id.* §§ 750.50(8)(e), 750.50b(8)(c).

46. *Id.* § 750.50(1)(b).

number of red cards that a pet cat receives, if indeed the chicken has any.⁴⁷

2. Blue Cards—Strong Legal Rights

Blue card examples are represented by both some of the oldest cases filed by the ASPCA in New York and a twenty-first-century case filed by the Animal Legal Defense Fund in North Carolina. After the adoption of the 1867 Animal Act, the ASPCA, as a private organization, was authorized by the statute to file criminal prosecutions in the local courts for violations of that law alone.⁴⁸ The ASPCA would prosecute the case without the necessity of the state prosecutor being part of the process.⁴⁹ (Of course, the State of New York could prosecute if it chose to do so.) Animals in New York City at the time had both a red and blue copy of the FFP card. This was a good thing, as it is doubtful that the red card would ever have been played. Today, the blue FFP cards have been withdrawn, as criminal prosecution has been brought back to being solely a government responsibility (red card).

As a present-day example of a blue card (strong legal right), consider a state law that allows private citizens or organizations to file civil actions for the benefit of animals. Existing criminal law anti-cruelty provisions can constitute the standards for such civil cases. A North Carolina statute allows civil enforcement of anti-cruelty provisions.⁵⁰ The case of *ALDF v. Woodley* is representative of this type of action.⁵¹ The Animal Legal Defense Fund (ALDF) filed suit to remove more than 300 dogs from the defendants' home

47. This disparity of legal rights arises more from the reality that the cats have high social visibility with humans and therefore more political capital, rather than from any inherent value cats may have over chickens.

48. Section 8 of the 1867 New York anti-cruelty law stated:

Any agent of the American [S]ociety for the [P]revention of [C]ruelty to [A]nimals, upon being designated thereto by the sheriff of any county in this state, may, within such county, make arrests, and bring before any court or magistrate thereof having jurisdiction, offenders found violating the provisions of this act; and all fines imposed and collected in any such county, under the provisions of this act, shall inure to said society, in aid of the benevolent objects for which it was incorporated.

Act of Apr. 12, 1867, ch. 375, § 8, 1867 N.Y. Laws 87 (current version at N.Y. AGRIC. & MKTS. § 371 (Consol. 2004)). Thus, the ASPCA had the power to arrest, prosecute, and receive any fines imposed—an amazing exercise of legal power by one private group.

49. In 1889, the ASPCA prosecuted 949 cases in the courts. ASPCA, *supra* note 19, at 17.

50. N.C. GEN. STAT. ANN. § 19A-2 (West 2007) (“It shall be the purpose of this Article to provide a civil remedy for the protection and humane treatment of animals in addition to any criminal remedies that are available . . .”). This statute is discussed in detail in a law review article, William A. Reppy Jr., *Citizen Standing to Enforce Anti-Cruelty Laws by Obtaining Injunctions: The North Carolina Experience*, 11 ANIMAL L. 39 (2005).

51. *Animal Legal Defense Fund v. Woodley*, 640 S.E.2d 777 (N.C. Ct. App. 2007).

because of the adverse conditions in which the animals were living.⁵² The court ordered all the animals removed from the Woodleys' home and title was transferred to ALDF, which found homes for almost all the animals. ALDF's trial court win was upheld on appeal.⁵³ After the civil case was filed, criminal charges were also filed against the owners on behalf of some of the animals (using these animals' red cards) and the defendants were found guilty in the criminal case. Without the blue card having been played first by ALDF, along with its attendant publicity, it is doubtful that the government would have played the red card on behalf of the animals. A second civil suit against a different defendant was filed by ALDF in 2007, and before the court ruled on the merits, the parties reached a settlement that provided appropriate care for the animals.⁵⁴

The North Carolina statute is an excellent example of a strong legal right that is both conceptually important and powerful. As in *Woodley*, the court's factual inquiry and the core of its decision will focus not on the plaintiff human organization, but on the animals in question. Using a modest number of words in one section of a statute, the state can bring to bear a new set of resources for the benefit of the animals. As the plaintiff organization will receive no financial benefit for bringing the case, the exercise of the power

52. The court stated the facts as such:

On 23 December 2004, [the] plaintiff filed a complaint against the defendants seeking preliminary and permanent injunctions under North Carolina's Civil Remedy for Protection of Animals statute[, N.C. GEN. STAT. ANN. § 19A-1]. [The] plaintiff alleged that [the] defendants had abused and neglected a large number of dogs (as well as some birds) in [the defendants'] possession.

Id. at 777-78. In this case, the defendants, Barbara and Robert Woodley, appealed from an injunction forfeiting all their rights in the animals and an order granting temporary custody of the animals to the plaintiff, the Animal Legal Defense Fund. *Id.* at 777.

53. On appeal, the defendants argued that Section 19A is unconstitutional in that it purports to grant standing to persons who have suffered no injury, and that it violates Article IV, Section 13 of the N.C. Constitution by granting standing through a statute. The court held that "Article IV, Section 13 . . . merely 'abolished the distinction between actions at law and suits in equity' . . . rather than placing limitations on the legislature's ability to create actions by statute," contrary to the defendants' interpretation. *Id.* at 779 (quoting *Reynolds v. Reynolds*, 182 S.E. 341, 369 (N.C. 1935)).

54. See Pleadings, Animal Legal Defense Fund v. Conyers, No. 07CVD17739 (N.C. Dist. Ct. 2007), available at <http://www.animallaw.info/pleadings/pbusncconyers.htm>. "[The plaintiffs sought] preliminary and permanent injunctions pursuant to [N.C. GEN. STAT. §§ 19A-1 to -4] against [the d]efendant Janie Conyers, who was found to have 106 animals living in her house under deplorable conditions." *Id.* "Most of the animals suffer[ed] from severe chronic oral and skin conditions due to neglect." *Id.* "[The] [p]laintiff[] also moved for an order pursuant to [N.C. GEN. STAT. § 19A-4] terminating all possessory interests in the animals seized and awarding custody and possessory rights to the ALDF." *Id.* See Press Release, Animal Legal Defense Fund, Animal Legal Defense Fund Sues to Rescue 100+ Dogs From Real-Life House of Horrors in Raleigh (Oct. 31, 2007), <http://www.aldf.org/article.php?id=468>.

will occur only when private individuals are willing to invest resources to help animals. Indeed, the *Woodley* case cited above cost ALDF significant amounts of money, both in attorney's fees and housing costs for hundreds of animals during the months the case wound its way through the courts. Finally, the statute is powerful as the inquiry is specifically focused on the conditions of the animals and on who should have ownership and responsibility for them. The remedy is focused on protecting the interests of the animals in question. It is doubtful that the local government had the resources to take on a case involving such a large number of animals, even if it had the will to do so. For the immediate future, this is the strongest and quickest path for the realization of animal rights in our legal system.

3. Green Cards—Preferred Legal Rights

Preferred legal rights exist when the animal or animals in question are the plaintiffs of the suit. In the above example, with only a small modification of the statute, North Carolina could allow enforcement by the animals themselves. The language "or domestic animal" could easily be added to the authorizing section. If the state did so, the domestic animals of the state would receive a green card right to add to the existing red and blue cards and the statute would represent a preferred legal right for animals.

As animals are not able to initiate a lawsuit personally or understand legal proceedings generally, the first step in the application of a preferred legal right will be the appointment of a legal guardian who can represent the animal or animals in the legal arena. This is not conceptually impossible and in fact has already occurred several times within the United States. A chimpanzee has had a guardian appointed for purposes of the animal's interests in a trust,⁵⁵ a dog has had a guardian appointed for purposes of placement,⁵⁶ and the fifty Michael Vick pit bulls were placed under the guardianship of an attorney.⁵⁷

55. Order Appointing Guardian ad Litem, *In re Fla. Chimpanzee Care Trust*, No. CP-02-1333-IY (Prob. Div. Palm Beach County Cir. Ct., Apr. 1, 2002) (on file with author) ("It is hereby ordered: 1. C.S. is appointed as guardian ad litem to represent the interests of the beneficiaries of the Trust in all future matters involving the Trust; and 2. C.S.'s reasonable fees for serving as guardian ad litem for the Trust beneficiaries shall be paid from the assets of the trust.").

56. Order Appointing Guardian ad Litem, *In re Estate of Ronald W. Callan Jr.*, No. D-2252 (Shelby County Prob. Ct., Mar. 20, 2007) (on file with author) ("It is therefore Ordered Adjudged and Decreed that: 2. The Guardian Ad Litem owes a duty to this Honorable Court to impartially investigate and to determine the facts to the Court. The Guardian Ad Litem is not an advocate for the dog, but has the duty to determine what is best for the dog's welfare.").

57. Second Order as to Disposition and Appointing Guardian/Special Master at 2, *United States v. Approximately 53 Pit Bull Dogs*, No. 3:07CV397 (E.D. Va. Oct. 15, 2007), available at http://www.animallaw.info/pleadings/pb_pdf/pbusvick_order_appointing_guardian.pdf ("1. Rebecca J. Huss is hereby appointed as guardian/special master to consider appropriate options for a final disposition of the remaining 48 pitbull dogs previously forfeited to the United States. 2. Professor Huss shall have the following powers and duties to fulfill her obligations: (a) Consider available

The threshold for appointment of a guardian is dependent on state law, but generally is allowed for children if (1) there is a prima facie showing of need within the legal system and (2) the party asking for the guardianship is capable of representing the child.⁵⁸ To expand the present system to include animals on a limited basis would not be difficult. This is primarily a procedural issue that is well within the existing capacity of our court system.

Examples of green cards are more limited. The primary example deals with human-created trusts for the care of animals, usually pets. The drafters of the Uniform Trust Code addressed this issue in the late 1990s with the drafting of Section 408 of the Model Law. Under this section, a trust for the care of an animal is specifically allowed, along with the authorization for courts to appoint someone to enforce the trust.⁵⁹ Parallel language has also been made part of the Uniform Probate Code.⁶⁰ Thus, a pet has become a legally relevant being, one who has equitable title in the income and assets of a trust. This is a limited legal personhood, but it goes beyond animal welfare concerns to actually provide a legal right for animals. The result of these

disposition and placement options as she deems appropriate for the final disposition of the remaining dogs[.]”); Motion for Second Order as to Disposition and Appointing Guardian/Special Master, *Approximately 53 Pit Bull Dogs*, No. 3:07CV397, available at http://www.animallaw.info/pleadings/pb_pdf/pbusvick_motion_to_appoint_guardian.pdf.

58. For examples of statutes providing for appointments of guardians for children, see ALASKA STAT. § 13.26.055 (2008) (“The court may appoint as guardian any adult whose appointment would be in the best interests of the minor”); WIS. STAT. § 48.977 (2007–2008) (appointment is allowed when a child is judged to be “in need of protection or services”); MICH. COMP. LAWS ANN. § 700.5212 (West 2009) (“The court may appoint as guardian a person whose appointment serves the minor’s welfare”). See generally Peter Mosanyi, Comment, *A Survey of State Guardianship Statutes: One Concept, Many Applications*, 18 J. AM. ACAD. MATRIM. LAW. 253 (2002).

59. UNIF. TRUST CODE § 408 (amended 2005).

(a) A trust may be created to provide for the care of an animal alive during the settlor’s lifetime. The trust terminates upon the death of the animal or, if the trust was created to provide for the care of more than one animal alive during the settlor’s lifetime, upon the death of the last surviving animal.

(b) A trust authorized by this section may be enforced by a person appointed in the terms of the trust or, if no person is so appointed, by a person appointed by the court. A person having an interest in the welfare of the animal may request the court to appoint a person to enforce the trust or to remove a person appointed.

Id.

60. See, e.g., ARIZ. REV. STAT. ANN. § 14-2907 (2005 & Supp. 2009).

[A] trust for the care of a designated domestic or pet animal is valid. The trust terminates when no living animal is covered by the trust. A governing instrument shall be liberally construed to bring the transfer within this subsection, to presume against the merely precatory or honorary nature of the disposition and to carry out the general intent of the transferor. Extrinsic evidence is admissible in determining the transferor’s intent.

Id.

provisions is that the animal is the beneficiary of the trust, and if issues arise, the trustee could be sued by the animal, through a court-appointed attorney, to enforce the provisions of the trust.

C. Playing Your Hand—The Balancing of Interests

As in most card games, to play a card does not mean that you will win the hand. That depends on the cards held by the other players. If an animal control officer has to use force to capture a dog, thus inflicting pain, the government may play the dog's FFP card. In turn, the animal control officer may play his "use of reasonable force" card that he received when he took on the job of dogcatcher. A jury will decide which card is stronger under the criminal law standard of proof beyond a reasonable doubt.⁶¹ If the same force was used by a neighbor, the dog's card will win, unless the human could play the "self-defense" card.

If a young man decides he wants to smell burning flesh and therefore sets his neighbor's dog on fire, the government can play the animal's red FFP card in every state and will most likely win the hand, as the young man holds no cards justifying such action. (His particular interest, to smell burning flesh, is not judged by society to be appropriate if the animal is alive, and may indeed be an interest judged adverse to other social values.) Note that this is a different card than the dog owner's property ownership cards, which might be played against the young man in a civil action to collect for damages to his property. However, if a researcher at Big University decides to burn the skin of a dog in order to do research on the recovery process of burned skin, the outcome will likely be very different. If the government seeks to play the FFP card here, the researcher has a powerful "go free" card because of the outright exemption for infliction of pain in scientific research. It is not even a matter of seeing which card has more value: at the present time the researcher's card simply trumps the animal's FFP card, regardless of the value of the dog's

61. *State v. Wrobel*, 207 A.2d 280 (Conn. Cir. Ct. 1964). The dog warden of East Hartford had been found guilty of cruelty to animals because of the violence he used as he rounded up dogs to take to the shelter. *Id.* at 282. In overturning the dog warden's conviction, the appellate court said that:

What is cruelty under one set of circumstances may not be cruelty in another. The issue of justification, we believe, was treated too abruptly. It was left to the jury to determine whether the defendant was justified in doing what he did. Further, explication, it appears, was needed, pointing to the extent and limits of the defendant's duty and authority as dog warden: that in performing his duty he may not only resort to force, beating, injuring or killing a roaming dog but may be required to do so; that the application of such force, although it may appear to be cruel to bystanders, who are under no responsibility to act, may be the practicable and reasonable means to accomplish the capture and impounding of the offending dog, and therefore not within the statutory meaning of cruelty.

Id. at 284–85.

card.

A 2008 Supreme Court case, *Winter v. NRDC*,⁶² provides an excellent example of a blue card legal balancing process between the interests of a set of animals and society's interest in military preparedness. In this case, the plaintiffs had obtained a preliminary injunction to stop the Navy from using high levels of sonar signals during open ocean training because of the risk of harm to whales and other mammals who are particularly sensitive to that range of sound.⁶³ Under the National Environmental Policy Act (NEPA), and the requirement that government agencies do an Environmental Impact Statement (EIS) before engaging in particular projects or actions,⁶⁴ the possibility of injury or death to groups of animals must be considered before the action is taken. This is a weak blue card held by the whales and dolphins. Under NEPA, citizen suits may be filed to assert the blue card of the animals in question, and in this case, the NRDC and others chose to do so.⁶⁵ At the lower level, the courts gave sufficient weight to the blue card of the whales to support a preliminary injunction, telling the Navy it could not proceed with the training exercise until the plaintiffs' claim about the lack of an EIS by the Navy could be heard by the courts.⁶⁶

62. *Winter v. Natural Res. Def. Council, Inc.*, 129 S. Ct. 365 (2008).

63. Admittedly, these animals are not human property. But wildlife shares the same interests in being free from pain and suffering as domestic animals. The author is presently drafting an article to address the issue of legal rights for wildlife.

64. As described by the Court:

The National Environmental Policy Act of 1969 (NEPA) requires federal agencies "to the fullest extent possible" to prepare an environmental impact statement (EIS) for "every . . . major Federal actio[n] significantly affecting the quality of the human environment." An agency is not required to prepare a full EIS if it determines—based on a shorter environmental assessment (EA)—that the proposed action will not have a significant impact on the environment.

Winter, 129 S. Ct. at 372 (internal citations omitted) (alteration in original).

65. The Supreme Court explained the plaintiffs' allegations of harm as follows:

They contend that MFA sonar can cause much more serious injuries to marine mammals than the Navy acknowledges, including permanent hearing loss, decompression sickness, and major behavioral disruptions. According to the plaintiffs, several mass strandings of marine mammals (outside of SOCAL) have been "associated" with the use of active sonar. They argue that certain species of marine mammals—such as beaked whales—are uniquely susceptible to injury from active sonar; these injuries would not necessarily be detected by the Navy, given that beaked whales are "very deep divers" that spend little time at the surface.

Id. at 371.

66. As stated by the Supreme Court:

The Court of Appeals further determined that plaintiffs had carried their burden of establishing a "possibility" of irreparable injury. Even under the Navy's own figures, the court concluded, the training exercises would cause

The Supreme Court reversed this position, striking the injunction and telling the Navy it could proceed with the training, without concern for the whales or dolphins. The weighing process was clearly stated by the majority:

While we do not question the seriousness of these interests, we conclude that the balance of equities and consideration of the overall public interest in this case tip strongly in favor of the Navy. For the plaintiffs, the most serious possible injury would be harm to an unknown number of the marine mammals that they study and observe. In contrast, forcing the Navy to deploy an inadequately trained antisubmarine force jeopardizes the safety of the fleet. Active sonar is the only reliable technology for detecting and tracking enemy diesel-electric submarines, and the President—the Commander in Chief—has determined that training with active sonar is “essential to national security.”⁶⁷

Thus, the animals had an interest worthy of considering, but the weight of their interests was not sufficient to overcome the military need of the state.⁶⁸ Two of the Justices⁶⁹ and others would have struck a different balance.⁷⁰ Note that the Supreme Court did not suggest what units of measurement should be used to do this balancing of interests, yet it seemed very sure of the ultimate weight assigned to each side. This is reflective of the difficulty in predicting the outcome of any particular conflict involving animal interests. It is often difficult to predict in advance just how a court will weigh either the interests of the animals in question or the value of the human enterprise that is at issue.

As the above suggests, animals presently have modest levels of legal rights in our system. These rights arise out of the factual reality that they, as

564 physical injuries to marine mammals, as well as 170,000 disturbances of marine mammals' behavior. Lastly, the Court of Appeals held that the balance of hardships and consideration of the public interest weighed in favor of the plaintiffs.

Id. at 374 (internal citation omitted).

67. *Id.* at 378.

68. The Court had to speak in terms of the plaintiffs' interest, as they have standing under NEPA, while the whales do not. *Id.* at 378. While it is certainly true that under our concepts of standing, humans have a cognizable interest in watching whales, the plaintiffs are also surrogates for the interests of the whales. The *Lujan*-based “harm” of the humans in this case opened the door for the Court to consider the real physical harm that the whales themselves would undergo when subjected to high-intensity bursts of sonar. *Id.* at 377–78.

69. Justices Ginsburg and Souter dissented. *Id.* at 387. Justice Ginsburg wrote: “I would hold that, in imposing manageable measures to mitigate harm until completion of the EIS, the District Court conscientiously balanced the equities and did not abuse its discretion.” *Id.* (Ginsburg, J., dissenting).

70. Editorial, *Sonar over Whales*, N.Y. TIMES, Nov. 15, 2008, at A20.

living beings, have interests. This is what separates animals from other personal property. They have and can hold cards in The Rights Game. Previous writers have not considered this reality in a systematic way. The following is offered to help bring some structure to the consideration of what legal rights might and should be granted to animals.

IV. LEGAL CHARACTERISTICS OF LIVING PROPERTY

As mentioned initially, this analysis assumes that animals will remain in some form of property status. This is not to suggest that wild animals do not deserve or are somehow not capable of holding legal rights.⁷¹ Under states' anti-cruelty statutes, the protections provided animals do not depend upon their status of being wild or domestic. However, this Article addresses only domestic animals and leaves for another day an article about legal rights for animals outside the realm of property law.

In the following, the word "ownership" will be used to describe the general relationship between humans and owned animals. This word is offensive to a number of individuals who believe the use of the word implies an attitude suggesting a superior human status with total control over the animal. Some suggest the term "guardian" be used instead.⁷² But, the concept of ownership as applied to an animal can be either beneficial, as when the relationship is respectful, or detrimental, when the relationship is oppressive. For this Article, the traditional word will be used in a more neutral and limited connotation. The owner of an animal is that human, or entity, who has responsibility for the animal in the context of the limited human and animal rights that will be set out below. Now we turn to consideration of the new, fourth category of property, living property.

71. More than a generation ago, one article argued for the legal rights of whales. Sudhir K. Chopra, *Whales: Toward a Developing Right of Survival as Part of an Ecosystem*, 17 DENV. J. INT'L L. & POL'Y 255 (1989). As discussed in *supra* notes 62–69, the U.S. Supreme Court weighed the interests of whales to be free from the negative effects of sonar. Additionally, the Great Ape Protection Project, or Project GAP, seeks to establish legal rights for the great apes. See Project GAP: World Declaration on Great Primates, <http://www.greatapeproject.org/en-US/oprojetogap/Declaracao/declaracao-mundial-dos-grandes-primatas> (last visited June 15, 2010). See also Lee P. Breckenridge, *Can Fish Own Water?: Envisioning Nonhuman Property in Ecosystems*, 20 J. LAND USE & ENVTL. L. 293 (2005) (discussing the need to modify property law concepts in the face of the complexities of managing nature resource ecology).

72. This movement for change has realized some success with the change of terms to "guardian" occurring in twenty cities and the State of Rhode Island. Diane Sullivan & Holly Vietzke, *An Animal Is Not an iPod*, 4 J. ANIMAL L. 41, 44–45 (2008).

Review

The voices of culture, conservation and the media event around bullfight 'Jallikattu' in Tamil Nadu, India

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In the Southern Indian 'State of Tamil Nadu', the traditional *Jallikattu* sport involving young men competing against bulls is described as one of the ancient living sports in the modern era. Based on petitions by animal rights groups, the Supreme Court of India banned the ancient sport of *Jallikattu* in 2014 on the grounds of animal cruelty. The ban of this traditional sport ignited protests culminating in a large-scale 15-day movement across the state from January 8 to 23, 2017 with a massive mobilization on the world's second longest beach, the Marina in the state capital of Chennai. Largely propelled by the youths, the ban was perceived as an attack on Tamil culture and identity. The anger was directed at foreign animal rights activism and an unstable political situation gained momentum with media attention. This resulted in the promulgation of a central Act to overturn the ban and facilitate conduct of the sport. This paper examines the role of social media rallying the public and activism against the *Jallikattu* ban. The paper examines how the platform of social media provided a means to mobilize effectively an affective public and a means to construct Tamil pride and identity through the ban of this bull sport.

Key words: *Jallikattu*, bullfight, social media, tradition, Tamil culture.

INTRODUCTION

The harvest festival Pongal in the Southern State of Tamil Nadu in India includes a number of social and cultural events. One of these is a sporting event called 'Jallikattu' that involves trying to hold onto a bull as it runs through the pathway of an arena. The event came under criticism by organizations that cite instances of cruelty. However, since it has been followed for generations, and it uses traditional breeds of bulls that are also revered, the other side has argued that it is a legitimate part of

culture. The sport was banned in 2014 by the Indian courts. After successive efforts to reinstate the sport failed, a series of protests broke out from January 8 to 23, 2017. The intensity of these protests and the manner in which they resonated with the theme of 'Tamil culture' to reinstate a sport, the streams of discussion on social media and the manner in which mainstream media picked up these developments to make it a 'media event' is the subject of this paper. It also studies how the social

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media engagement facilitated the youths' movement.

THE HISTORY AND CULTURAL SIGNIFICANCE OF JALLIKATTU

Tamil Nadu in South India is home to a traditional annual rural sport known as '*Jallikattu*' (Tamil form of bullfight which is referred to as '*Eru Tazhuvudhal*' or '*Manju Virattu*') held around the Tamil harvest festival *Pongal* in the middle of January. It involves the challenge of trying to hold onto the horns or the hump of a bull for a specified time within an enclosed arena. As an intrinsic part of the annual harvest festival celebrations and rituals in the region, *Jallikattu* manifests in different forms today. Historically, it sought to display mastery of bull by men, who, singly or in small groups, try to take a cloth from its horns or to overpower it (Duff, 2012). According to Kalaarasan (2017), the literal meaning of *Jallikattu* is *Jalli/salli* (coins) and *kattu* (tie) wherein the men, gathered in the arena, try to take a prize of coins that are tied to the horn of the bull. In that sense, it is not so much about 'bull taming' but more as a sport of 'bravery' and gaining a prize from the bull unleashed in the arena. It was, therefore, intrinsically bound with masculinity and heroism of the men who take part and aim to 'tame' the bulls. As an act of chivalry and male prowess, according to legend, men successful at *Jallikattu* were chosen by women to be their husbands. There are references to other versions of the sport, including one where the bull is left free in an open ground for any person to challenge and another where the bull is tied and a group tries to tame it (Ramesh et al., 2014).

The sport itself has been dated as ancient and described as one of the oldest living ancient sports seen in the modern era (Saidulu, 2014). The presence of bulls in seals¹ dating back to 2300-1700 B.C. suggests that these may be in reference to the *Jallikattu* sport (Duff, 2012), concurring with an earlier study (Mahadevan, 1977). These ancient seals refer to human figures interacting with bulls indicating a form of sport or combat with the figures of men or women wearing knee-length tunics and bangles. While these may not have been gender-specific and plausibly related to social status – the tunics may be indicative of clothing worn by men in South India. Vivekanandan and Alagumalai (2013) describe the first domestication of zebu (humped cattle, *Bos indicus*) at the site of Indus valley of Pakistan about 7,000 years ago, suggesting that the sport might have been subsequently taken to other parts of the present-day India. The bulls used for the sport are specific Indian breeds of cattle. Therefore, preservation of the sport is directly linked to the conservation and sustainability of these specific Indian breeds.

¹ The seals, part of the iconography of the Indus Valley civilization, include a script, sign or motif and probably an animal (Duff, 2012). The image of the bull and ritualistic activities such as bullfighting seem to feature in these ancient seals.

Pongal or the harvest festival in Tamil Nadu is a time when the cattle are worshipped with a day dedicated to them known as '*Maattu Pongal*' (where '*maattu*' denotes cattle), since they are considered divine as well as essential to the livelihood of agriculture.

The native cattle breeds of the region used for the *Jallikattu* sport include *Kangayam*, *Pulikulam*, *Umbalachery*, *Barugur* and *Malai Maadu*. These bulls are characterized as strong, vigorous with well-developed hump and more resistant to communicable and parasitic diseases compared to crossbreds in that area (Vivekanandan, 2013). The publication by Sustainable Agriculture and Environment Voluntary Action (SEVA)² notes the dwindling numbers in the *Pulikulam* breed of cattle, one of the main breeds used for the *Jallikattu* sport. Due to the preference for female calves, there is a risk that the bulls used only for sporting activities would dwindle faster in the absence of the sport.

In a project for the People's Archive of Rural India (PARI) that was published in *Caravan*, Karthikeyan (2016) points out that the numbers of indigenous breeds have decreased particularly bulls and bullocks, while in comparison the overall livestock numbers including that of exotic and cross-breeds have increased. Out of the 37 indigenous Indian breeds recognized by the National Bureau of Animal Genetic Resources, the sub-species *Bos indicus* characterized by humps on their backs dipped nine per cent from 2007, and the overall stock of indigenous bulls and bullocks by 19 per cent. In a marked contrast, animals of European descent and exotic-indigenous crossbreeds rose by 20%.

These figures reflect the dwindling numbers of specific native breed of cattle – especially the bulls. Historically, one of the key uses of these native breed bulls is for the *Jallikattu* sport. Kalaarasan (2017) links the sport to its references in ancient Tamil literature, *Yeru Thazhuvuthal* (embracing bull) asserting that the support for the sport denotes intimacy with the bull and their domestication in Tamil culture rather than showmanship or male chivalry.

The U.N. Convention on Biological Diversity (CBD), 1992, at the Rio Earth Summit recognized the importance of traditional knowledge and recommended initiatives to preserve and promote it. It made an explicit and vital link between traditional lifestyles of indigenous peoples and local communities and the sustenance of biodiversity (Bavikatte et al., 2015). The vulnerability or security of individuals and of societies is determined, not only by the likely responses of the resources on which individuals depend (Adger et al., 2003), but also on the entitlement of individuals and groups to call on these resources.

This means that in the case of the bulls or the sport that was part of the lifestyle, it is this perception that it is their identity and their entitlement to their way of life. Also, the diverse breeds of bulls were part of the conservation

² An NGO based in Madurai in south India, SEVA works to conserve and disseminate traditional knowledge, especially livestock and agricultural biodiversity.

fabric, as was the cultural diversity. However, these cultural and traditional aspects of their lives were intertwined with the outside world, when it was seen from the lens of animal rights and cruelty.

Jallikattu ban

The *Jallikattu* sport was banned by the Supreme Court, the apex court of India, in May 2014 citing violation of animal rights and recognizing animals as part of the environment of human beings and, therefore, needing to be protected under Article 21 of the Indian Constitution.

The verdict imposed a complete ban on *Jallikattu*, bullock-cart races and other such events, holding them to be in violation of several sections of the Prevention of Cruelty to Animals Act, 1960, (Sharma and Singh, 2015). The court found there were 12 violations of the Prevention of Cruelty to Animals Act (PCA), 1960, of the Government of India under Section 11(1). This section specifies the cruelty to animals as entailing "beats, kicks, over-rides, over-drives, over-loads, tortures or otherwise treats any animal so as to subject it to unnecessary pain or suffering" (PCA, 1960: pp 8). The Section details various instances and circumstances which may be construed as cruelty and violation of the Act. In invoking this Act to ban the traditional sport, the court found that the violations caused distress to the bulls in a number of ways. It also detailed the injuries that took place in the three events that had been observed by the Animal Welfare Board of India (AWBI). These arguments laid out by AWBI have been endorsed by the court (Mathew and Chadha-Sridhar, 2014). Similar arguments against the bullock cart races in the state of Maharashtra in central India are also in the same judgment, citing violation. The court contends that bulls are not naturally performing animals but meant for agriculture and farming activities and to treat them as performers with actions that are cruel to them are violation of the Act. While the state of Maharashtra did not contest the alleged cruelty to bulls in the bullock-cart races, nor claim this to be a traditional or cultural form, the case was different for Tamil Nadu.

The state of Tamil Nadu had already passed a state Act called the 'Tamil Nadu Regulation of *Jallikattu* Act, 2009' to regulate the conduct of *Jallikattu* with the introduction of strict protocols in holding such events to safeguard animals, participants and the spectators. In the Act, the term, *Jallikattu*, includes related events such as *manjuvirattu*, *oormadu*, *vadamadu*, *erudhu vidum vizha* and other events involving bulls. However, the Supreme Court was not in favour of this, raising doubts on the congruence between the promulgations of the state and centre, contending that the former only emphasized the safety and concern for spectators and participants, not the bulls. It struck down this state Act as being constitutionally void. It contended that the safety and the rights of the bulls too were important.

Peter Singer's landmark 'Animal Liberation' (2002)

takes a very clear stand on animal suffering that is in line with this court ruling.

If a being suffers there can be no moral justification for refusing to take that suffering into consideration. No matter what the nature of the being, the principle of equality requires that its suffering be counted equally with the like suffering-insofar as rough comparisons can be made-of any other being (pp8).

However, legal analysis such as Mathew and Chadha-Sridhar (2014) find the verdict is 'incompatible' and 'ineffective' as Article 21 essentially considers human rights and the right of 'person' cannot be accorded to animals the same manner in which it can be given to human beings. The verdict brought to the fore heated debates over animal and human rights. It also led to discussion over continuance of cultural practices and their role in conservation of native breeds. Several legal papers review this verdict and the validity of the Animal Welfare Board and the Prevention of Cruelty to Animals Act of India, 1960, but fail to integrate the cultural aspects of the debate. Also it is pointed out that without an objective or normative concept or standard of harm for comparison, the decision is aberrant and contentious in a country where slaughterhouses are permitted for commercial reasons but a ban is imposed on *Jallikattu* and related sporting activities (Mathew and Chadha-Sridhar, 2014; Sharma and Singh, 2015).

The judgment emphasized the 1992 U.N. Biodiversity Convention, on a nature-centric approach, rather than a human-centric approach for all forms of life. While *Jallikattu* was claimed to be an ancient and traditional sport by respondents, the court struck down this claim and contended that it was not performed in the traditional manner. It accepted the arguments of the Animal Welfare Board of India and ruled that bulls could not be used in *Jallikattu* or in bullock cart races in the Indian states of Tamil Nadu and Maharashtra.

Legal discussions over animal rights did not view the cultural setting the symbolic significance of cattle to Tamil identity and heritage. In Tamil Nadu, as in many states of India, cattle are revered, decorated and worshipped especially during the harvest festival, besides during other occasions. Connecting *Jallikattu* with violence and abuse was seen as a misrepresentation of Tamil values and historical traditions. The relationship of Tamils with animals and reverence of bulls historically needed to have been considered in the light of the long history of the sport. Also, this sport has been known to cause injury to humans, but animal casualties were rarely reported.

The 2014 ban goes back to 2006 when the Madras High Court banned all types of bull-related sports or 'entertainment'. This was in response to a petition by A Nagaraja, whose son, an artist, had died while sketching the sporting activity (Imanullah, 2017) and the Animal Welfare Board, which later pushed for a ban on *Jallikattu*, was actually a respondent in this case. The Madurai

Bench of the High Court took the stand that the sports could be conducted while ensuring the safety of the animals, participants and spectators. Meanwhile, the Tamil Nadu Government enacted a piece of legislation, to permit the sport, with certain safeguards and protocols (Tamil Nadu Regulation of Jallikattu Act, 2009). However, a 2011 notification by the Centre banned animals including bulls from being used for performance.

The People for the Ethical Treatment of Animals (PETA), a global animal rights organization, entered the scene when it found the sport being conducted in spite of the ban. The Supreme Court, the highest appellate of the country, had the Animal Welfare Board of India monitor and report with photographic and video evidences. In May 2014, the Supreme Court banned the conduct of the sport after viewing the Animal Welfare Board evidence. Nevertheless *Jallikattu* was permitted as 'part of culture' subject to conditions³. Organizations including the Animal Welfare Board and PETA continued to challenge the conduct of the sport. Although the original legal petitioner against *Jallikattu* was from the community, it was an international organization's involvement that jarred people. While the sport was still being conducted in the interim years through one way or the other, based on PETA's subsequent complaint of violations, the Supreme Court reinforced its 2014 verdict. Hence PETA was seen as the main antagonist to the 'Tamil culture' in the *Jallikattu* debate as the 'foreign' hand that caused the ban.

PROTESTS FOR JALLIKATTU

The impossibility of *Jallikattu* looming large over the harvest festival of 2017 gave rise to the pro-*Jallikattu* protests began. A movement across the state of Tamil Nadu, considered unprecedented in their intensity and mass support, broke out, to reinstate this sport. Described as 'iconic' in the history of Tamil Nadu (Kalaarasan, 2017), not only was it massive, non-violent, and spontaneous, it also attracted people from all strata of life with a large number of women and men, mostly young people, taking part in the protest. Interestingly, the protests began and picked up momentum in the cities, mainly in the state capital city of Chennai. This was an interesting phenomenon, as *Jallikattu* is primarily seen in rural settings as part of an agricultural landscape and the harvest festival. It is not conducted in cities and city-dwellers are no more than tourists, witnessing the event in its native locations. Later in 2018, *Jallikattu* was advertised and for the first time in its ancient history, held in an urban setting, indicating the impact this movement had on city dwellers too.

Although many of the *Jallikattu* protestors may not have watched a live bull sport in their lifetime, they saw the ban

on *Jallikattu* as an attack on Tamil culture and 'pride'.

This sentiment of the Tamil culture being under siege transcended the rural-urban divide to unite these binaries under the banner of this bull sport. *Jallikattu* became synonymous with a symbol of Tamil pride and as public antagonism grew against the ban, those who were in favour of the ban were portrayed as anti-Tamil. The issue provided a means to construct and define Tamil identity (Sarukkai, 2017).

Other prevailing political and social issues became conjoined with the ban to intensify the anger of the public. The economic plight of farmers, increasing numbers of farmer suicides due to crop failure due to one of the worst droughts experienced in Tamil Nadu for decades added to the populist sentiments of Tamil identity.

According to Lal (2017), the *Jallikattu* protest became a lightning rod for complaints, concerns and worries of the youths in the state. These cumulative issues were also related to inter-state waters disputes that aggravated the farming crisis. In spite of court verdicts in favour of the state of Tamil Nadu, the Government of India's inability to implement the water-sharing in two water disputes – Cauvery and Mullaiperiyar added to the perception that farmers of Tamil Nadu were more affected due to bias in the Central Government's stand. The death of a popular Chief Minister of the state, J. Jayalalithaa, in December 2016 and the political instability that followed, added to existing anxieties with people of the state, looking for new ways to reinforce demands. The *Jallikattu* verdict seen as negative to Tamil people seemed to come as a last straw in this perceived neglect of a region and its people.

With Indian farming systems being predominantly mixed – with livestock and poultry – cattle play a very important role within the system. Often, sale of livestock indicates the first sign of agriculture distress. With modern farming systems replacing the traditional plough and bullock carts, *Jallikattu* remained one of the few uses for specific breeds of cattle. The concerns were that the ban on the traditional sport would deal a further blow to the rural fabric and sustainability of farming communities, endanger the biodiversity of livestock, besides laying siege to traditions and heritage and equally their belief systems and practices.

YOUTHS AND JALLIKATTU

The visible protests over banning of *Jallikattu*, began in January 2017. Interestingly, young people from urban regions were active participants in the protests for this rural sport.

Beck (2016) shows how the internet can openly challenge oppressive institutions through smooth digital spaces, applying Deleuze and Guattari's rhizome theory. This suggests a non-hierarchical spreading of a protest and a movement of young people that spread rhizome-like in different directions, without one specific leader or root using the internet as a facilitator. In the case of

³ The Centre notified that *Jallikattu* could be conducted during the festival period and only in the locations where it was traditionally held.

Jallikattu, the issue seemed to have found a resonance, in Tamil Nadu among the youths. People came together in large numbers, with no single identifiable leader.

Youths engaged, articulated and built momentum on the subject of culture and their right to tradition through multiple protests all across Tamil Nadu. In a period of over two weeks, the protests witnessed an unprecedented gathering of women, men and children coming together, cutting across political affiliations to protest as one. Street corners and tier-2 cities erupted with multiple protesters taking up the cause in a visible manner. Private companies directly or indirectly permitted their employees to show solidarity with protestors as people were seen in black clothes, with the sign of the bull, accompanied by drumbeats and theatre artistes, or in silent solidarity with placards. As the 15-day protests between reached a peak, schools were closed, traders shut shops and many official establishments announced official or unofficial holidays. Overall, it was one common cause that united. However initially, the protests were small (Moorthy, 2018) January 13 – the date when *Jallikattu* events would have actually begun in various parts of the state. It was only after it was clear that the Supreme Court was not allowing any reprieve that people re-converged. Moorthy notes that Palamedu in Madurai where *Jallikattu* is usually held earlier than in other parts of the state signalled to the rest of the state on January 14 that the protests needed to be intensified. They did intensify in an unprecedented manner, increasing after protesters were arrested in Alanganallur, the seat of the most famous *Jallikattu* event a couple of days later.

The second longest beach in the world, the Marina beach in Chennai, has been an iconic venue from the tourist as well as from the aspect of being a visual entity that symbolizes the city, featured often in films or visual material related to the city. It now became a nodal point for the assembly of these protesters. The beach was not just a convenient point of congregation, given its space and access it also became a symbol for the protests, so much so it even came to be popularly called the 'Marina Movement' (Lal, 2017). Starting with a few protesters in the first week of January, the numbers increased day on day, leading to several thousands of people converging here. The beach, in fact, became as much a participant and symbol of the protest, more than just a venue. It was interestingly a predominantly urban protest for a specifically rural issue.

On January 20, 2017, there were an estimated 100,000 protestors gathered on the Marina Beach alone (*Deccan Chronicle*, 2017) and public transport was packed with people making their way to the protest locations. Some reports put it down to as many as half a million people to one million (Moorthy, 2018).

The protests went beyond just gatherings and slogans. News reports described how students stretched out their hands atop their heads to symbolise the bulls' horns enacting *Jallikattu*, got themselves painted as bulls, performed folk dances while traditional instruments

including drums were played for youth who swayed to the beats for a two kilometre stretch (*Economic Times*, 2017).

All this was in spite of several efforts taken by the police machinery to prevent people from gathering. Many employees in the Government as well as private sectors too joined in these protests to show solidarity with this movement. Private vehicles, buses and trucks with performing drummers and musicians all made their way in a festive atmosphere. It was as much a chance for the city to celebrate its culture as a time to come together in protest. *Jallikattu* had caught the fancy of the general public, as a symbol of convergence.

ROLE OF SOCIAL MEDIA

The mobilization of this movement as it spread seamlessly relied heavily on online information. The social media was crucial in mobilizing millions of people who cannot be targeted by face-to-face interaction (Rucht, 2004). It also serves as a platform to articulate thoughts and emotions related to a subject.

While Tamil Nadu has a high literacy rate, the youths of Tamil Nadu have a high literacy rate of nearly 98% (Government of India Census, 2011) with the overall literacy rate at about 85% (NFHS 4). The state also has the third highest levels of penetration of mobile phones in the country, at over 81%, as per the Ministry of Telecommunication, Government of India data, 2017. The rural internet penetration is over 7 million users in Tamil Nadu and in urban areas Tamil Nadu tops the list of subscribers with over 20 million users as of January 2016 (source: data.gov.in). This makes Tamil Nadu an ideal ground for digital connectivity and social media access both through mobile phones as well as through other devices.

In the case of *Jallikattu*, the youths used social media as an important mechanism to communicate, share and build momentum, which will be explored in greater detail here.

Van de Donk et al. (2004) discuss social movements and ICTs and how they can be understood only along with their ideological beliefs, need for collective identity, and attempts to mobilize followers to appeal to a wider environment. However, they further add that virtual mobilization may lack the attraction of the group experience and the 'fun' and 'adventure factor' accompanying some forms of protest. *Jallikattu* presented a case for appeal on tradition and culture protection and social media was a means to mobilize and reinforce messages. However, it was the larger, real-life protests that became events of celebration and togetherness.

The 15-day event became a 'media event' (Katz, 1980) with live transmission on mass media due to its high dramatic or ritual significance. *Jallikattu* too in that sense became a media event as it was covered widely in the news with several opportunities for live coverage. The

social media had played a role in reinforcing the messages, building momentum and sharing updates across platforms. The free messaging service introduced by a service provider around the time is also attributed with helping bring crowds together (Moorthy, 2018). Already, the social media platforms had also been a vehicle to articulate the angst of the Tamil people. However, from this point on, the visibility in real terms was amplified by the mass media – newspapers, television news networks and web portals gave a lot of importance to this subject, in Tamil Nadu. As the momentum picked up in the rallies and gatherings, it also became national news, making it a widely followed media event. Protests not only in Chennai or in Tamil Nadu, but across the world were reported, mostly by Tamil population groups in those countries. *Jallikattu* had become a global discourse, even beyond the Tamil diaspora.

The heady feel among the youths, of moving against authority, was further reinforced in these manners, echoing Bakhtin's carnivalesque notion where the folk forms or the carnival is opposed to the official culture (1968, 1984). In that sense also, there were no spectators, everyone was a participant. Here too, the challenge of the authority, and the participatory involved nature of the protests recalled the concept of the anonymous mass that becomes powerful.

It was also providing vibrant opportunities for the mass media – whether newspaper, TV, radio or online to pick up the happenings of these gatherings. The coverage reinforced and kept the momentum of the event going.

Even as leaders of the state appealed for the protest to be called off, it picked up momentum with each passing day. Although media reports estimated over 100,000 protesters in one location, on the beach, some reports putting the numbers at several times higher, these protests went on peacefully. Reports also highlighted how women and girls stayed put in a public place of protest, even through the night, without any fears or concerns.

The movement also led to the creation of new youth icons. A singer, a radio jockey, an actor-dancer, a college girl – were some new icons who emerged after the 'Marina Movement'. The media coverage for these protests was consistent and elaborate, ranging from news stories, analysis, to live TV coverage and talk shows focusing on the protestors.

Platforms such as Twitter, Facebook and Whatsapp were used for sharing information with hashtags related to *Jallikattu* trending on Twitter and Facebook. These hashtag #WeDoJallikattu was the first to become a major trend. This was followed by #IsupportJallikattu, #Jallikattu TamilPride, #TNneedsJallikattu, #JallikattuVeeravilayattu, #WeNeedJallikattu and the like. Social media icons and logos were used to give a branding to protests by groups of social media users. In a sense, the social media maintained the momentum and connected with the issue, providing background information and updates.

Student leaders, who preferred to be unnamed most of the time, projected this as a movement of the entire

community. No one organization was identified in pushing this cause forward, though many spoke in its favour. The 'leaderless' movement even sent back politicians and film stars who tried to join the protestors (Janardhanan, 2017). This was observed and reported upon in several newspaper reports. Even film-stars who command high influence in this region were left to show solidarity with their own mini-protests in their film association compounds and not on the Marina Beach.

However, by attempting to join the movement, celebrities clearly indicated that they were in favour of the pro-*Jallikattu* group. This added to the public momentum and demand for holding the sport, making it seem much more bona fide case to be considered by the government.

This social media networks-led mobilization, writes Kalaiarasan (2017), changed the traditional protest or demonstration into the new social movement. Moorthy (2018) even compares it to the landmark anti-Hindi agitation of the 1960s that had marked a sea change in the political movement and alignment in Tamil Nadu. It was also seen in the backdrop of Tamil Nadu's floods in 2015, referred to as the worst in a century that left over a million people marooned. During this time, spontaneous contributions came in as youth took the lead, mobilizing support through the social media (Ashok, 2015) and taken the opportunity to share how it happened. What happened in *Jallikattu*, in a way that brought the spotlight on them, is similar to these precedents.

Youths demonstrated their power and solidarity while protesting in favour of *Jallikattu*. Parents, school-going children too, and others too took an active part in the evenings to distribute water and food. With schools, many offices and other establishments being shut, this kind of sustained pressure was finally heeded to.

The phenomenon of putting pressure on the Government through social media advocates, supporters and amplifiers is studied by Ansari et al. (2018) whose study of 100 events on social platforms over a period of eight years, find how social media pressure can force a government to respond.

A new federal law that would permit the sporting activity to be conducted was passed by the federal government. This was made possible since *Jallikattu* bulls were taken off the list of performing animals that were not permitted to be used. Only then was the protest called off. While there was some unfortunate violence at the end of the protests, marring the hitherto peaceful movement it was overall, a landmark protest in peace, solidarity and magnitude.

SOCIAL MEDIA AND JALLIKATTU

Briggs (2013) says communities are becoming increasingly empowered through self-confidence to inform development interventions which directly affect them in their everyday lives. Discussions on tradition, conservation and identity here were taken forward

Table 1. Top 10 liked pages related to *Jallikattu* on Facebook – as on October 2017

S/N	Name	Type	Likes	Possible Start date
1	Jallikattu Veeravilayattu	Sport League	312000	Jul.14
2	I love Jallikattu	Stadium Arena	68000	Apr.13
3	Venthanpatti Jallikattu	Community	57000	Aug.15
4	Jallikattu Tamil Nadu	Community	43000	Jan.15
5	Jallikattu by J Suresh	Sporting Event	40000	Jun.15
6	Jallikattu (@Jallikattu)	Community	29000	Nov.16
7	I like Jallikattu	Community	26000	Feb.14
8	We want Jallikattu	Sporting Event	27000	Jan.17
9	Jallikattu.in	Community	24000	Dec.13
10	TN Student Jallikattu @tnstudentjallikattu	Public Figure	20400	Jan.17

through contemporary communication methods with quantitative impact. Discourse, through new media methods in a heterogeneous manner, may possibly pave the way for reaffirming conservation, cultural identity, and biodiversity among young people, as the *Jallikattu* experience demonstrated.

To analyze how the narrative played out on social media, the flow of information, during and beyond the period of protests is studied. This paper looks at one social medium – Facebook – to understand the extent to which support for this sport is visible on this media platform. A manual search on Facebook for pages groups and communities that had included the word *Jallikattu* in the title or the name was pulled out through the search tab as of October 2017.

On Facebook, there were 105 pages, 99 groups, 98 accounts and 17 places with *Jallikattu* in their name. These had a tone or intent that was favourable to the conduct of the sport. The presence of a large number and types of these pages indicated the prevailing sentiment on this theme on social media. Of the pages on Facebook, 34 relate to 'community' or 'community organization', 26 are named sport event, league or arena, 17 places are marked for *Jallikattu*, including restaurants and places where *Jallikattu* is actually held and location of protest groups. There is interestingly even a game under Facebook Apps with the title '*Jallikattu* run'. In addition to these pages, there are 99 groups for *Jallikattu*, on Facebook. There are 98 Facebook accounts that have the name '*Jallikattu*'. These are as prefix or suffix to their name.

What makes the above information significant is that, the term '*Jallikattu*' has become a popular term on which many users are interested to engage upon. This may be the reason why various types of pages, groups and communities have been created.

While a page on Facebook is created for sharing information with regard to an official entity. Within the type of page, there is an option to indicate what it engages in. About one third of the Facebook pages have

preferred to indicate that they are a community or community organization. Others include programme, communities and groups are related to common interest and could be official or unofficial. Sporting arena or restaurants usually denote a specific place.

The number of followers of each of the pages as indicated in the page has been listed (Table 1), to understand how people connected to *Jallikattu* on social media, through the various groups and opportunities that Facebook offered. The likes, followers and group memberships were counted to arrive at an estimated reach of the pages. On Facebook a 'like', 'follow' or a 'member' indicates that the social media user prefers to be regularly connected on this particular topic, usually getting an alert or a notification when there is a post on the page. Overall, on taking a count of the people who are regularly following this subject on Facebook, there were about 1 million connections for this subject including those for pages, groups and accounts measured through 'likes', followers and group memberships on Facebook as of October 2017.

Of the different types of presence on Facebook, the top influential pages with the *Jallikattu* theme measured by the number of 'likes' are given in Table 1, The number of likes is 871,000 cumulatively for the top few pages. It indicates those who would regularly subscribe to updates on this subject. There are also likely to be other social media consumers who read these posts without following a specific public page on a regular basis.

While it is difficult to indicate an exact start date for the pages, as Facebook does not give this information upfront, many of these pages, had been in existence much before the protests of January 2017 (Table 1). This has been identified by looking at the page post history for each of the top followed pages to get an idea of the date from which it has been active. Only two of the top 10 pages started in January 2017, when the legal crisis peaked and the protests started. The other eight had been in existence from before the protests. This means that the subject had been focused upon with interest in

social media and with people sharing updates, much before it became a large-scale visible public protest event.

What makes this even more interesting is that out of the 105 Facebook pages that contain the *Jallikattu* in its name, there were 1,000 followers or more for 56 pages, or over 53% of the pages. This indicates the popularity of the subject across pages and groups and that the social media users are keen to track this on a regular basis.

The popularity of the sport and the discussion around it may also be a reason why the name *Jallikattu* has been included in many of the pages. Since Facebook does not permit duplicate pages with the same name, pages seem to use different categories with the word *Jallikattu* and avoid duplication. Therefore, there are 37 different types of page categories on Facebook including sporting arena, event, community page, community organization or public figure. The same name is seen with different page categories. For example 'Support *Jallikattu*' is a 'sports team' and also a 'community' page, indicating the momentum on this subject.

The Facebook group with the largest membership interestingly is from a Special Economic Zone – that is, an industrial area. This may seem incongruous, but it appears likely from reading the posts on the page, it is more to do with individuals than the economic zone-related activities. People seem to have shown that their interest in the subject has been further reinforced through their work communities. The most liked page – 'Jallikattu – Veeravilayattu' (*Jallikattu* – Sport of Bravery) and several other pages are also very active, several months after the protests indicating that the social mobilization has been sustained. These pages have also been consistently keeping up the tempo on *Jallikattu* and other issues of concern for Tamils, including subjects like water sharing, agriculture-related updates or some political content.

Facebook, therefore, played an important role in building the background to the media event along with mainstream media. The physical manifestation of this was identified mainly with a place with symbolic resonance – the Marina Beach, Chennai's iconic spot. However, it is to be noted that social media platforms have been an outlet to ventilate even before the physical manifestation of the protests.

THE THEMES OF THE POSTS ON FACEBOOK

The posts on the Facebook communities and pages focused on the '*Jallikattu*' and 'Tamil pride'. The predominant theme or subject in the top followed pages is mainly related to this sport. These include pictures of people in action, videos of events, information on a specific bull or a type of bull or other interesting information on Tamil culture. Interestingly, many prized bulls are discussed by names or by their identities on these groups, indicating that the followers of these pages

have a deep interest and connection with these bulls that are even accorded a celebrity status. Most of the posts on the popular pages have been seen, liked or shared hundreds of times. Sharing, a manner by which a Facebook user indicates their more active connection since the user adds it to their own timeline or page, shows that it is a popular space for not only sharing information but for reinforcement and amplification. The comments and posts to the page also show that it is two-way communication between the users of the page and those who are following the subject. On the regularity, dates, locations and event updates are given in detail on a daily basis. As regards the content, the pages are colourful and vibrant, with more emphasis on photographs, 'selfies' and videos rather than long reads or written content.

The youngsters also discuss politics on these pages and there is talk of showing 'youth strength' during the elections as well. Issues related to education, water disputes and agriculture, besides a follow-up of some of the key individuals who protested during *Jallikattu* are updated and shared (Figure 1). The '*Jallikattu* protest' is cited as a landmark for any issue that they want to bring up in the future (Figures 2 and 3).

When a prized *Jallikattu* bull passes away, the death is announced on social media with pictures of bidding farewell to it with flowers. Processions are also held in honour of the departed bull where the local community takes part. These pictures as well as condolences are shared through the page. These kinds of posts not only indicate a deep connection with the animals but also negate the general prevailing concern of animal activists that the sport is inherently cruel to animals and involves torturing them (Figure 4).

Social media posts also share information on conservation and in case non-native breeds are allowed in the *Jallikattu* arena. They raise it as an issue as well, reinforcing that this is a space meant for native and specific breeds alone. Violations are also reported and discussed in terms of where and how the events were held. Within the *Jallikattu* community, there seem to be in-built self-policing machinery to maintain the traditional norms of the sport.

While there are multiple pages as listed, these seem to maintain a discussion amongst them, mutually sharing posts and information, requesting for updates, reporting violations in conduct of the sport or denying rumours and false information. The most popular pages contain dramatic pictures, videos and images of *Jallikattu* or of youngsters sharing their photographs and posing in the sporting arena. These seem to reinforce their sense of cultural pride in relation to the sport. Till the time of the study, the most popular pages are still vibrant with several posts on a daily / weekly basis. PETA has yet again moved the court, at the time of completion of this study, challenging the legal permission accorded to conducting the sport, and stepped up their campaign to



Figure 1. Youngsters and students participate in a protest to lift the ban on Jallikattu on Marina Beach in Chennai. (Source: Press Trust of India, January 19, 2017).



Figure 2. Slogan, "For us, who love our bulls, we were taught how to express our love by PETA".



Figure 3. "The only sport that doesn't involve gambling is Jallikattu".



Figure 4. Death of a bull (Source: Jallikattu Tamil Nadu page).

ban *Jallikattu*.

CONCLUSION

Through its tumultuous journey between legality and culture, the struggle over conflicting views on *Jallikattu* made it an opportunity for discourse on ethnicity in the milieu of a media event. In this process, it made an impression on social media users. Since the protests were seen as largely propelled by youngsters, social media seems to have become an outlet for youth to articulate their angst, reaffirm their identity and resonate with themes of culture and tradition.

The news media backpacked on the momentum created on social media. While social media connected youngsters and the issue, mainstream media used this to create a symbiotic resonance accentuating the prevailing sentiment. More than just mobilization, *Jallikattu* protests became an opportunity for ventilation of feelings and expression of opinion.

To summarize, the manner in which youths engaged on the issue of *Jallikattu* and Tamil pride is visible on social media and is a telling example of how social media can not only amplify but also become a participant in social causes. The momentum generated due to *Jallikattu* is being sustained on the social media space. This is an indicator that one compelling, convergent issue can be the starting point of a galvanized young urban community not only in the digital but also in the real world – as

activism on social media did not confine themselves to the cyber space.

CONFLICT OF INTERESTS

The authors have not declared any conflict of interests.

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Jallikattu: Post-Humanistic Coefficients and Coloniality in South Asia's Ergic Sport

Jallikattu, a bull taming sport held during the Tamil harvest festival of Pongal, claimed national headlines at the start of this year. Mass protests erupted all over the state of Tamil Nadu against the decision of the Supreme Court of India confirming the two-year-old ban on the sport. This article unpacks stake-holder attitudes imbricated in Jallikattu through Victor Turner's framework for processual analysis of "Social Drama." By following Turner's stages for understanding significant "irregular" changes in society the article explores the potency of Jallikattu as a root metaphor for larger socio-political-juridical tensions. A possible source of these tensions lies in what Anibal Quijano terms coloniality and Robert JC Young refers to as deep colonialism. The regional location of the sport in South India resonates with Walter Mignolo's understanding of the Global South – an entity where emancipatory and decolonial forces do not acquiesce with global designs.

Key words: ergic, Social Drama, root metaphor, deep colonialism, aesthetics.

In the context of animal rights, it seemed anachronistic that this time it was not the activists for animal rights who had taken to the streets, but urban professionals and agriculture workers who had decided to campaign for their right to "play" with the bull in an apparent stance against animal rights.

The mention of bull-fighting is more likely to conjure up images of imperious Spanish matadors in their resplendent suits of light, tracing measured paces in a meticulously appointed bullring rather than that of gawky, semi-clad, sweaty youths making ungainly attempts at grabbing a bull's hump in a chase down a dirt track in Tamil Nadu. Around a thousand years ago, Spain adopted bullfighting from Roman rituals of bull worship, it began to be played in its colonies in Latin America five hundred years ago, but in India, bullfighting dates back three thousand five hundred years, making it the oldest practitioner of the sport. Yet, the sport, with Jallikattu as its principal variant, is not emblematic of India because of its highly regional presence. Jallikattu is played in a sparse scattering of villages in the southern part of the South Indian state of Tamil Nadu. In the Indian bullfight the animal is not killed therefore it is more appropriate to refer to Jallikattu as a bull-taming sport, where the objective is to subdue a charging bull, either by mounting and riding it for a specified distance or bringing it to a standstill by pinning it to the ground.

Despite its limited regional appeal, the entire country took note of Jallikattu at the start of 2017. It became the subject of news headlines when hundreds of thousands of people turned out in the streets in support of it. In the context of animal rights, it seemed anachronistic that this time it was not the activists for animal rights who had taken to the streets, but urban professionals and agriculture workers who had decided to campaign for their right to "play" with the bull in an apparent stance *against* animal rights. Supporters of the sport, differentiated by age, profession, education, geographic region and income status were unified by their common belief in Jallikattu as a symbol of Tamil identity. The provincial past-time of a few thousand villagers had become the unifying force for millions of Tamil people, not only in India but all over the world.

The article, organized into three main sections, delves into the elements which made Jallikattu a potent symbol of Tamil identity. The first part examines the uniqueness of Jallikattu as an "ergic sport", the second part carries out a processual analysis of the "Social Drama" being played out in Jallikattu, this section is further structured around the four stages of Social Drama – breach, crisis, redressive action and reintegration/schism and the final section attempts to see the postcolonial remains in the differing, confrontational stances on Jallikattu.

THE UNIQUENESS OF JALLIKATTU

Jallikattu is perhaps the last remaining ergic sport in India. Ergic refers to "of the nature of work," and anergic is "of the nature of play", the two spheres of human activity are normatively

considered non-intersectional. Sports, music, drama and games as playful, ludic pursuits stand distinguished from the serious, responsible nature of professional work. This distinction is manifest in the clichéd idiom “All work and no play makes Jack a dull boy” and, in the gender equal work place, in “...makes Jill a dull girl.” Heeding the message, corporate businesses strive for more playful workplaces, organize off-site employee gatherings where cultural activities like *antakshari*¹, humorous sketches, quizzes, rock climbing, river rafting and sports, mostly cricket matches², are programmed into the schedule. The overt objective of such getaways is to foster team spirit among employees with the expectation of generating better work place relations; in this sense, such ludic pursuits are “work-related” but they cannot be deemed ergic, that is “of the nature of work,” thus Jallikattu and Rekla race– the bull taming sport and bullock-cart race, held at harvest time in rural areas are perhaps the last remaining ergic ludic events. They are “of the nature of work” because they are held in the work environment, they do not demand a vastly different skill set from what is required for agrarian labour and continue the work-engendered animal-human partnership to the arena of play.

Victor Turner, the noted cultural anthropologist, distinguished between ergic and anergic ludic cultural performances. Turner builds his concept of ergic/anergic on the basis of Joffre Dumazedier’s³ understanding of leisure as a unique characteristic of “the civilization born from the Industrial revolution.” Dumazedier rejected the assertion that leisure has always been a feature of all societies at all times, “...the idle state of Greek philosophers and sixteenth century gentry cannot be defined in relation to work, but rather replaces work altogether. Work is done by slaves, peasants, or servants. True leisure exists only when it complements or rewards work” (qtd. in Turner, “Liminal to Liminoid” 67).

In post-industrial societies leisure (ludic) is construed as essentially non-work, it is the anti-work phase in the life of a person who works, thus the ludic is anergic. Pre-industrial, agrarian societies, however, instead of severing play from work, meshed play within work; their ludic was ergic.

In post-industrial societies leisure (ludic) is construed as essentially non-work, it is the anti-work phase in the life of a person who works, thus the ludic is anergic. Pre-industrial, agrarian societies, however, instead of severing play from work, meshed play within work; their ludic was ergic. The rhythm of seasons steered sowing and harvesting as well as festivals and cultural performances; dance, drama, music and games concentrated around the harvest period. The entire community participated in carnivalesque festivities held at the end of days of essential physical toil. Thus, work and play were commensals, not mutually exclusionary, they were communal not individual and were largely obligatory not voluntary. Jallikattu (and its variants)⁴ is one such ergic sport held during Pongal, the harvest festival of the southern Indian state of Tamil Nadu.

Jallikattu has existed for five hundred years in its current form, and for three millennia before that. Over its long history it has undergone several mutations but has retained its agrarian, ergic character. Historians place the sport in pre-Aryan times, dating its origins at least as far back as 3,500 years ago.⁵ Across millennia of existence its changing nature reflected the change in relations of production in the agrarian economy. K.T. Gandhirajan, an art historian who discovered the cave paintings which form the basis of estimating the origin of the sport, asserts that the tradition started out as a bull-chasing or bull-lassoing sport in ancient India, and took its present form of bull-taming “after the advent of the Nayak rule in Tamil Nadu.” He blames the outsiders from the Andhra region for introducing violence into the sport, “...with its Telugu rulers and chieftains...this harmless bull-chasing sport metamorphosed into ‘jallikattu’” (qtd. in Subramanian). As far as the issue of animal rights is concerned, Gandhirajan’s distinctions of “bull-chasing, bull-lassoing” and “bull-taming,” hardly seem relevant. The subjugated animal is turned into an object of thrill for mankind in all three versions, therefore, tagging the earlier versions as “harmless” is clearly unmerited. Gandhirajan describes only Jallikattu as a “gallery sport,” that is, as a spectator sport, implying that the more ancient games of *manju*

¹ An Indian game, like the last letter game, based on songs.

² In the Indian context, off-site activities would vary per cultural specificities.

³ Joffre Dumazedier was a key figure in the field of Sociology of Leisure. His best known work is *Towards a Society of Leisure* (Loosely 46).

⁴ From here on, all references to Jallikattu will also refer to its variants.

⁵ There are several rock paintings, more than 3,500 years old, at remote Karikkiyur village in the Nilgiris district in Tamil Nadu that show men chasing bulls (Subramanian).

virattu (chasing bulls) and *eruthu kattuthal* (lassoing bulls) were egalitarian where the distinction between spectators and participants was not marked, perhaps, because of a stronger community spirit fostered by smaller communities. Later on, as communities expanded and scale of agriculture grew, when the feudal zamindar appropriated the bull from the community, it became a symbol of power relations extant in the hierarchical order. In earlier versions, bulls were freed all together on the *peru vazhi* (highway), later under Jallikattu, they were confined to a *vadivasal*, a narrow, enclosed pathway from which they would be released one by one. The stringent confinement of the bull and the individualized release of each animal in the new version conveyed stricter control over the animal and put it in a one-on-one confrontation with the tamers who were members of the vassal, landless peasant class. The strongest and bravest among the peasantry could be, at times, defeated by an animal reared and owned by the zamindar who held hegemonic power. Thus, Jallikattu as it has existed for the last five hundred years, has served as a “block of capacity-communication-power,” (Foucault 338): the tamers are pre-selected, they have to observe rules of the game which are framed to place them at a disadvantage because a quick suppression of the bull would mitigate authoritarian power. The foucauldian power spiral springs to life in an apparently playful engagement between man and animal, the bull’s body becomes the arena where the zamindar’s power and the landless tamer’s resistance are simultaneously enacted.

In the post-industrial economy, the landowning class in villages maintains its control in absentia. The younger generation has set up base in urban areas by taking up modern professions or by investing in other economic sectors. Yet, they are reluctant to cut ties entirely with the villages because they are at a transitional stage, they do not feel completely accommodated in the urban economy. Those among them who are involved in politics have a stronger reason to maintain ties with the rural vote bank. Discussing the trends in urbanization in Tamil Nadu, Lal states that, “A large section of the youth in urban areas, from students to industrial and service-sector workers, are first-generation immigrants...This is a population living away from rural Tamil Nadu, but still not integrated with urban life.”

The “still not integrated” mindset is common to migrants irrespective of their financial and social status. The involvement of a Tamil Sri Lankan political leader in the 2017 Alanganallur Jallikattu celebration shows the disintegrated migrant’s need for a connection with his ancestral origins. His ancestors were from Sivaganga in southern Tamil Nadu, they settled in Sri Lanka during the British Raj but continued to rear bulls, following their example, he owns ten bulls of various native breeds. He told the press that, “We treat the bulls like our family members. They have separate rooms and a swimming pool for the bulls. As swimming is the best exercise to make them strong, a tank was converted into an exclusive pool so that they can swim around without risking injuries” (qtd. in Rajasekaran).

The sport establishes a clear link to the agrarian economy of the past and the feudal relations it fomented. Normally, feudal hierarchies would not be endorsed by progressive individuals, yet the unique ergic, playful nature of Jallikattu puts it at a distance from relations of exploitation and thus allows it to generate identification among rural traditionalists at the margins of the global market place as well as among urban professionals at the centre of it. The issue of tradition was paramount in the mass protests mounted against the Indian Supreme Court’s decision of January 2017 which confirmed the ban on the sport. The decision instigated protests all over the state even though the sport is played only in around twenty villages spread over 3, of a total of 32, districts of Tamil Nadu. Its limited territorial spread notwithstanding, the protests received the support of iconic figures in the film industry, the noted musician AR Rahman and Viswanathan Anand, the Indian chess Grandmaster and former world champion who has been living in Madrid since the mid nineties. Anand’s tweets on the issue sum up the identity aspect of the issue. “#jallikattu is a cultural symbol. Respect it. I’m all for animal rights but here that is not the point. tradition & livelihood are. My state rises again. In unison. In peace. Proud to be a #tamizhanda. Genext here are modern yet culturally rooted.” #JusticeforJallikattu (@vishy64theking).

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Depictions of the parochial sport as a marker of Tamil identity in a range of cultural representations has magnified its presence beyond the three-district confine where it is played. AR Venkatachalapathy, a historian, traces the trajectory of Jallikattu in Tamil literature - the sport is described in detail in *Kathikolai*, a two thousand year old poetry text from Sangam literature, it features in B.R. Rajam Aiyar's novel *Kamalambal Charithiram*,⁶ (1893) and provides the setting for the entire narrative in Ci.Su. Chellapa's novella *Vaadivasaal* (1959).⁷ Jallikattu makes its first appearance on the big screen in the legendary actor MGR's *Thaikupin Tharam* (1956), then in the equally prominent Rajnikant's *Murattu Kaalai* (1980) and Sarathkumar's *Cheran Pandiyan* (1991). Every production in the repertoire of almost hundred cultural representations depicts the bull as an embodiment of the feudal lord's ferocious domination, therefore, overpowering it is an open metaphor for negating the hero's subaltern status. When Anand demands "respect" on grounds of "tradition & livelihood," speaks of "unison" his call echoes that of Venkatachalapathy who credits the efforts of "animal lovers, of 'north India', of an insensitive Central government, of Hindutva and of the impersonal forces of globalisation" for unwittingly turning the sport into a shrine of Tamil cultural "pride."

THE SOCIAL DRAMA OF JALLIKATTU

The drama over Jallikattu features all the plot devices of Victor Turner's Social Drama, which unfolds through the stages of breach – crisis - redressive action-reintegration/schism. According to Turner all rapid social transformations are marked by this processual chain. He distinguished the changes brought about by Social Drama from slower processes which operate within established structures of society over a long period of time. Social Dramas, on the other hand, effect rapid and "irregular" change because they have "good deal of uniqueness and arbitrariness" (*Dramas* 44).

Breach. The first stage in the Social Drama is breach. "Whether it is a large affair, like the Dreyfus affair or Watergate, or a struggle for village headmanship, a social drama first manifests itself as the breach of a norm, the infraction of a rule of morality, law, custom, or etiquette, in some public arena" (Turner, "Social Dramas and Stories about Them" 150).

The breach in the current scenario occurred on the day that the Supreme court of India refused to arrive at a quick decision which would have nullified a two-year-old ban on the sport of Jallikattu, the court's delay in decision-making was tantamount to a continuance of the ban. The next day a crowd of thousands turned out at Marina beach in Chennai in protest, within a week, other major cities in the state – Madurai, Trichy, Salem and Coimbatore, were reporting ten-thousand-strong throngs of protesters. Though there were protests in rural areas, the crowds were thicker in the cities. Huge city crowds are partly explained by the large numbers of displaced workers from rural areas who have been sucked in by the construction industry but their numbers were equally matched by a strong contingent of university students and city professionals connected through digital social networks. The urban youth who had taken up the cause of Jallikattu were in no way directly involved in it, not even as potential spectators.

There are no ticket sales to spectators and there is complete absence of corporate involvement therefore no advertising revenues, no sponsorship deals and no endorsement opportunities of star athletes or bulls.

The direct stakeholders in Jallikattu are the owners of the native breeds of Bos Indicus bulls, the trainers, the tamers (players) and the organizers. Continuance of the sport affects their economic prospects. In financial terms, its discontinuance affects the bull owners the least because the activity is more of a status symbol for them rather than a source of significant income. In fact, rearing of native cows and bulls involves a substantial investment which cannot be recouped from the sporting event alone. There are no ticket sales to spectators and there is complete absence of corporate involvement therefore no advertising revenues, no sponsorship deals and no endorsement opportunities for star athletes or bulls. Owners profit from the appreciation in the trading price of champion bulls, in this sense the economics of Jallikattu works much like the market for works of art, wherein the exchange value is far in surplus of the use value, the difference being appropriated by the asset owner. Though, the economic scale of the sport is limited it is not insignificant. A detailed article in *Caravan*, a

⁶ translated into English as *The Fatal Rumour* in 1998.

⁷ translated into English as *The Arena* in 2013.

respected publication which distinguishes itself by featuring long journalistic pieces, written before the protests, examines the economic and ecological implications of the Jallikattu ban. Kangayams, like many other indigenous cattle, require relatively little water, making them suited to dry areas such as this part of Tamil Nadu—the Kangayam region, from which the breed draws its name. They also range freely, feeding on what is normally considered poor pasture. The move towards exotic cattle means more and more land must be cleared and dedicated to raising pasture suitable for them, at a cost to biodiversity and water resources (Karthikeyan). The economic and ecological arguments, in any case, did not receive serious consideration by the urban supporters. Thus, the breach stage of the Social Drama, instigated by the disaffection with the court's decision, was largely rooted in the claims of "cultural pride" and "tradition."

Crisis. The next stage in the Social Drama is that of crisis. "(It is) a momentous juncture or turning point in the relations between components of a social field - at which seeming peace becomes overt conflict and covert antagonisms become visible. Sides are taken, factions are formed..." (Turner, "Social Dramas and Stories about Them" 151). As the Social Drama of Jallikattu reached crisis stage, a much larger "social field," beyond that of direct stakeholders, began to reveal itself. Tamil diaspora populations in the UK, Australia and Ireland ("Jallikattu Protests Spread") staged protest gatherings; cultural icons – musicians, actors, sportsmen expressed their support; animal rights organizations, Animal Welfare Board of India and PeTA India, chief amongst them, came in the limelight; journalists were not merely reporting events, op-eds, largely sympathetic to the protests, were mushrooming; the judicial system and legislative institutions at the centre and state level completed the social field. The "overt conflict" between "modern" animal rights and traditional values opened a Pandora's box of "covert antagonisms." Some decisions of the central government and the Supreme Court over the last few years, on the Cauvery water distribution⁸, the Mullaperiyar dam⁹, the Kundankulam atomic power project¹⁰ and the plight of Tamil fishermen who stray into international waters, were considered biased against the state's interests or indifferent to them. As in the case of the Jallikattu decision, mass protests have marked these occasions in the past. A root paradigm emerges from the linking of these expressions of discontent.

Root paradigms are shared *abstract* notions of a social group which give form to the social actions of the group. Turner identifies "implicit generalization from social experience" as a source of paradigms¹¹ adopted by the group (*Drama Fields and Metaphors* 13). The Tamil social experiences of water sharing, dam control, nuclear plant construction and the Jallikattu ban generate an "implicit generalization" of being subjected to pastoral power. Foucauldian pastoral power, a combination of care and control, is wielded by the shepherd over its flock. Pandian, taking a post-humanist view, argues against "reducing pasturage to nothing more than a political metaphor..." because this delimits its applicability to a narrow set of issues; whereas, "a closer consideration of relations with the animal evoked by the notion of pastoral power (would) aid in grasping what is at stake in the tension between care and control" (Pandian 90).

In the agrarian structure the dominant castes, acting as shepherds, feed and discipline the bull in order to put it to use in the fields as a beast of burden and as a bestial adversary in Jallikattu. In a similar vein, in modern societies, the role of the shepherd is assumed by state welfare institutions which dole out benefits (individual care) to those who submit to their authority (collective control) (Golden 165). Despite the specular image of pastoral power in agrarian and

⁸ The Cauvery water dispute is a long standing dispute, since 1892, among the South Indian states of Tamil Nadu, Karnataka, Kerala and Puducherry. None of the states is satisfied with the Supreme Court's decision and filed appeals against it. (Economic and Political Weekly)

⁹ Terms of lease, settled in 1886 by the then British government, of the Mullaperiyar dam have been a source of disagreement between the states of Kerala and Tamil Nadu.

¹⁰ In 2013, the Supreme Court rejected a Public Interest Litigation asking for a delay in the development of the atomic power plant.

¹¹ Though Turner discusses the concept in a religious context, citing the acceptance of martyrdom for the sake of an altruistic cause as an example of a root paradigm among catholic, secular root paradigms can also be identified.

modern societies each denies the other's right to exercise it. Thus the operating root paradigm operating in the iterative quest for Tamil identity is the undermining of pastoral power.

While examining the issue of Tamil identity, caution must be exercised against treating Tamils as a monolithic social group. Dissenting views of Dalits and feminists on Jallikattu belie the monolithic homogeneity of Tamil identity. Dalit scholars see it as a means of sustaining hegemony in villages, K Krishnaswamay, a Dalit leader, says that caste hierarchies are reinforced in bull rearing, rich landlords belonging to dominant castes hire Dalit workers as low-paid caretakers for the bulls thus stymieing their social and economic mobility. Stalin Rangarajan, a Dalit writer has said that though Dalits are allowed to participate in the Jallikattu of Alanganallur where the event is presided over by a Dalit priest, the Dalit presence is "mere tokenism." There have been instances where Dalits aspiring to tame the bull have been attacked. (Scroll) Women, too are marginal to the sport, they have some role in rearing the bull, but no active participation in the sport. Most literary and film depictions of the woman's connection to the sport are patriarchal, Jallikattu is the arena where women admire "courageous" men who distinguish themselves by subjugating the bull. A self-proclaimed "in-your-face feminist" sees it as a sport that "worships toxic masculinity" (Seeker), a Madurai based documentary film-maker says it means nothing to her and Uma Devi, a Chennai based writer and lyricist does not accept the idea of Jallikattu as a symbol of Tamil identity (qtd. in Muralidharan). The lack of consensus notwithstanding, conformity of opinion is sufficiently broad-based to permit the identification of undermining of pastoral power as a Tamil root paradigm. The adversaries of the Tamil identity seekers include what Venkatachalapathy identifies as "animal lovers of the 'north,'" the Supreme Court and the central government and may be grouped together as northern urban elites, even though PeTA, the principal "animal lover" is based in Mumbai. C. Aryama Sundaram, who represented the Animal Welfare Board of India in their petition for an effective ban of Jallikattu, is himself from Tamil Nadu. Commenting on the mass protests, he dispelled any integral link between Tamil culture and Jallikattu, "the sport is neither vital/ intrinsic to the culture of the Tamil people, nor its banning an onslaught on the Tamil culture" (Sundaram).

The root paradigm of the northern urban elites appears to be modernity, as espousal of animal rights is certainly a modern ethical value. In their estimation, acceptance of a sport which involves clumsy, barbaric clutching at a bull's hump by untrained callow villagers is not modern entertainment whereas polo, designated the sport of kings, deeply rooted in feudal traditions, patronized greatly by the British colonials, does not conflict with their "modern" stance against using animals for entertainment. Even PeTA India is silent on the topic of polo, the organization has an ongoing campaign against elephant polo and horse racing but there is not a single mention of (horse) polo on their website.

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Particular species have been singled out for preferential treatment since the very enunciation of the Prevention of Cruelty to Animals (PCA) Act of 1960. It lays down legal standards for care of dogs which must be "exercised reasonably" and not be "habitually chained up or kept in close confinement" but allows "destruction of stray dogs in lethal chambers" (PCA Act). The Act itself is manifest with speciesism, the closer a species is to human beings the more preferential its treatment, this may be an obvious outcome of humanism but from a post-humanist perspective its ethical relativism is objectionable. Other instances of ethical relativism in the Act are in its directions to the Animal Welfare Board in respect of laboratory experimentation on animals and its provisions on treatment of cattle. The Act directs the Board to oversee that "larger animals are avoided when it is possible to achieve the same results by experiments upon small laboratory animals like guinea-pigs, rabbits, frogs and rats." The Act also explicitly legitimizes "castration, branding and noseroping of cattle." The summary objective of the Act, "to prevent the infliction of unnecessary pain or suffering on animals," is a nod to the principle that there is a level of necessary pain and suffering which must be borne by all non-human animals in the service of human beings. This Act is the foundation of the Supreme Court's judgement banning Jallikattu. Thus, at closer look the northern elite's love for animals is better understood as love for some animals. This equivocal clamour for animal rights conflicts covertly seeks imposition of pastoral power on a recalcitrant flock of men and animals.

In Social Dramas, conflicting groups reinforce their own paradigms, and militate against the primacy of their opponents' paradigms. Turner explains that, "paradigms consist of sets of 'rules' from which many kinds of sequences of social action may be generated but which further specify what sequences must be excluded. Paradigm conflicts arises over exclusion rules" (*Dramas* 15).

Root Metaphors. The crisis stage generates root metaphors. In order to engage in a conflict through a strategy of exclusion (and inclusion), the *abstract* notion of the paradigm needs *reification* through a metaphor. The conflicting paradigms of undermining-pastoral-power and modernity-through-animal-rights both found their metaphor in Jallikattu. Victor Turner emphasizes the multiple relationalities between the two constitutive entities of a metaphor. A metaphor is not a tool for "imply comparing" or "substituting" one idea with another, each thought remains coactive with the other (*Dramas* 29). This "coactivity" creates a "root metaphor" from which "many subsequent structures may be 'unpacked'." Jallikattu as a root metaphor for Tamil cultural pride unpacks into the dissatisfaction with the perceived indifference of institutions of the North towards provincial concerns, the link with a history of resistance against cultural impositions,¹² the disillusionment with the material gains of globalization and the nostalgia for a disappearing way of life. Like all symbols, the root metaphor has multivocality but it also conveys

(a) certain kind of polarization of meaning in which the subsidiary subject is really a depth world of prophetic, half-glimpsed images, and the principal subject, the visible, fully known (or thought to be fully known component), at the opposite pole to it, acquires new and surprising contours and valences from its dark companion. On the other hand, because the poles are "active together" the unknown is brought just a little more into the light by the known (51).

Jallikattu as a root metaphor for Tamil cultural pride unpacks into the dissatisfaction with the perceived indifference of institutions of the North towards provincial concerns, the link with a history of resistance against cultural impositions,¹ the disillusionment with the material gains of globalization and the nostalgia for a disappearing way of life.

In the metaphor "Jallikattu is Tamil cultural pride," the sport is the "fully visible" principal subject and Tamil cultural pride, is the "half-glimpsed," "prophetic" subsidiary subject. When the two are conjoined in the metaphor, the subsidiary subject "acquires new and surprising contours and valences."

Vishwanathan Anand's "tweeting" support is a distillation of the sentiments of hundreds of thousands of people protesting the ban on Jallikattu. "I'm all for animal rights but *here* that is not the point. tradition & livelihood are," Anand mentions animal rights, but like other Jallikattu supporters, he is clearly not "all for" it, the animal is third on the agenda after tradition and livelihood. In another tweet, quoted earlier, he recalls the history of uprisings in Tamil Nadu "my state rises again," he invokes "pride" and sees no contradiction in the simultaneous invocation of traditional pride and modern Genext.

When antagonistic sides lay claim to the same attribute of "modernity" it generates a paradox. Further unpacking of the metaphor resolves this paradox. Though full knowledge of the other is incomplete, we can place reasonable reliance on the assessment of the bull as a prey animal, its response to a fear inducing stimulus is flight. It is widely accepted, at least in the context of bullfights world over that the bull needs to be provoked into aggression. This puts the lie to claims of Jallikattu organizers and participants that the bull is not harmed in any way. Manoeuvres adopted for provocation and subsequent taming do not redound to the animal's welfare. The Animal Welfare Board and PeTA have documented instances of ear mutilation, biting and twisting the tail, rubbing irritant solutions into eyes and nose to agitate the animal, chafing from tight yanking of the nose rope and other violations of the bulls' welfare in the course of the sport ("Animal Welfare Board of India vs. A. Nagaraja"). The spectacle may be successful in increasing the value of the untamed bulls and pushing up the demand for native breeds in general but this does not create any benefit for the bull.

¹² Anti-Hindi agitations, against compulsory teaching of Hindi, first took place during Imperial Rule in 1937, when Tamil Nadu was called Madras Presidency. A key figure of the campaign to teach Hindi was C. Rajagopalachari, a Tamil, who went on to serve as the last Governor-General in independent India.

An attendant issue to that of tradition is the protection of native breeds. The *Caravan* article reports that even before the ban the number of Jallikattu events had fallen sharply. "Despite the additional demands and expenses, jallikattus went on, though their number decreased. In January 2009, there were over 300 of them. In 2014, even before the Supreme Court's ban, that number had fallen to just 25" (Karthikeyan). The additional expenses which the article refers to were incurred due to the provisions of the Tamil Nadu Regulation of Jallikattu Act of 2009 which "required organisers to, among other things, erect double barricades around jallikattu arenas, register participating bulls with animal husbandry officials, ensure the presence of animal-welfare officials and a district collector to monitor for cruelty, and submit video footage of every event for official scrutiny" (Karthikeyan).

It can be concluded that regulation of the sport resulted in a drop in the number of Jallikattus. The writer in declaring Jallikattu indispensable for the conservation of native breeds would recommend larger number of Jallikattus but this can be accomplished only by leaving the sport entirely unregulated and thereby the animals unprotected. Therefore, the article suffers from a confirmation bias, it starts out with the premise that Jallikattu is the strongest incentive for rearing the more ecological native breeds. Karthikeyan describes several other measures which have been adopted for promoting native breeds such as raising the procurement price of their milk, but eventually, without sufficient comparative evaluation, declares the critical indispensability of Jallikattu to the program. Saving native breeds is a worthy objective, but perhaps other measures need to be strengthened instead of focusing attention on Jallikattu. Endangered species should not need to be paraded and exhibited, much less "tamed" in order to prevent their extinction.

The Supreme Court attempts to set right the injustice done to the animal by rejecting the claim of tradition. When it rules that "the PCA Act, a welfare legislation, in our view, overshadows or overrides the *so-called* tradition and culture," it denies the right of hundreds of thousands to self-determination of culture. It also debunks the privileging of tradition, by stating that "We have a history of doing away with such *evil* practices in the society, assuming such practices have the support of culture and tradition..." The court counters the claims of tradition with the higher moral (modern) ground of prevention of "unnecessary pain" to the animal, the judgement quotes the Isha Upanishad, a Hindu philosophical text from 1500-600 BCE, "The universe along with its creatures belongs to the land. No creature is superior to any other. Human beings should not be above nature. Let no one species encroach over the rights and privileges of other species." ("Animal Welfare Board of India vs. A. Nagaraja"). Yet, it accepts "castration, branding and nose-roping," as "necessary pain." The patent polarization of animal rights (modernity) versus rights of man (tradition) then is immanently a negotiation for determining the correct measure of "necessary pain." Thus, in the arena of animal rights, the seeming confrontation is only a negotiation.

Redressive Action and Reintegration or Schism. The third and fourth stages of the Social Drama are Redressive Action and Re-integration. In the third stage, "In order to limit the spread of crisis, certain adjustive and redressive "mechanisms," ... informal or formal, institutionalized or ad hoc, are swiftly brought into operation by leading or structurally representative members of the disturbed social system" (Turner, *Dramas* 39).

Jallikattu had been under ban since 2014, about two years later the central government took bulls off the list of prohibited animals as a means of currying favour with voters in the state elections which were due later that year. Within one day of the change in the notification, PeTA India moved the Supreme Court against the Ministry's alteration. The Supreme Court ruled in PeTA's favour declaring the Ministry's alteration illegal. The court took only three days to decide the matter, thus PeTA was successful in preventing Jallikattu celebrations for a second consecutive year. When the state government approached the courts again before the next Pongal, the court refused an early hearing on the case, effectively continuing the ban. Defeated twice, Jallikattu supporters turned up in ever larger numbers in an acephalous, spontaneous gathering which replicated almost all the features of Turner's *communitas*. Such

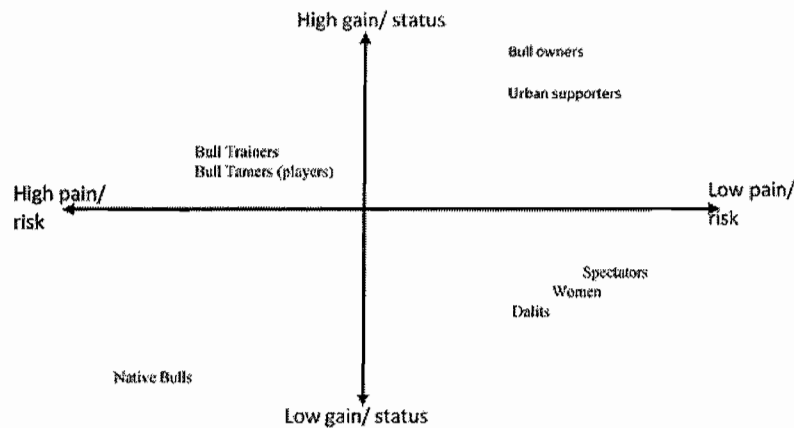
spontaneous gatherings inspired in a shared sentiment also came up during the Chennai floods of 2015 and Cyclone Vardah of 2016, but this does not constitute a breach, as they were not expressions of resistance, rather of solidarity against natural calamities. Jallikattu protests effected the Turnerian breach because they defied judicial authority and crisis festered at a scale that institutions were compelled to take note. The state legislature amended its PCA Act, the courts relented, consequently, Jallikattus were held all over the state a month after Pongal, but with as much fanfare. Redressive action was “swiftly brought into operation.”

At the last stage of the Social Drama, two outcomes are possible. The “disturbed” group may be reintegrated, accommodated within the structures of the social system otherwise it may segregate itself, as happens sometimes in case of militant outfits, from existing social structures in recognition of a permanent schism. Though not as radical as Schism, Reintegration too involves change. The Social Drama will bring out a multi-dimensional transformation, “Asymmetric relations may have become egalitarian ones. High status will have become low status and vice versa. New power will have been channelled into old and new authority and former authority defenestrated. Closeness will have become distance, and vice-versa. Formerly integrated parts will have segmented; previously independent parts will have fused” (Turner, *Dramas* 42).

Jallikattu became the root metaphor for cultural pride not only because of its autochthonous origins, which in fact stand contested because its present form was shaped by a non-Tamil dynasty about five hundred years ago, or because of its long viability - in some form it has been played in the region for 3,500 years. Neither provenance nor perdurance entirely explain the emergence of Jallikattu as the emblem of Tamil identity. The complexity of the symbol made it multi-vocal in a way that it could hold polarized positions, though temporarily, in dynamic equilibrium. Jallikattu is of work and of play, it is of animal and of man, it is of the village and of the becoming urban and it is of native breeds against foreign breeds. Where there are strategies of inclusion, there must be strategies of exclusion, Jallikattu is not of the feminist, it is not of all Tamils – least of all, of Nagaraja, who lost his son in a Jallikattu when an irate bull charged at the boy who was sketching the race in the spectators’ section (“Jallikattu: PETA Says it is Committed”). The Supreme Court judgement banning Jallikattu bears his name.

It is not at all surprising that individuals who have no direct experience of, or stake in, Jallikattu are able to appreciate concerns about native breeds and rural livelihood but the escalation of such empathy into a matter of identification and personalization merits more examination. The identification was made possible because Jallikattu is a living tradition or what Turner calls “living action” (*Dramas* 13) of a cultural system. “Cultural systems...depend not only for their meaning but also for their existence upon the participation of conscious, volitional human agents and upon men's continuing and potentially changing relations with one another... (this is) the “humanistic coefficient” (32).

Jallikattu as a cultural practice is different from other secular or religious rituals because it involves the “conscious, volitional” participation not only of men but also the conscious, though perhaps involuntary, participation of animals. Participation is also differentiated by degree and kind. The owners’ and trainers’ participation is less visceral, more deliberate than the involvement of the players and spectators. Thus, in the context of Jallikattu it is more appropriate to talk of *post-humanistic coefficients*, rather than a singular humanistic coefficient and these multiple coefficients can be assigned ordinal values. If outcomes of participation were graded on the axes of pain/risk and material gain/social status, degrees of subalternity stand revealed.



Starting from the top right quadrant, where the regional hegemonic class is located, subalternity increases as one moves downwards or leftwards. In the grid, subalternity is inversely proportional to proximity with Jallikattu as Tamil identity, the Dalit who draws no sense of identification with Jallikattu is the most subaltern among the human groups.

COLONIAL REMAINS IN JALLIKATTU

Two important differentiations of hegemony need attention – that of inheritance and absoluteness. The dominant caste in Jallikattu playing districts is Thevar which is categorized as Other Backward Caste (OBC). Thevar is the agnomen used by the Piramalai Kallar community (Jothi 49) which was declared a criminal tribe under the 1871 Criminal Tribes Act of the then colonial administration (Pandian 88). Synchronically, Kallars emerged from subaltern status to acquire the hegemonic status of Thevars while diachronically claiming the tag of OBC because in the global, “modern” economic system their skill set was “backward”, that is they had a handicap in their access to the opportunities in an economy dominated by the industrial and services sector. For the Thevar caste hegemony is not inherited, it has come about as a result of destabilizing inherited marginality. The second differentiation is the absence of absolute hegemony. The regional hegemonic class sees itself as a subaltern vis-à-vis Northern elites comprising animal rights activists, central juridical and executive bodies. This sets up a layered subalternity, a kind of deep colonialism. Young and Veracini discuss deep colonialism in the context of dispossession and oppression of indigenous communities in settler colonies (Young 25) but it is equally applicable to non-settler colonies of exploitation. In the sub-continent, deep colonialism is practiced by the inheritors of “coloniality” on a “regional south.”

Coloniality refers to the continuity of colonial forms of domination after the end of colonial administrations... This phenomenon cannot be understood from a nationalist nor a colonialist perspective that assumes automatic decolonization after the formation of a nation-state or from an approach that privileges the nation-state as the unit of analysis. Peripheral zones remain in a colonial situation even though they are no longer under a colonial administration (Grosfoguel 206). “Regional South,” replicates the features of the Global South within nation states. At the national level “south” is a measure of the distance from the centre and is dispersed all over, the Kukis and Nagas of Manipur are as much part of the “regional south” as the bull tamers and fishing communities of Tamil Nadu. “The “Global South” is ...an entity that has been invented in the struggle and conflicts between imperial global domination and emancipatory and decolonial forces that do not acquiesce with global designs” (Mignolo and Levander 3). Similarly, the regional south is defined in the conflict between the centripetal, homogenizing imperative of a nationalist rhetoric and the centrifugal, regional resistance(s) against it.

Two categories of subalterns are visible in the Jallikattu Social Drama, the animal represented in the bull and Tamil identity seekers who locate their “cultural pride” in the bull’s subjugation

in the sport. The direct stake holders in Jallikattu, see the bull as property, they feed it, treat it well and therefore maintain that their right to “play” with it should not be questioned; they even claim “modern” humaneness by asserting that the bull is not tortured in anyway in the sport. The Northern elite see the Jallikattu bull as an exploited living form, persecuted by man for the trivial purpose of entertainment. Both conflicting paradigms claim to promote the welfare of the bull but neither accomplishes it to the full measure. The problem here is the age-old one of “translation.” To be heard, the subaltern must speak in a language that can be understood by the dominant class, this necessarily involves an act of translation. “In other words, the subaltern can speak as long as they speak in a “language” that is already recognized by the dominant culture of the West. Reason and rational communication, “mediated via the market or the academy, prevail as the meta-language, and the subaltern are forced to compete in a bazaar of ideas where the deck is stacked against them by years of colonial rule” (Maggio 431).

“Years of colonial rule” in India resulted in the classification of the Thevar tribe, which in independent India became the hegemonic land-owning and bull-owning caste, as criminal, even though the tribesmen were merely pursuing their traditional form of livelihood; on the other hand, colonial rulers glorified the sport of polo as a royal pastime. Polo, in its current form, first became popular among British regiments and tea planters, then the royal families of Rajasthan joined in the patronage. The association of the game with the ruling classes, both old and new, later made it acceptable to the colonized aesthetics of corporate tzars. According to Mignolo, modernity and (de)coloniality are inseparable parts of the same concept. “Modern (colonized) aesthetics have played a key role in configuring a canon, a normativity that enabled the disdain and the rejection of other forms of aesthetic practices, or, more precisely, other forms of aesthetics, of sensing and perceiving” (Vazquez and Mignolo). Jallikattu needs (an)other form of sensing and perceiving. The northern elites, conversant with the grammar of dress-code, discipline, pedigree, order and regimentation of horses associated with polo are unable to understand the free-style interaction between man and animal enacted in the rustic, unmanicured, make-shift arenas of Jallikattu. The voice of the rural bull-owning, bull-taming subaltern devoid of the grammar of the market or academy cannot make itself heard when it is “forced to compete in bazaar of ideas.”

Around the same time when the volcano of Jallikattu protest was heating up to an eruption, the formation of the Indian Polo League was announced in Jaipur. Polo and horse racing enjoy institutional support and corporate patronage because of the connection of erstwhile Indian royalty and colonial rulers to the sport. The current, largely urban, stakeholders of polo are able to better “translate” their interests than the rural stakeholders of Jallikattu and Rekla (bullock-cart) races. Luxury brands of watches, liquor and perfumes are willing to extend sponsorships to polo because the image of the sport is conducive to enhancing the exclusivity of their products, both the sport and the products appeal to consumers with colonized aesthetics.

The remarks of Ratnasami¹³ are pertinent to the enterprise of translation, he pointed out that instead of arguing “for retaining jallikattu as tradition and culture” the state should have demonstrated “that this is a tradition that is intelligent,” lying at the “intersection of biological and cultural criterion” (qtd. in Karthikeyan) Supporters of Jallikattu might rightly bristle at the need for such demonstration of “intelligence” of a practice which evinces a visceral connection from a large section of the Tamil population. Perhaps the northern elite needs to understand cultural performances which do not possess the grammar of the market or the academy. If, additionally, Tamil identity seekers acknowledge that the bull is the most subaltern among all the stakeholders, and therefore, regulation of the sport is necessary for safeguarding animal rights, the denouement of the Social Drama would move towards reintegration instead of schism.

¹³ Srinivas Ratnasami is a practising lawyer in Chennai, and the chairman of the Biodiversity Conservation Council of India—a non-profit advocacy group founded in March 2016 to oppose the Jallikattu ban (Karthikeyan).

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FEATURED

The Past and Present of Jallikattu: An Overview



By

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In January 2017, protests and demonstrations were held across Tamil Nadu challenging the 2014 Supreme Court (SC) ban on a rural traditional sport—Jallikattu. Alongside the movement, a debate raged in electronic and print media (both in English and Tamil) on the history, politics and ethics of Jallikattu. This debate evoked widespread public participation, with academics, political figures, writers, animal rights activists, and cultural figures, including members of the Tamil film industry, voicing their opinions. The Jallikattu debate in 2017 became the fulcrum of discussions on culture, folk traditions, modernity, regional identity, caste, gender, law, the environment, animal rights and so on. In this module, we attempt to briefly trace the socio-politico-cultural genealogy of Jallikattu in order to better understand the complexities and nuances of these contemporary debates.

A Historical and Cultural Overview

The term 'Jallikattu' is a compound word derived from two Tamil words—sallikaasu (coins) and kattu (a package)—which gained currency during the colonial period. The festival was named thus as it involved releasing a bull through a narrow gate known as vaadivaasal into an arena where male participants in the festival try to grab a pouch tied to its horns by catching hold of the running animal's hump. The aim is to secure the pouch successfully without falling off the

bull. Taming the bull requires quick reflexes, the absence of which can lead to serious injuries or even fatalities. Celebrated annually across various towns in certain districts of Tamil Nadu such as Trichy, Pudukkottai, Sivaganga and Madurai, Jallikattu is part of the traditional repertoire of Pongal, the three-day-long harvest festival held in January, or the Tamil month of Thai.

The Tamil word for bull or cow, i.e., *maadu*, has also come to denote wealth. Moreover, according to the classical Tamil text *Thirukkural*, authored by poet and philosopher Thiruvalluvar, education or knowledge is the real '*maadu*'. In this sense, there is '*value*' attached to the bull—be it in terms of economic wealth or the wealth of knowledge/nature—which has been corroborated in our interviews with bull keepers/tamers, who attribute values of regional pride, identity and culture to the bull (elaborated in the allied article '*Story of a Bull Keeper*').

While no one disputes that Jallikattu is a long-standing tradition, recent attempts by the state and animal rights organisations to ban the festival have provoked a flurry of articles and essays on the history of this sport that have attempted to prove its legitimacy by establishing the longevity of the practice. This quest to prove the '*ancientness*' of Jallikattu often calls upon evidence such as a seal depicting the bull-taming practice in the Indus Valley Civilisation—unearthed during excavations in the 1930s at Mohenjo-daro—as proof of its antiquity. Similarly, several rock paintings dating back over 3,500 years found at Karikkiyur, a remote village in Tamil Nadu, show men chasing bulls with big humps and long, straight horns. According to local folklore, Jallikattu has been celebrated since the days of the Nayaka kings, and it is known even to this day as a *Veera Vilayattu* (warrior sport). The biggest open space available in each village would be used for the sport, and the *vaadivaasal* marked out for the bulls to make an entrance.

Although traditionally the festival was celebrated in rural Tamil Nadu on the second and third days of Pongal, today, Jallikattu takes place on the first day of Pongal in the town of Avaniyapuram in the Madurai district, and on the second and third days in the towns of Palamedu and Alanganallur, respectively; the festival draws thousands of spectators across the state, who either attend the events themselves or watch it broadcasted on TV. Following the Pongal festival, Jallikattu is conducted across the southern rural belt of the state for the next six months. Interchangeably referred to as festival (*vizha*) and sport (*vilayattu*), Jallikattu, at least in its present form (since 2017), is more akin to the latter than the former—due in part to the regulated, organised nature of the practice, including the rigorous methods of care-taking that have evolved to prepare the bulls for the festival.

The changing dynamics of the sport, its representation in popular discourse and the place of the bull in the hierarchy of this world can be traced through multiple Tamil literary texts. One finds historical references to bull-fighting practices during festivals which date back to the Tamil classical period also known as the Sangam period (400 BC–AD 200). The first elaborate description of this sport, known then as *Yeruthazhuvuthal* (embrace the bull), can be found in *Kalithogai*, a Sangam anthology of 150 poems in the *kali* metre of varied length, composed around 200 BC. In *Kalithogai*, the festival is described as part of a rural pastoral setup and as being popular among warriors, as it involves both courage and violence. Lines 15–35 of section 102 recount a scene of the festival thus: 'There is a crowd of people standing around. A man arises and grabs the hump of the bull, then its neck and then the head. The bull runs in all ferocity with him initially, but gets tamed. At the end, the entire crowd and village is happy'.

Traditionally, Jallikattu referred to as Yeru Thazhuvuthal (meaning embracing the bull), seems to have been conducted to judge a man's valour and strength, and this was perceived to be one of the ways to win a woman's hand in marriage. Another poem in Kalithogai describes the bull as being a woman's best friend, as it helps select the best man for her.

Apart from being referenced in Sangam literature, the Jallikattu festival has also been prominently featured in modern literary texts in Tamil. For instance, it has been written about in a number of Tamil novels that provide crucial insights into the various iterations of this tradition over the years. B.R. Rajam Aiyar's *Kamalambal Charithiram*, written in 1893, depicts the celebration accompanying the sport as one that was attended by men and women in large numbers. In Aiyar's novel, we also see how the terminology associated with the sport evolved and was used, and how the practice was entangled with rural power structures in the districts of Madurai and Tirunelveli, where the story is set. In the 1930s, Kothamangalam Subbu wrote a short story titled 'Manji Virattu', which also refers to a form of Jallikattu. It narrates a conflict which arises against the backdrop of this sport between two caste groups, and, for the first time, describes the festival as one that all Tamils celebrate. He also wrote a novel, *Rao Bahadur Singaram*, which was published in the popular Tamil weekly, *Ananda Vikatan*. Here, the story centres on a romance between a young girl who raises a bull and a youth who sets out to capture it. However, it was C.S. Chellapa's 1959 novella, *Vaadivaasal*, which became the 'locus classicus' of Jallikattu. The book captures the shifting dynamics of the sport, not just between man and man, but also as it plays out between man and animal. Interestingly, while the sport/festival is primarily celebrated among the intermediary castes (such as Thevars), all these texts mentioned above were written by Brahmins. In that sense what we observe here is the cultural significance of Jallikattu in the way that it seems to have captured the Tamil modern imagination across caste lines. Modern Tamil literature depicts Jallikattu in its multiple social and political dimensions, from the changing landscape around it, and the caste conflicts that arise in its context, to the relationship between man and animal.

From the mid-20th century, in cinematic representations of the festival 'the taming of the bull by the rural hero became a recurring trope'. The town of Alanganallur in the Madurai district soon became synonymous with the sport because of the hit movie starring Rajnikanth, *Murattu Kaalai* released in 1980. This continues to hold true today, as Govindaraj, one of the bull keepers we interviewed (on 23rd December, 2017 at Alanganallur), said, 'Jallikattu is Alanganallur. Alanganallur is Jallikattu. Jallikattu is a symbol of Alanganallur'. Therefore, through these representations, Jallikattu began to transcend its narrow regional and caste definitions, evolving into a symbol of Tamil identity, pride, and culture.

The Jallikattu Protests and Tamil Identity: Background and Context

In January 2017, a 15-day pro-Jallikattu demonstration was held on Marina Beach, Chennai, primarily to protest the SC's 2014 ban on the sport/festival on the grounds of animal cruelty. The Marina beach protest was one of several protests which occurred across the state—in Madurai, Coimbatore, Cuddalore, Kanchipuram, Erode and Tirunelveli, among other locations. The protest also received international support from Tamil diaspora communities in UK, Australia, Ireland,

China, Russia and the US. The Chennai protest was by far the largest and best attended. Although often referred to as a 'student movement', the protest comprised a large number of people across occupations—working professionals, academics, celebrities, politicians, conservation activists, writers, daily wage workers, and other members of the working class—not just from the city, but several thousands who travelled from other parts of the state to the capital in support of the cause. The protest soon became a fulcrum for addressing a range of grievances against the state. Some of these related directly to Jallikattu, such as the demand to ban the animal rights organisation, People for the Ethical Treatment of Animals (PETA), and other organisations with an 'international agenda' which failed to take cognisance of local communitarian and cultural interests. Some of the other issues raised had no direct relation to Jallikattu, such as demands to boycott multi-national corporations (MNCs), to resolve the ongoing agrarian crisis in the context of the Cauvery River issue, to resist the enforcement of Hindi as an official language by the central government, to improve the plight of the fishermen community, and for a separate Tamil Eelam, to mention some. In that sense, the protest became a movement, a platform to raise voice against several burning issues that signalled state apathy toward regional concerns, and therefore, came to be called a 'Tamil uprising' or 'Tamil Spring'.

Thus, multiple socio-political and economic factors were at play in the protests that erupted in Tamil Nadu in defence of Jallikattu. Political issues including the perceived role of the Indian state in the genocide of Tamils in Sri Lanka; the recent move by the centre to impose Hindi and Sanskrit in Tamil Nadu's schools; and the inclusion of Hindi and Devanagari numerals in the design of the newly introduced rupee note all contributed to the transformation of the Jallikattu protest into a Tamil Spring. The Hindu Right's attempts to subsume Tamil identity under a pan-Indian Hindu identity is perhaps the primary cause for this assertion of 'Tamilness'. However, the mobilisation of the Tamil people in the pro-Jallikattu protests also needs to be considered in the context of changing socio-economic realities in Tamil Nadu.

The Rural as a Site of Nostalgia

The rural is no longer synonymous with agrarian life in Tamil Nadu, with youth withdrawal from agriculture occurring at a faster pace here than in other Indian states. Tamil Nadu is one of the fastest urbanising states in the country; about 50 per cent of its population has been urban since 2011. With the acceleration in urbanisation over the last two decades, many migrants from rural areas living in urban Tamil Nadu have been unable to find jobs suitable to their education, particularly those with degrees in engineering. This has created a sense of nostalgia for the rural among young city-dwellers in the state, combined with feelings of alienation and rootlessness—all of which were evident in the speeches and songs heard during the Jallikattu protests. However, while the Tamil village continues to exist, the life that it offers is fast changing. And change is not desirable in itself for all—a matter that holds true particularly for certain castes who enjoyed power and privilege in the rural structures of the past. Thus, many who participated in the pro-Jallikattu protests were also driven by nostalgia—a desire to travel back in time, reassert in an agrarian culture that might restore those privileges. The movement's emphasis on Tamil pride seems to have offered solace to that sense of lost power. The taming of the bull was seen as an affirmation of that pride.



Image: <https://www.sahapedia.org/>

Vanishing Agrarian Life

The agrarian economy has experienced vast transformations in Tamil Nadu in recent decades. A steady decline in both the share and absolute number of cultivators since the 1990s suggests a movement of the rural workforce to non-agricultural and urban spaces. The percentage of cultivators in rural Tamil Nadu has come down from 29 per cent in 1981 to just 13 per cent in 2011, which is one of the lowest figures across states in India. Household incomes from cultivation have also declined. Among agricultural households in the state, only about 43 per cent of the household income is from cultivation, as against 60 per cent for the rest of India. Even the net sown area declined from 62.32 lakh hectares in 1979–80 to 49.86 lakh hectares in 2011–12. The urban settings are often seen as a source of opportunities and freedom, thereby inviting migration from rural settings. Yet, neither these promised opportunities nor this anticipated freedom have been made available to all.

Engineers on Paper

Tamil Nadu has become a supply hub for engineers in recent years. The state has 534 engineering colleges, fewer only than Maharashtra. Affirmative action policies in the state's education sector have ensured access to education across social strata. While it is true that intermediate castes (such as Vanniars, Nadars, Gounders and Devars) exploited their access to political power and further cemented their economic status from building private engineering colleges across the state (given the huge demand for engineering courses in Tamil Nadu), these colleges granted diverse caste groups access to education. The gross enrolment ratio in higher education in Tamil Nadu is one of the highest among the states and is double the all-India average. According to a report by the All India Survey on Higher Education (2014–15), 45.2 per cent of the state's youth in the 18–23 age group are engaged in some form of higher education, whereas the all-India figure is just 24.3 per cent. There is also a measure of equality of

educational opportunity, as mentioned before, between caste groups in Tamil Nadu. However, increased access to education may constitute a problem when, despite investing in education, one finds no returns—as, for example, in a situation where there are not enough jobs to absorb all the engineers that the state has produced. Given the limited generation of quality jobs, mere access to higher education, without proportional diversification in the employment market, does not translate into better prospects for its beneficiaries.

A recent National Sample Survey (68th round for 2011–12) suggests that a large percentage of rural Tamil Nadu's youth population is unemployed and underemployed. Many of them are in the category of 'neither in jobs nor in education'. The fact that nearly 30 per cent of male graduates from rural areas fall under this category suggests that education does not guarantee quality employment.

English as a Barrier

The dividing line between those who get jobs and those who do not is mediated by language, among other factors. In other words, English has become a marker of the opportunity divide, functioning as barrier to entry for many in the job market. The nature of job opportunities created by the recent economic growth in the state demands a set of soft skills—social graces, professional communicative styles and a particular class disposition—to land a desirable job. Despite possessing formal engineering degrees, many job-seekers from rural Tamil Nadu lack these skills. A recent study suggests that the medium of education is a critical factor of differentiation in the job market, where a lack of access to English often becomes a barrier to better employment opportunities, particularly in service sectors.

Many who have invested considerable sums to study at private colleges feel a deep sense of despair and frustration at not having found remunerative jobs. Very often, families take out bank loans to fund youths' higher education. Recent data show that Tamil Nadu accounted for more than one-fifth of all educational loans availed in the country through public sector banks in 2013–14 as well as 2015–16; it was also the biggest borrower in this sector among all the states. Engineering is the most sought-after profession, followed by construction-related work, indicating a kind of a dualistic labour market in terms of skills and incomes. The question of who lands which job is often decided by language skills. The inability to acquire English language speaking skills has also renewed a certain pride in Tamil among many, and the protests in defence of Jallikattu became a platform to display that pride.

Anxieties of the Intermediate Castes

Under the rule of the Dravidian parties since the 1960s, the combination of affirmative action and a new sense of Tamil identity worked to empower lower castes—particularly the intermediate caste groups, which benefited the most from the overhauling of the system. Education and land offered mobility to those who possessed a certain 'social capability', i.e., minimum resources which enabled them to avail new opportunities created by this political mobilisation. When land was transferred from the elite to these caste groups, the surplus generated in agriculture and other sectors made its way into real estate and construction, liquor production and educational institutions. Contrasting to this growth of the intermediate castes,

the gains for the lower castes and classes were uneven. Intra-caste differentiation sharpened to the extent that while some Dalit caste groups experienced new mobility, others were left behind. Indeed, several recent micro studies suggest that as a result of this new mobility for some Dalit caste groups, the intermediate castes no longer wield control over them in the way that they used to in the past. Further, state interventions through a slew of welfare measures as well as urbanisation have improved the position of Dalits vis-à-vis intermediate caste groups. The large turnout at the Jallikattu protests in some sense represent this desire of the intermediate castes to return to what is perceived as an older social equilibrium of their caste dominance over lower caste groups.

The Protest as an Event

Several people and organisations have demanded that Jallikattu be given legal status, including Karthikeyan Sivasenapathy (Senapathy Kangeyam Cattle Research Foundation), Dr P. Rajasekaran (Jallikattu Peravai Tamil Nadu), and Tamil hip-hop artist Tamizha Adhi, among others, since the initial ban on the sport in 2006. For instance, since 2012 in Madurai, Sivasenapathy has been working to create awareness about the festival and the science behind the practice, bringing it together with notions of Tamil pride and culture. Despite many such efforts, the SC banned the Jallikattu festival in 2014, based on evidence of animal abuse and cruelty submitted by PETA and the Animal Welfare Board of India (AWBI). Preparations for the festival took place even in the two years following the ban in the hope that it would be revoked. However, the SC did not budge on its verdict despite appeals made by both state and central governments. In 2016, the Central Government reversed its earlier decision and exempted bulls from the list of performing animals, an action which met with severe criticism from SC justices who questioned the authority of the Centre on this matter. The SC then issued a stay order, effectively banning the sport once again, just five days after the Centre revoked the ban. Repeated attempts to legalise the festival sparked much discussion and debate around the sport, especially on social media. In June 2016, a video released by rapper Adhi, linking Jallikattu and Tamil pride, went viral on YouTube, garnering six million views. The video addressed the importance of Jallikattu's role in promoting native breeds of livestock and organic farming. With resentment growing against not only political parties within the state, but the central government as well, on account of their failure to legalise and legitimise the festival, the SC's refusal to reconsider the matter in November 2016 was the final straw that set off a spate of protests across the state.

As mentioned earlier, social media, particularly Facebook and WhatsApp, played a crucial role in bringing the protesters together and making the protests possible. The posts were circulated widely and included messages of unity and pleas to collectively defy the orders of the apex court; demands for a revival of Tamil culture; and calls to save native breeds of cattle. Multiple hashtags were used across popular mediums, ensuring that the messages and posts had a wide reach. The protests in Chennai began on January 8, 2017, with about 5000 pro-Jallikattu protesters holding placards saying, among other things, 'Save Jallikattu', touting it as a matter of 'Tamil Pride' and 'Tamil Culture'. Various slogans were raised during the protest against the ban, including some demanding the ban of PETA. The site of the protest was the six-kilometre-long stretch of Marina Beach, a popular and prominent location which attracts a large number of visitors on a daily basis.

Protesters, predominantly students, marched from the lighthouse to the ‘Triumph of Labour’ statue on the beach, along with folk performers and a decorated bull. The protest marches continued for a couple of days until the SC once again rejected the plea for reverting its judgement on Jallikattu. Afterwards, numerous student protesters were arrested in Alanganallur, and once again, massive protests erupted on January 17 in Chennai. What began at 6 am with a handful of students grew into a crowd of thousands of people protesting until past midnight. While protesters engaged in sloganeering, holding placards, and forming human chains, they ensured that the demonstrations were peaceful, demonstrators cleaned up the protest sites, and food and water were supplied to all. When the Chennai police turned off the lights along the Marina stretch that night, thousands of mobile phone torches were lit up in defiance of this attempt by the state to subdue the protests. Protesters who stayed back that night and camped on the beach were provided with tents and blankets. In the media, the demonstrators were applauded for how the whole affair was conducted—the protest was driven by the youth of today, strove to keep away the political class and the state, and above all, was mindful and peaceful.

The leaders of the protest—Sivasenapathy, Rajasekaran and Adhi—met Prime Minister Narendra Modi and Home Minister Rajnath Singh on January 20, 2017, and along with President Pranab Mukherjee and the Governor of Tamil Nadu, C. Vidyasagar Rao, drafted and signed an ordinance which sanctioned the festival on January 21. By the time they returned to the city, however, the mood of the protest had changed. According to Sivasenapathy, students from other districts and towns had left the site, but other groups with vested interests had taken over the protest. On January 23, parts of the protest turned violent and the organisers distanced themselves from these groups, claiming that a victory delivered by students was being hijacked by ‘fringe’ causes that were overshadowing the core demand of the movement. While both English and Tamil media supported the event, neither they nor the state recognised that the protests were not concerned merely with one demand. They were unable to realise the transformative potential and nature of the event.

Conclusion

Jallikattu, the sport, is generally practised in certain districts of Tamil Nadu—Trichy, Pudukkottai, Sivaganga, and Madurai—during the harvest festival of Pongal, celebrated in the month of January or Thai as per the Tamil calendar. While the sport has a long social and cultural history, it acquired a new prominence and became the symbol of a resurgent Tamil identity during the Jallikattu protest in 2017. The protest has a pretext and context. The pretext is, inter alia, resistance to the Indian state’s aggressive policies in Tamil Nadu—its role in the genocide of Tamils in Sri Lanka, its imposition of Hindi and Sanskrit in schools, and the inclusion of Hindi and Devanagari numerals in the design of rupee notes—aimed at extending the Centre’s shadow power over the region by making inroads in cultural as well as political and administrative practices. The context of the protest is the fast-changing socio-economic reality of the state. On the one hand, the agrarian crisis, rapid urbanisation and the blurring distinction between the rural and urban have recast the Tamil village as a site of nostalgia. On the other, Dalit mobility and changing social relations have generated fresh anxieties among intermediate castes. The increasing sense of alienation, displacement, and incompleteness felt by new inhabitants of

urban spaces in Tamil Nadu, owing to the rootless and abstract lifestyles of the city, often induces in them the desire to seek compensation in an idyllic, almost mythical, rural past.

Notes

[i] Venkatachalapathy, 'Catching a sport by its horns.'

[ii] Karthikeyan, 'Jallikattu: Tradition first, safety next.'

[iii] Pal, 'To ban or not to ban: Jallikattu, its interesting history and both sides of the debate.'

[iv] Kali metre is noted as different from the akaval and vanchi metres which were more commonly used in early classical Tamil poetry. Along with another metre called paripatal, kali is deemed by scholars as best suited to love poetry.

[v] Pal, 'To ban or not to ban: Jallikattu, its interesting history and both sides of the debate.'

[vi] Translated by the authors.

[vii] Pal, 'To ban or not to ban: Jallikattu, its interesting history and both sides of the debate.'

[viii] Venkatachalapathy, 'Catching a sport by its horns.'

[ix] Ibid.

[x] Ibid.

[xi] The News Minute, 'From London to Madurai and beyond: Tamilians protest against Jallikattu ban.'

[xii] Vijayabaskar, Narayanan and Srinivasan, 'Agricultural Revival and Reaping the Youth Dividend.'

[xiii] Vijayabaskar, 'The Agrarian Question amidst Populist Welfare.'

[xiv] Vijayabaskar, Narayanan and Srinivasan, 'Agricultural Revival and Reaping the Youth Dividend.'

[xv] Ibid.

[xvi] Vijayabaskar, 'The Agrarian Question amidst Populist Welfare.'

[xvii] Subramanian, Ethnicity and Populist Mobilization, 74.

[xviii] Jeyaranjan, 'Tenancy Reforms in Tamil Nadu: A Study from the Cauvery Delta Region.'

[xix] Pandian, 'Caste in Tamil Nadu - II'

[xx] Chapter V of the Prevention of Cruelty to Animals (PCA) Act, 1960 which was constituted to prevent unnecessary pain or suffering on animals, deals with 'Performing Animals'—animals which are trained or exhibited for the purpose of entertainment. According to the PCA (TN Amendments) Act 2017, bulls participating in Jallikattu are exempt from the rules applicable to performing animals.

[xxi] Ravishankar and Kumar, 'Jallikattu protests: Was the students' 'movement' in Tamil Nadu hijacked?'

[xxii] Financial Express, 'Jallikattu' ban: Chennai public takes to streets, demands annulment.'

[xxiii] The Hindu, 'Thousands hit the streets for Jallikattu.'

[xxiv] Ravishankar and Kumar, 'Jallikattu protests: Was the students' 'movement' in Tamil Nadu hijacked?'

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A Quantitative Analysis of the Indian Supreme Court's Workload

*Nick Robinson**

This article analyzes the Indian Supreme Court's docket in detail from 1993 to 2011. It also draws on available data to describe more broadly the workings of the Court before 1993. The article explains how deficiencies in the way data are currently collected and categorized by the Court presents challenges in developing a full picture of its workload. Using the admittedly imperfect data set, it then analyzes the Supreme Court's caseload by geographic region of appeal, subject matter category, petition type, and other classifications. Among other findings, this analysis shows that the Court is disproportionately accessed by those close to Delhi and with more resources and that the Supreme Court's multiplicity of benches and cases may be undercutting precedent following in the Indian judicial system.

I. INTRODUCTION

With up to 31 judges, sitting in over a dozen courtrooms, the Indian Supreme Court is both powerful and sprawling.¹ In scores of major cases each year its orders have far-reaching

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¹Currently, the Indian Supreme Court may have up to 31 judges, including the chief justice, but often a handful of positions remain vacant at any given time. See Supreme Court (Number of Judges) Amendment Act 2008. Each courtroom of the Supreme Court typically hears cases between 10:30 to 1:00 and 2:00 to 4:00 Monday through Friday (except holidays). Admission matters are heard on Monday and Friday. On a typical Monday or Friday, a given courtroom will generally hear 50 to 75 cases involving admission. If these matters are accepted to be heard by the Court, they are then scheduled for regular hearing, which is on Tuesday, Wednesday, and Thursday. On these days, each courtroom hears on average two to three regular hearing cases (although a bench may hear only one such matter or more than 10). On these regular hearing days, admission cases may also be mentioned (which in a typical courtroom could add from 0 to 25 more cases). It is important to note that cases and matters are not the same. A bench may have 20 cases listed before it, but each case may on average include two matters that relate to the same case. In other words, in that situation, disposing of 20 cases would in fact dispose of 40 matters. In 2013, the Supreme Court was scheduled to sit at its full strength for 190 total days: 113 regular hearing days and 77 admission days.

political, economic, and social consequences.² At the same time, it hears thousands of relatively routine matters. Indeed, even today many of its orders are not officially published. Yet, despite its central role in Indian political life and massive docket, there is little understanding of the actual dynamics of the Court's workload. Rajeev Dhavan's landmark studies on the Court's docket are now almost three decades old.³ Little analysis has been done since. In this time, not only have more years and new types of data become available, but the Court has expanded and evolved as an institution.

Within this context, this article, which draws on internal Supreme Court data provided by the Court itself, examines the Supreme Court's docket in detail from 1993 to 2011. It also uses available data to describe more broadly the workings of the Court before 1993. The article points out how deficiencies in the way data are currently collected and categorized by the Court present challenges in developing a full picture of its docket. Using this admittedly imperfect data set, it then attempts to lay out as complete an understanding as possible of the Court's workload.

Part of the story this article tells is already well known. Commentators have long lamented the Indian Supreme Court's ever expanding workload, which has led to a long line of pending matters.⁴ This trend has not changed in recent years. Between 2000 and 2010, the number of new admission matters that were filed with the Supreme Court nearly doubled from 24,747 to 48,677 (an increase of about 97 percent).⁵ Meanwhile, the number of regular hearing matters admitted by the Court also nearly doubled from 4,507 to 8,824 (an increase of 96 percent). All these new matters have helped increase the Court's backlog. In 2004, 7 percent of regular hearing matters had been pending for more than five years. In 2011, it was 17 percent of regular hearing matters.

Other parts of the Supreme Court's workload that this article describes are less well explored. Among other notable findings, it shows how writ petitions and certified appeals have made up a decreasing percent of the Court's docket in recent years, while special leave

²For a useful overview of the Court's jurisprudence and its role in Indian society, see Lavanya Rajamani & Arghya Sengupta, *The Supreme Court of India: Power, Promise, and Overreach*, in *The Oxford Companion to Politics in India* (Niraja Gopal Jayal & Pratap Bhanu Mehta eds., 2010); Nick Robinson, *Expanding Judiciaries: India and the Rise of the Good Governance Court*, 8(1) *Wash. U. Global Stud. L. Rev.* 1 (2009); Pratap Bhanu Manu Mehta, *India's Judiciary: The Promise of Uncertainty*, in *Public Institutions in India* (Devesh Kapur & Pratap Bhanu Mehta eds., 2005); *Supreme But Not Infallible: Essays in Honour of the Supreme Court of India* (B.N. Kirpal et al. eds., 2001).

³See Rajeev Dhavan, *The Supreme Court Under Strain: The Challenge of Arrears* (1978); Rajeev Dhavan, *Litigation Explosion in India* (1986).

⁴Rajeev Dhavan cautioned against the expansion of the Court's docket back in the 1970s. Dhavan (1978), *supra* note 3, at 36 (1978). An India Law Commission report written in 1988 proposed a series of recommendations to tackle what it described as the "crisis-laden situation in the Supreme Court." See Law Commission of India, *One Hundred Twenty Fifth Report on the Supreme Court—A Fresh Look I* (1988). For a more recent description of concerns over the Court's backlog, see Kian Ganz, *Supreme Court's Battle Against Backlog in Cases*, *Live Mint*, June 7, 2012, available at <http://www.livemint.com/Politics/ziffwni3N64eFBcaWZobtL/Supreme-Court8217s-battle-against-backlog-in-cases.html>.

⁵Note that these statistics do not include unregistered matters for reasons explained later in this article. Unregistered matters are those that are filed with the registrar, but contain a filing defect and so are listed as unregistered until that defect is cured.

petitions (SLPs) now make up the vast bulk of its workload. The article also finds that the Court's caseload is disproportionately appealed from high courts near Delhi and those located in wealthier states. Civil, criminal, tax, service, labor, and land acquisition cases make up the bulk of the Supreme Court's docket, while larger benches that hear pressing constitutional matters are now relatively rare. Public interest litigation, which is often the focus of substantial media attention,⁶ accounts for only about 1 percent of the Court's workload. Tax, arbitration, land acquisition, and company law matters seem to be accepted by the Court for regular hearing more than others, while family law, labor, service, and criminal matters are decided more quickly. In general, acceptance rates by the Court have held steady in recent years even as appeals to it have increased. In fact, the Supreme Court's workload has increased disproportionately faster than that of the high courts and lower courts, perhaps indicating an increasing breakdown of the following of precedent within the judicial system.

This article does not attempt to argue what the caseload for the Indian Supreme Court should be. There are many competing factors for any apex court that affect its ultimate workload.⁷ For example, accepting more cases ensures greater access to the Court, but may come at the cost of adding even more Supreme Court judges or benches, causing a fracturing of the institution's jurisprudence and a deterioration of precedent. Meanwhile, constituting more five-judge benches may allow the Court to create a more cohesive constitutional jurisprudence, but may limit the Court's ability to police the lower courts in the larger mass of cases.

It is hoped that the data and analysis in this article can help ground debates over the Court's future by helping illuminate how the Court currently invests its time and resources. The article concludes by describing the need for more quantitative research about the Supreme Court and the Indian judiciary more broadly, while also cautioning about such research's potential limitations.

II. THE CHALLENGE OF UNDERSTANDING THE SUPREME COURT'S WORKLOAD

Given its multiple benches and thousands of cases, no one person can keep track of all the matters heard and decided by the Indian Supreme Court. Although a detailed knowledge of the Court's major precedent is critical to understanding the modern Court, one cannot have a full appreciation of its activities and role in Indian judicial life without data about its workload. Unfortunately, someone hoping to use the data that are currently collected by the Supreme Court faces several challenges.

⁶For example, for the profiling of some high-profile environmental public interest litigation, see Lavanya Rajamani, *Public Interest Litigation in India: Exploring Issues of Access, Participation, Equity, Effectiveness and Sustainability*, 9(3) *J. of Envtl. L.* 293 (2007).

⁷Some of the potential tradeoffs of different levels of access and their impact on the size and structure of a court are discussed in Nick Robinson, *Structure Matters: The Impact of Court Structure on the Indian and U.S. Supreme Courts*, 61(1) *Am. J. of Comp. L.* 173 (2013); Nick Robinson, *A Court Adrift*, 30(8) *Frontline* 4 (2013).

A. Acquiring Data

The first challenge is the availability of the data. The Supreme Court published a public annual report between 2005 and 2009.⁸ In each of these annual reports information was provided on how many admission and regular hearing matters had been instituted, disposed of, and were left pending for each year since Independence until the publication of the annual report. A new annual report is supposedly in the works, but is now at least three years overdue. In *Court News*, available on the Supreme Court's website for the period from 2006 through 2011, the Court publishes similar data on a quarterly basis, as well as a basic tallying of the workload of the high courts and district courts in each state broken down by civil and criminal matters.⁹

Beyond this publicly available annual report and the data in *Court News*, the Court's division of the National Informatics Centre (NIC) publishes internal monthly reports that list backlog by subject matter categories (civil, criminal, labor, service, arbitration, etc.) and the institution and disposal of admission and regular hearing matters based on petition type (special leave petition, appeal, writ petitions, etc.). This article benefitted from access to these monthly statements from 2004 to 2011, as well as monthly statements (which are somewhat differently formatted) from 1971 to 1993.¹⁰ The Court also publishes annual statements that list institution and disposal of admission and regular hearing matters based on petition type. For this article, access was gained to such annual statements for 1993 to 2011.

Some data are also produced by the Court on special request. The Supreme Court began computerizing its data-collection systems in the early 1990s. Although the Court's administrative personnel were helpful in collecting the information for this article, the staff is stretched thin simply tracking the data routinely used for monthly and annual reports and has little time or resources to make other data public.

For this article, a copy of charts that broke down institution, disposal, and pendency of admission and regular hearing matters by subject matter categories (i.e., civil, criminal, labor, service, arbitration, etc.) was acquired for cases from 2005 to 2007. Also a chart was acquired that broke down the institution and disposal of admission and regular hearing matters by subject matter for the period from 2008 to 2011. Finally, data were received on how many cases were appealed to the Supreme Court from each high court for the years 2006, 2007, 2008, and 2011.

Using the hodgepodge of data that is either publicly available or that can be acquired from the Supreme Court, one can then begin to paint as full a picture as possible of the Supreme Court's workload.

⁸These annual reports may be found at Annual Reports, Supreme Court of India website, available at <<http://supremecourtindia.nic.in/annualreports.htm>>.

⁹*Court News* may be accessed at Court News, Supreme Court of India website, available at <<http://supremecourtindia.nic.in/courtnews.htm>>.

¹⁰The monthly statements from 2004–2011 were acquired from the Court itself, while the monthly statements from 1971–1993 were on file with Rajeev Dhavan. Unfortunately, monthly statements between 1993 and 2004 could not be accessed. It is unclear where these statements are and if they still exist.

Table 1: Data Sources

<i>Source</i>	<i>Type of Data</i>	<i>Years Available</i>
<i>Supreme Court Annual Report</i> (public)	Institution, disposal, and pendency of admission and regular hearing matters by year (1950–2008); letter petitions received/accepted (2000–2008)	2005–2009
<i>Court News</i> (public)	Institution, disposal, and pendency of admission and regular hearing matters by year broken down by civil and criminal matters (2006–2011)	2006–2011
Monthly reports (internal)	Institution and disposal of admission and regular hearing matters by petition type (1971–1993, 2004–2011); pendency by subject matter category (2004–2011)	1971–1993, 2004–2011
Annual statements (internal)	Institution and disposal of admission and regular hearing matters by petition type (1993–2011)	1993–2011
Special request (internal)	Subject matter category institution and disposal for admission and regular hearing matters (2005–2011)	2005–2011
Special request (internal)	State-wise origin of Supreme Court appeals (2006–2008, 2011)	2006–2008, 2011

B. Accuracy of Data

The second challenge the available data present is determining their accuracy. This is a particularly difficult task for older data. For example, the Supreme Court annual report lists the disposal of 34 regular hearing matters in 1950, yet according to Judis and other searchable databases there were about 50 judgments in 1950.¹¹ Further, in 1965 and 1968, the annual reports list more cases as being instituted as regular hearing matters than disposed of as admission matters. This would seem to indicate that the Supreme Court had an acceptance rate of over 100 percent these two years, which is impossible. Perhaps there are errors in the data for these years or the manner in which admission and regular hearing matters were recorded was different than today. There is now no one easily identifiable who is able to answer with authority why these discrepancies exist or to attest to the accuracy of the data collected about the Court in its earlier years.

Other times there are contradictions between different data sources. For example, the annual statements and monthly statements sometimes are inconsistent with the statistics available in the annual report, especially in regard to pending matters. The 2008–2009 Annual Report lists 20,947 pending regular hearing matters in 1995. Meanwhile, the 1995 annual statement lists 298 more pending regular hearing matters, or 21,245. Such discrepancies are reasonably frequent between the data in the annual statements and the annual report; luckily, the differences are all as relatively minor as this 1995 example. For the purposes of this article, the number of pending matters are taken from the annual reports

¹¹Determined by a relevant search of the Indian Government's Judgment Information System (Judis), available at <<http://judis.nic.in/>>.

(unless otherwise noted) as Court staff may have gone back in later years to correct the number of pending matters listed in the annual report.¹²

Further, the way admission matters are listed as disposed of on the monthly statements since at least 2004 appears inaccurate. On the admission side, monthly statements list the number of cases that were disposed of through “leave granted” (i.e., accepted for regular hearing), “leave granted and disposed of” (i.e., a decision issued during a short hearing at the admission stage), and “in limine” (denied acceptance without any decision), as well as how many were “adjourned” or “after notice.” However, the numbers associated with each category of disposal seem suspect. First, the monthly statements show a much higher number of admission matters having “leave granted” at the admission stage each month than the number of matters shown as being registered that month as regular hearing matters. These two numbers should be equal. Once a matter has leave granted it should be immediately shown as becoming a new regular hearing matter that month, but the numbers do not show this (even if averaged out over a longer period of time).¹³ Further, the total number of disposals listed each month includes “after notice” and “adjourned” cases. These, though, are not disposed of cases. An adjourned case is simply adjourned and then will be decided later. Perhaps the monthly statements mean that a case that was once “adjourned” and then later decided is counted as an “adjourned” disposal, but this seems like a strange way to keep track of admission disposals. One would still want to know if an adjourned case was later disposed of through leave granted or in limine. Upon inquiry, Supreme Court staff acknowledged that these discrepancies exist and at least the “leave granted” issue was potentially the result of an error in the original computer program. A process has been started to identify and, if needed, fix this potential error, but there was no resolution of this issue by the time of publication of this article. As a result of these challenges in understanding the monthly statements, this article does not use any of the data concerning how admission matters are disposed of (leave granted, in limine, etc.) since it is difficult to know how to correctly interpret these statistics.

Finally, cases are categorized by subject matter (civil, criminal, labor, service, arbitration, etc.) by the filing party, and this is then cross-checked by Court staff. Still, this categorization may be done inaccurately, or at least inconsistently, between different persons and across time, particularly because many matters can involve multiple subject categories, but only one subject category may be selected for each case.

C. Understanding the Data that are Available (and Unavailable)

The third challenge when working with data about the Indian Supreme Court is to understand the Court’s relatively counterintuitive accounting methods. One of the most promi-

¹²Generally, the institution and disposal of matters per year as listed in monthly and annual statements matched the annual report. There were some smaller discrepancies found in the monthly statements from the 1970s and 1980s.

¹³Also, note that the terminology the Court uses in its monthly statements is sometimes curious. For example, it lists writ petitions and appeals as having “leave granted.” However, the term “leave granted” is usually associated only with the acceptance of special leave petitions. For example, the Supreme Court Rules list that in relation to a certified appeal the Supreme Court may accept or dismiss the petition, but generally do not give granting leave as an option. See The Supreme Court Rules, 1966, 38–50 (2010).

nent examples is how the Court tracks unregistered cases. If a case is filed without any defects it is immediately admitted and registered as a special leave petition (SLP), writ petition, or whatever other type of case it may be. However, if the registrar has identified a filing defect, such as a missing annexure or the failure to properly grant power of attorney, it is admitted, but filed as an unregistered matter. If the defect is later cured, the matter is then disposed of as an unregistered matter and registered as a regular admission matter. If the defect is not cured, and no further application is made, then the registrar simply disposes of the unregistered matter after 28 days.¹⁴ The Supreme Court in its annual report and *Court News* keeps track of instituted, disposed of, and pending admission cases, but it counts the disposal of unregistered cases in this calculation. As a result, many cases are actually counted twice: once when they are instituted/disposed of/pending as an unregistered admission case and then again when they are instituted/disposed of/pending as a normal admission matter after they are cured. Meanwhile, unregistered matters that are never cured are still counted once even though they never appeared before a judge.

This method of accounting has large consequences for how one understands the workload of the Court. For example, in 2009 the annual report states the Court had 69,171 admission matters instituted, while it disposed of 64,282 admission matters, and 30,087 admission matters were pending. In actuality, unregistered matters counted for 20,854 of the instituted admission matters, 20,112 of the disposed of admission matters, and 1,921 of the pending admission matters. As such, it would be more intuitive, and perhaps more accurate, to state that in 2009 the Court had 48,317 instituted admission matters, 44,170 disposed of admission matters, and 28,166 pending admission matters. By including unregistered matters in the final tally the Court effectively counts the same case twice, once as a defective unregistered matter, and then again once the defect is cured and the case is reentered into the system as a normal admission matter.

This accounting anomaly can be adjusted for in much of the data since 1993, but before 1993 it was not possible to learn how many of the matters were unregistered each year and so what percent of the admission matters were effectively being double counted. Therefore, for consistency in comparisons that involve years before 1993, the tallies in this article simply mirror the tallies as the Supreme Court presents them in the annual report, with unregistered matters included.

Further, the number of matters where the parties settle out of court, or are otherwise not contested, is not included in the available data provided by the Supreme Court. Since the parties took the time and expense to appeal to New Delhi, there are likely not as many cases that are uncontested at the Supreme Court as in the lower courts, but the number could still be significant. To understand how the Supreme Court spends its time it would be useful to know in how many cases it enters a default judgment or a judgment that is the result of an out-of-court settlement.¹⁵

¹⁴Supreme Court of India, *Practice and Procedure* 23 (2010).

¹⁵These data would probably be even more telling for the lower courts, where uncontested cases are presumably more common, but for which such data are currently not available. Pre-Independence, these data were kept track of. The Civil Justice Committee Report 1924–1925 (otherwise known as the Rankin Committee Report (1925)), for example,

Finally, another consequential accounting issue arises in the instance of keeping track of “miscellaneous” matters. From the 1970s and into the 1990s, the Supreme Court kept track of what it called “miscellaneous” admission matters in its monthly statements. These matters seem to essentially be interim applications in relation to ongoing admission matters, although what “miscellaneous” matters exactly includes is not defined anywhere in these monthly statements.¹⁶ Such “miscellaneous” matters accounted then (and now) for a sizeable percent of the docket. For example, in 1985 out of 89,119 instituted admission matters listed in the monthly statements, 52,877 were reportedly miscellaneous matters, meaning only 36,424 matters were nonmiscellaneous. The annual report only lists 36,243 admission matters for 1985 (essentially the 36,424 number). In other words, the annual report has not kept track of miscellaneous matters historically. In addition, none of the annual statements that were made available for this article since 1993 listed miscellaneous matters separately, nor did the monthly statements since 2004. Miscellaneous matters are essentially not counted any longer in any of the data sets available for this article even though they take up significant amounts of the Court’s time and often involve important questions of law.¹⁷

These three anomalies skew our perspective of the actual workload of the Supreme Court. On the one hand, unregistered matters are counted in the admission totals even though they never appear before a judge. Further, likely a small, but significant number of admission and regular hearing cases either settle out of court or are uncontested, but these are counted as disposals like any other case. On the other hand, miscellaneous matters do come before the Supreme Court’s judges in large numbers, but are not counted even though they take up a substantial amount of the Court’s time and resources. Given this situation, this article simply states these caveats and presents the data that are available.

found that only 10 percent of cases in the Bengal courts were contested. In the rest, either one party defaulted or there was an out-of-court settlement.

¹⁶Confusion is created about what these matters actually were in part because today many Supreme Court lawyers refer to all admission matters as “miscellaneous matters.” Further investigation is needed to understand fully what types of matters were included as “miscellaneous” in these earlier monthly reports. For example, besides “interim applications,” “after notice” and “adjourned” matters may have also been categorized as “miscellaneous.” “Fresh” admission matters were likely categorized as simply admission matters (not miscellaneous admission matters).

¹⁷One potential way to capture the number of miscellaneous matters is to track the number of “daily orders” the Supreme Court issues. Although daily orders do capture many of the Court’s final decisions, admission decisions, or decisions on adjournment, interim relief, or questions of procedure, they do not capture all of them. For example, in 2011 the Supreme Court issued 41,811 daily orders on its website. See *Case Status of Supreme Court of India*, available at <<http://courtnic.nic.in/courtnicsc.asp>>. According to the Annual Statement in 2011, the Supreme Court decided 6,002 regular hearing matters and 47,096 admission matters. Even when one takes into account that matters are often clubbed together, there are not enough daily orders to account for the overall number of decisions, including in miscellaneous matters. For example, a sample set of the cause list from one week in November 2012 and one week in January 2013 revealed that on average there were two regular hearing matters clubbed together in each potential disposal. For admission matters, for every four cases, one of those cases on average had an additional matter clubbed with it. If these rough estimates are any indication, there would be 3,001 regular hearing decisions and 37,677 admission decisions or 40,678 orders total (leaving just 1,133 remaining daily orders to account for miscellaneous decisions). Yet, a perusal of daily orders and a familiarity with the Court’s workload indicates there are far more miscellaneous matters in 2011 than 1,133.

III. A SHORT HISTORY OF THE SUPREME COURT'S WORKLOAD

After Independence there was a steady increase in the number of cases filed in the Indian Supreme Court. The number of positions for judges on the Court correspondingly increased from the original eight at Independence to 11 in 1956, and then to 14 in 1960, and to 18 in 1977.¹⁸ Between Independence and 1976, the number of admission matters the Court received increased five times from 1,037 to 5,549. However, in the wake of the state of emergency declared between 1975 and 1977 and the resulting political turmoil,¹⁹ it would increase almost another five times in just five years to 24,474 in 1981. Meanwhile, the number of five-judge or larger benches decreased from a high point of about 100 per year in the 1960s to just 15 a year in the second half of the 1970s.²⁰ After the Emergency, the Court would settle on an average of about 11 constitution benches a year. Meanwhile, two-judge benches, which were once considered “weak benches,” supplanted three-judge benches for the majority of the Court’s business.²¹ This large increase in workload and the corresponding changes in how the Court heard cases ushered in the birth of the modern Indian Supreme Court—one mired in thousands of petitions and perpetual backlog with far less time for larger constitution benches and other important matters.

The institution of regular hearing matters followed a similar, but slightly different path. Here, institution increased from 600 in 1951 to 2,705 in 1976 (more than quadrupling the institution rate of regular hearing matters). Five years later it had increased to 6,566 cases (more than doubling).

This trajectory of an ever increasing workload and backlog has continued with just a few interruptions since the Emergency. Shortly after the Emergency ended there was a modest drop off in the institution of new matters and a resulting decrease in the workload of the Court, with a relatively stable institution rate in the mid- to late-1980s. However, the number of new petitions increased significantly in the 1990s and the first decade of the 2000s. In an attempt to respond to these workload pressures the Court increased the maximum number of judges to 26 in 1986 and then to 31 in 2008.²²

In the early to mid-1990s there was a dramatic drop off in the number of recorded admission and regular hearing matters pending before the Court. Admission pendency

¹⁸Supreme Court (Number of Judges) Act 1956, Supreme Court (Number of Judges) Amendment Act 1960, Supreme Court (Number of Judges) Amendment Act 1977.

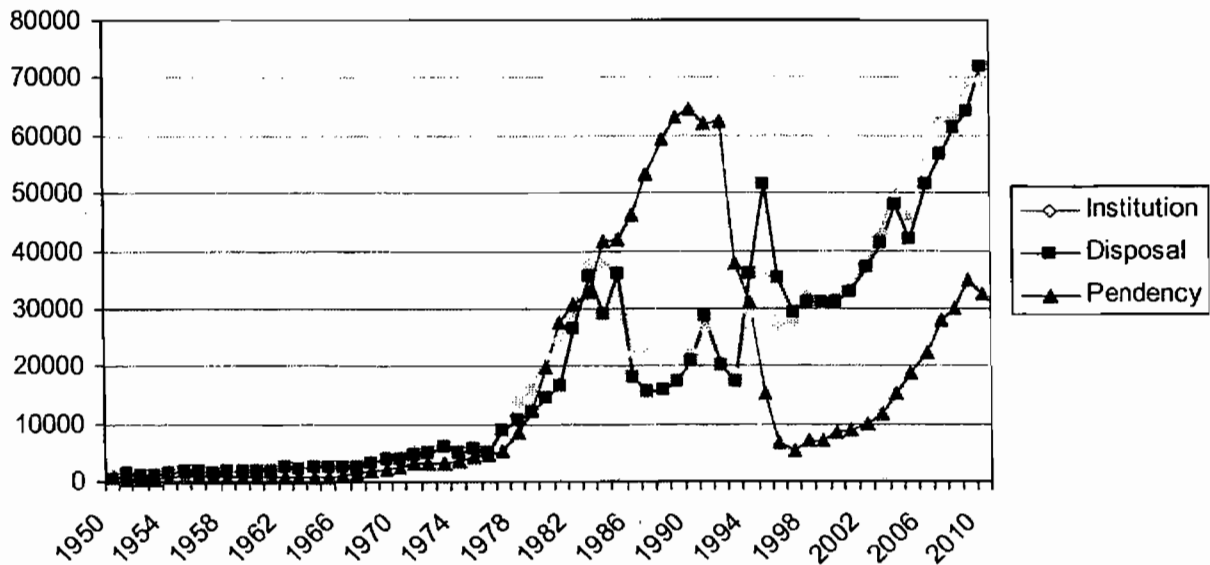
¹⁹The 21-month state of emergency, commonly referred to as “the Emergency” in India, gave Prime Minister Indira Gandhi the power to rule by decree and suspend civil liberties. A detailed history of the impact of the Emergency on the Indian judiciary can be found in Granville Austin, *Working a Democratic Constitution: A History of the Indian Experience* (2003).

²⁰For more on these data concerning five-judge and larger benches of the Indian Supreme Court, see Nick Robinson et al., *Interpreting the Constitution: Supreme Court Constitution Benches Since Independence*, 46(19) *Econ. & Pol. Wkly.* 27 (2011). The table on “Number of Five Judge of Larger Benches Decided Each Year” is taken from that article.

²¹Robinson, *supra* note 8.

²²Supreme Court (Number of Judges) Amendment Act 1986, Supreme Court (Number of Judges) Amendment Act 2008.

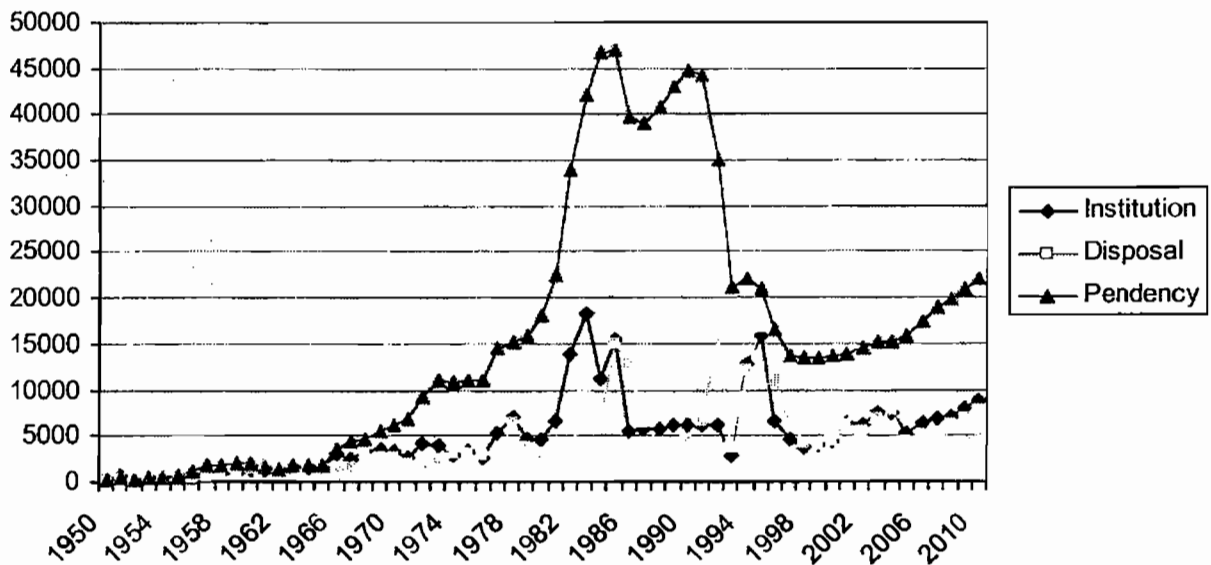
Figure 1: Supreme Court admission matter workload (1950–2010).



NOTE: Number of instituted, disposed of, and pending admission matters at the Supreme Court of India between 1950 and 2011.

SOURCE: Supreme Court of India Annual Report 2008–2009 and Supreme Court of India Annual Statement 2009, 2010, and 2011.

Figure 2: Supreme Court regular hearing workload (1950–2010).

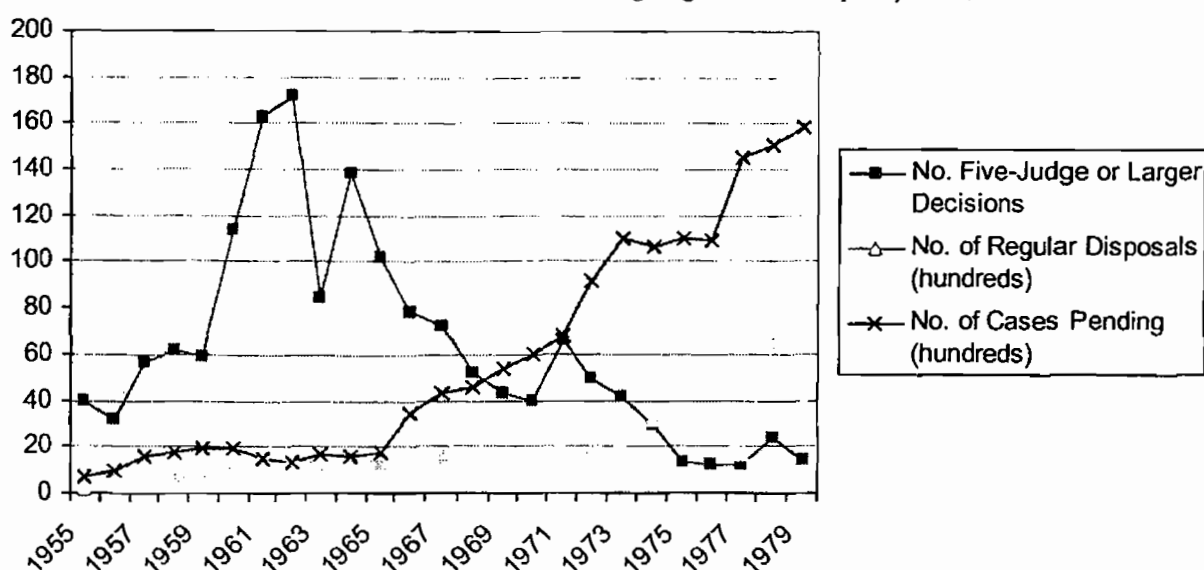


NOTE: Number of instituted, disposed of, and pending regular hearing matters at the Supreme Court of India between 1950 and 2011.

SOURCE: Supreme Court of India Annual Report 2008–2009 and Supreme Court of India Annual Statement 2009, 2010, and 2011.

dropped from 62,291 in 1992 to 6,660 in 1996. Regular hearing pendency dropped from 44,374 in 1991 to 21,245 in 1993. This decrease was primarily the result of two factors. First, between 1992 and 1993 the Court changed how it accounted for backlogged matters by switching from counting each hyphenated matter in a file to counting only the entire file

Figure 3: Supreme Court workload versus five-judge benches per year (1950–1979).



NOTE: The figure shows the decline in the number of five-judge or larger benches per year relative to the increase in pending regular hearing matters and the disposal of regular hearing matters. This figure starts in 1955 and ends in 1979 so as to highlight the decline in five-judge benches between the 1960s and 1975.

SOURCE: Supreme Court Annual Report 2008–2009 and Nick Robinson et al., *Interpreting the Constitution: Indian Supreme Court Constitution Benches Since Independence*, 46(9) *Econ. & Pol. Wkly.* (Feb. 26, 2011).

of clubbed matters (this modification in accounting reduced the number of admission matters pending by 26,354 and regular hearing matters by 12,892 essentially overnight). At the same time, during this period the Supreme Court brought in district court judges and other judicial officers to club matters together more effectively for Supreme Court judges to decide. This resulted in a corresponding spike in the number of cases disposed of and a reduction in backlog.²³

IV. GROWTH OF THE SUPREME COURT WORKLOAD AND PRECEDENT PROBLEMS?

Tellingly, the Indian Supreme Court's regular hearing workload has grown at a faster rate in recent years than either its admission workload or the number of matters disposed of by high courts or lower courts. *Court News* provides data on the number of matters disposed of by all the high courts and lower courts from 2005 through 2011. Using this information, we can compare the growth of the disposal of lower court and high court matters with the institution of Supreme Court appeals (i.e., SLPs and certified appeals) and instituted regular hearing matters at the Supreme Court.

²³The Supreme Court's annual reports describe how between 1992 and 1993 the Court changed how it counted clubbed matters. The description of how the Court brought in judicial officers to club matters during this period was shared during interviews with retired Supreme Court judges.

Table 2: Number of Five-Judge or Larger Benches Decided Each Year

	<i>Five+ Judge Benches</i>	<i>Regular Hearing Disposals</i>	<i>Pending Regular Hearing Matters</i>	<i>Five+ Judge Benches as % of Disposals</i>
1950-54	45.6	293	364	15.5
1955-59	49.8	435	1,458	11.5
1960-64	134.4	1,441	1,635	9.3
1965-69	69.4	2,018	3,957	3.4
1970-74	45	2,292	8,785	2
1975-79	15	3,561	13,522	0.42
1980-84	9	4,785	32,643	0.19
1985-89	12.6	8,483	41,830	0.15
1990-94	10.6	8,476	33,470	0.13
1995-99	9.2	8,651	15,595	0.1
2000-04	14	6,119	14,489	0.23
2005-09	6.4	5,557	18,574	0.12

NOTE: The table shows the average number of five-judge or larger benches per year during each five-year period between 1950 and 2009. It also shows the average number of regular hearing disposals and pending regular hearing matters per year during the same period.

SOURCE: Nick Robinson et al., *Interpreting the Constitution: Indian Supreme Court Constitution Benches Since Independence*, 46(9) *Econ. & Pol. Wkly.* (Feb. 26, 2011).

Table 3: Relative Growth of the Judiciary

	<i>Lower Ct Disposal</i>	<i>High Ct Disposal</i>	<i>S Ct Appealed</i>	<i>S Ct Accepted</i>
2005	17,263,362	1,338,245	28,478	5,198
2006	15,623,712	1,440,354	35,229	6,437
2007	15,164,847	1,450,996	38,498	6,822
2008	16,410,217	1,531,921	39,591	7,006
2009	16,965,198	1,593,369	42,707	7,980
2010	17,993,311	1,677,863	43,243	8,824
2011	18,617,095	1,785,432	41,233	9,070
% increase	7.8	33.4	44.8	74.5

NOTE: The table shows both the actual and percent increase in the number of matters disposed of by lower courts, disposed of by high courts, appealed to the Supreme Court, and accepted by the Supreme Court for regular hearing between 2005 and 2011.

SOURCE: Supreme Court of India, *Court News* 2005 to 2011.

What one sees in Table 3 is that from 2005 to 2011 the number of matters disposed of by the high courts grew by 33.4 percent. Meanwhile, the growth in admission matters instituted in the Supreme Court increased by 44.8 percent. Perhaps most importantly, during 2005 and 2011, the growth in the number of instituted Supreme Court matters for regular hearing (i.e., those admission matters accepted for regular hearing) grew by 74.5 percent.

The disproportionate growth of the Supreme Court's regular hearing matters is striking and the opposite of what one would intuitively expect. In theory, decisions should have precedential value.²⁴ This should help reduce the workload of the Supreme Court.

²⁴Art. 141 Const. of India ("The law declared by the Supreme Court shall be binding on all courts within the territory of India.").

Once the Supreme Court decides an issue it generally should not have to hear a case involving the same issue again and may rely on the high courts to implement its decision in similar cases. If the law is seen as settled, one would expect that litigants would not appeal to the Supreme Court as much and certainly that the Supreme Court would not accept their appeals for regular hearing. As such, the dockets of the high courts would be expected to grow more quickly than the docket of the Supreme Court. However, instead, we see the reverse.

These trajectories seem to indicate that increasingly litigants (likely rightly) feel that even if the high court has decided a matter it is worth appealing the same case to the Supreme Court. This may be because the high courts are no longer following precedent reliably, and so more litigants are appealing and the Supreme Court is accepting those appeals. Alternatively, the numerous benches of the Supreme Court might not be reliably following precedent themselves and/or giving conflicting precedent, meaning it makes sense for litigants to appeal and take their chances at the Supreme Court. Whatever the explanation, the disproportionate growth of the Supreme Court's docket relative to that of the high courts is likely not a sign of a judicial system that is successfully implementing a system of precedent.

Perhaps even more startling, lower court disposals from 2005 to 2011 only grew by 7.8 percent. There is some indication that this depressed growth rate may be the result of litigants trying to avoid the lower courts because of high backlog.²⁵ Whatever the reason, the Indian judiciary is currently seeing a rush of litigants toward the top of the system, and to the Supreme Court in particular. It is a trend, which according to the data, the Supreme Court has seemed quite willing to oblige.²⁶

V. TYPES OF PETITIONS

A. *The Rise of the SLP and the Decline of Article 32 Writ Petitions*

Admission matters are categorized by petition type at the Supreme Court. By far the most admission matters brought before the Supreme Court are special leave petitions (SLPs).²⁷ SLPs are appeals brought by the appealing party challenging the ruling of a lower court. The lower court has not certified the appeal and an SLP may be accepted by the Supreme Court at its discretion. Other major petition types include writ petitions, certified appeals, transfer petitions, review petitions, and contempt petitions. Writ petitions are brought directly to the Supreme Court without first being heard by a lower court where the Court's fundamental rights jurisdiction under Article 32 of the Constitution is invoked by the

²⁵See generally Theodore Eisenberg, Sital Kalantry & Nick Robinson, *Litigation as a Measure of Well-Being*, DePaul L. Rev. (forthcoming) (indicating that states with lower judiciaries with higher backlog have less of an increase in civil filing than one would expect based on their GDP growth).

²⁶For an elaboration of this type of analysis, see Nick Robinson, *Top Heavy Justice*, Indian Express, Dec. 17, 2012; Arghya Sengupta, *Inconsistent Decisions*, 30(8) Frontline (2013).

²⁷Art. 136 Const. of India.

litigants. Appeals are brought when a high court certifies that a case raises a substantial question of law that should be heard by the Supreme Court.²⁸ This category may also include certain statutory appeals, although it is unclear from the wording of the category and after conversation with Court staff whether in fact these statutory appeals are included.²⁹ Transfer petitions are those in which a case before a high court involving substantially the same question of law as a case currently before the Supreme Court is transferred to the Supreme Court to be heard together. They may also involve cases where a party requests the Supreme Court to transfer a civil or criminal matter from one court in a state to a court in another state.³⁰ Review petitions are those where the Supreme Court is asked to review one of its own previous decisions.³¹ Contempt petitions are brought by litigants asking the Court to hold another party in contempt.³²

Table 4, using data from annual statements, presents the percent each petition type has been of the total docket from 1993 to 2011. Note that unregistered petitions are not included in this calculus although they are listed in the annual statements and in recent years have made up about 30 percent of petitions.

As Table 4 shows, in recent years the percent of admission matters that are SLPs has increased slightly from 78–82 percent in the 1990s to 83–86 percent from 2005–2011. Transfer, review, and contempt petitions have remained a relatively stable fraction of the docket, accounting for about 3 percent, 5 percent, and a bit less than 1 percent of the docket in 2011, respectively, as they have for much of the last 18 years. The larger change in the Court's admission docket has come in relation to appeals and writ petitions. Appeals dropped from about 3–8 percent of the Court's docket in the 1990s to about 2–3 percent from 2006–2011, and writ petitions dropped from 4–7 percent to 1–2 percent of the docket during the same periods. Remarkably, both appeals and writ petitions saw not only a decline in their percent of the total docket, but also a decline in absolute numbers.

From a larger historical perspective, the proportion of the Court's docket that has been comprised of writ petitions has swung widely over the last several decades, but has been in steep decline in recent years. For example, writ petitions constituted 9 percent of admission matters in 1971.³³ However, with the advent of the Emergency in 1975, the

²⁸Art. 134A Const. of India.

²⁹In the monthly statements, the Court lists these petitions as civil or criminal "appeals." Some Court staff explained to the author that these petitions were only "certified appeals." It would be useful for the Court to more specifically differentiate between certified appeals and statutory appeals for the purposes of accounting, or at least make clear what was included in each category. For a list of the type of statutory appeals possible to the Supreme Court, see Supreme Court of India Practice and Procedure 12–14 (2010).

³⁰Art. 139A Const. of India; Supreme Court of India Practice and Procedure 14–15 (2010).

³¹Art. 137 Const. of India.

³²Art. 129 Const. of India.

³³Monthly statements from 1971 to 1990 tell us the number of SLPs and writ petitions filed for admission although they do not separately keep track of certified appeals, or transfer, review, or contempt petitions.

Table 4: Percent of Supreme Court Admission Docket by Petition Type

	<i>SLP</i>	<i>Writ</i>	<i>Appeal</i>	<i>Transfer</i>	<i>Review</i>	<i>Contempt</i>
1993	81.9	6.8	8.4	2.6	0.3	0.0
1994	81.5	4.1	8.0	2.4	3.9	0.0
1995	82.4	5.3	3.9	2.2	6.0	0.1
1996	79.6	5.5	3.4	2.6	7.8	1.0
1997	78.7	4.6	4.9	2.2	8.0	1.6
1998	82.9	4.1	3.9	2.2	5.4	1.1
1999	80.6	3.9	6.0	2.5	5.6	1.3
2000	83.0	3.7	5.3	2.3	4.5	1.0
2001	84.9	3.2	3.7	2.6	4.5	0.9
2002	85.1	2.5	3.2	2.7	4.6	1.6
2003	85.2	2.1	3.6	2.8	5.0	0.7
2004	85.8	2.5	3.2	2.4	4.4	0.6
2005	83.2	2.7	3.8	3.3	5.7	0.7
2006	84.8	2.1	3.5	3.7	4.7	0.6
2007	86.5	2.0	2.6	3.0	4.4	0.7
2008	86.3	1.9	2.6	3.2	5.0	0.6
2009	86.0	1.5	2.3	3.1	5.8	0.5
2010	85.9	1.2	3.0	3.2	5.0	0.6
2011	84.6	1.8	3.1	3.7	5.4	0.8

NOTE: The table shows what percent of cases instituted at the Supreme Court are special leave petitions (SLPs), writ petitions, appeals, transfer petitions, review petitions, and contempt petitions.

SOURCE: Supreme Court annual statements between 1993 and 2011.

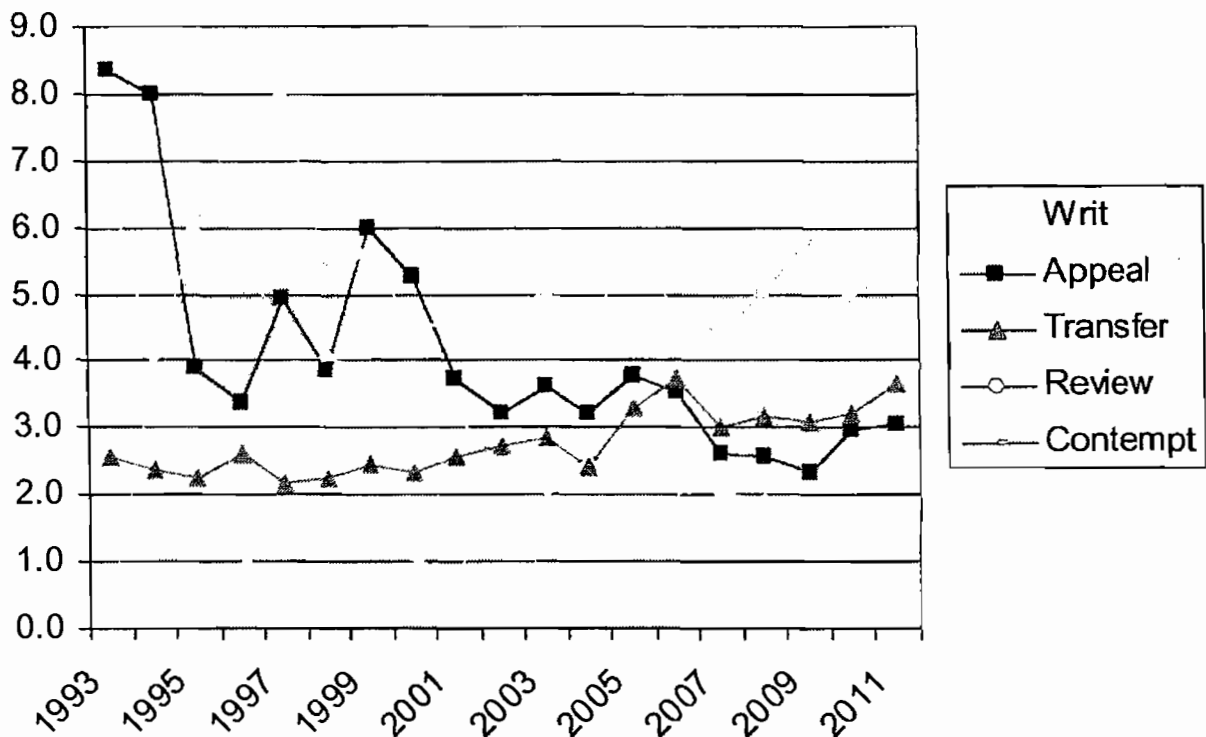
number of writ petitions had increased to 26 percent in 1975, then 31 percent in 1980, and 41 percent in 1985, before beginning a rapid decline to reach 15 percent by 1990, and eventually the 1–2 percent rates witnessed today. This decline is likely linked to a trend starting in the late 1980s of Supreme Court judges discouraging writ petitions directly to the Supreme Court unless they dealt with matters of vital national importance. Instead, judges encouraged litigants to file writ petitions in their respective high courts.³⁴

B. Civil and Criminal Petitions

The ratio of civil to criminal SLPs in the Supreme Court has also changed, albeit less dramatically, over the last 40 years. In 1971, 74 percent of admission SLPs were civil (26 percent criminal). This dipped to 71 percent in 1975, before, for reasons that are unclear, increasing to 77 percent in 1980, 82 percent in 1985, and 86 percent in 1990. It then began dipping again to 83 percent in 1995, 77 percent in 2000, 75 percent in 2005, and 74 percent in 2010. In recent years, both certified appeals and writs have been more likely to be civil

³⁴See, for example, *P.N. Kumar v. Municipal Corp. of Delhi*, (1987) 4 SCC 609 (directing a litigant to file a petition under Art. 226 to the high court and detailing 10 reasons litigants should generally approach high courts before the Supreme Court for fundamental rights violations).

Figure 4: Petition types by percent of admission docket.



NOTE: The figure shows what percent of the matters instituted at the Supreme Court are writ petitions, certified appeals, transfer petitions, review petitions, or contempt petitions. Special leave petitions (SLPs) are excluded.

Source: Supreme Court Annual Statements between 1993 and 2011.

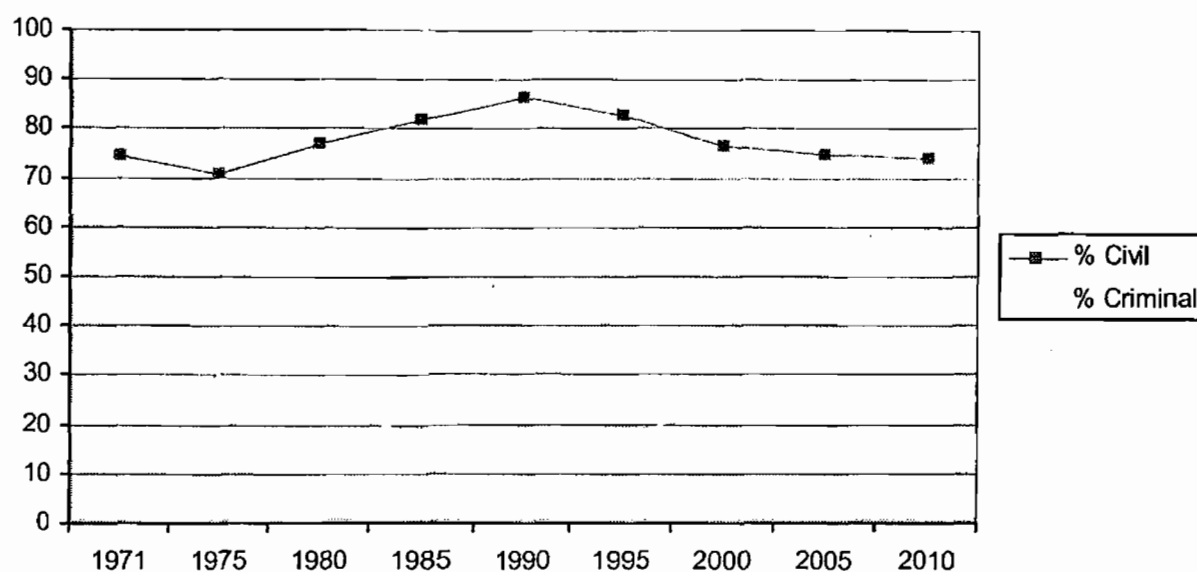
cases than SLPs, with writs being about 80 percent civil matters and certified appeals 83–84 percent civil cases over the last five years. Lower courts generally have more criminal matters than the Supreme Court. From 2005–2010, high courts averaged 67.5 percent of their instituted cases being civil and 32.5 percent criminal. In the subordinate courts during this period, 24.4 percent of cases were civil and 73.6 percent criminal.

VI. ORIGIN OF SUPREME COURT CASES

Appeals to the Supreme Court do not come to it evenly from high courts throughout the country. Those high courts situated in areas that are close to Delhi or that are wealthier are on average more likely to generate more appeals. For example, in 2011 18.6 percent of the Court's admission docket was appealed to it from Punjab and Haryana, while 10.6 percent was appealed from Delhi itself. Thus, even if compared in absolute numbers, appeals from these two high courts represented a larger portion of the Supreme Court's docket than high courts such as Bombay, Uttar Pradesh, or Madras that hear far more cases.

The disproportionate number of appeals from high courts close to Delhi and from those that represent wealthier states can be seen even more dramatically when one looks at the percent of cases disposed of by a high court that are appealed to the Supreme Court. The approximate percent of cases appealed from a high court can be calculated by dividing

Figure 5: Special leave petition (SLP) by civil or criminal.



NOTE: The figure shows the percent of civil special leave petitions versus criminal special leave petitions instituted at the Supreme Court between 1971 and 2010.

SOURCE: Supreme Court Monthly Statements 1971, 1975, 1980, 1985, 1990; Supreme Court Annual Statements 1995, 2000, 2005, and 2010.

the number of appeals to the Supreme Court from each high court by the number of disposals by the same high court.³⁵ When averaging 2006, 2007, 2008, and 2011, the Delhi High Court had the highest frequency of cases disposed by it appealed to the Supreme Court, with an appeal rate of 9.3 percent. The Uttaranchal and Punjab and Haryana High Courts, which are both near Delhi and are located in relatively wealthier states, also had appeal rates to the Supreme Court of over 5 percent. All other high courts besides Himachal Pradesh (3.2 percent) and Bombay (3.0 percent) had an appeal rate of less than 3 percent. Madras had an appeal rate of just 1.1 percent and Orissa less than 1 percent.³⁶

³⁵This approximation can be only a crude estimate. Beyond potential errors in the high court data, two inaccuracies bias estimates of an appeal rate. First, not all high court matters are appealed to the Supreme Court in the year they are decided, but can generally be appealed up to 60 or 90 days later depending on the type of matter. See Supreme Court of India Practice and Procedure 27 (2010). This discrepancy, though, should not skew results too much as presumably rates of appeal would change slowly between years. Second, and more troublingly, the Supreme Court counts as appeals not only appeals from high courts, but also tribunals. However, it does not disaggregate these data to distinguish between the two sorts of appeals from any given state. At the same time, the available high court data do not include the number of matters decided by tribunals in its jurisdiction that might be appealed directly to the Supreme Court. Therefore, when calculating the appeal rate, tribunal disposals are not included with high court disposals from that state, skewing the results. However, even if the calculated appeal rate is somewhat inaccurate, it should still provide a relational sense of appeal rates of different high court jurisdictions.

³⁶The affect of proximity to the Supreme Court seems to have an impact only on high courts closest to New Delhi. The four high courts with the highest appeal rate are also the four closest to the Supreme Court (in 2011 these high courts generated 34.1 percent of the appeals to the Supreme Court, but represented only 7.2 percent of the total population). Census of India, Provisional Populations Totals Paper 1 of 2011, 47 (2011). However, if you remove these four high courts from the calculus, the correlation between appeal rate and distance from the Supreme Court goes from being very strong to practically nonexistent (from a correlation coefficient of -0.63 , significant at $p < 0.003$, to a

Table 5: Origin of Appeals to the Supreme Court in Percent

	2006	2007	2008	2011
Punjab and Haryana	15.5	14.4	16.2	18.6
Delhi	10.8	10.8	11.2	10.6
Bombay	10.9	9.9	11.0	10.5
Uttar Pradesh	11.7	11.6	10.5	10.5
Karnataka	5.2	4.7	5.4	6.4
Madras	5.6	8.1	6.5	5.4
Madhya Pradesh	6.9	6.7	7.0	5.1
Gujarat	2.9	2.8	3.2	4.4
Rajasthan	6.0	4.7	5.5	4.2
Andhra Pradesh	5.3	5.0	3.9	3.9
Kerala	3.9	4.5	4.0	3.8
Himachal Pradesh	0.9	1.3	1.3	3.2
Bihar	2.3	3.5	3.1	3.0
Calcutta	2.8	3.3	3.3	2.4
Orissa	1.0	1.4	1.9	2.3
Uttaranchal	2.5	2.8	2.4	1.7
Chhattisgarh	1.3	1.2	0.8	1.3
Jharkhand	2.3	1.7	1.3	1.1
Assam	1.5	1.3	1.0	0.9
Jammu and Kashmir	0.6	0.4	0.5	0.5
Sikkim	0.0	0.0	0.0	0.0

NOTE: The table shows the percent of appeals to the Supreme Court originating from each high court jurisdiction in India for 2006, 2007, 2008, and 2011. Data on the origin of appeals were not able to be acquired for 2009 and 2010.

SOURCE: State-wise origin of Supreme Court appeals (2006–2008, 2011) provided by the Supreme Court of India.

Information concerning from which high court regular hearing matters, as opposed to admission matters, had been appealed could not be ascertained. Therefore, it is unclear if the Supreme Court's regular hearing docket disproportionately represents certain states as does its admission docket.

correlation coefficient of -0.11 , significant at $p < 0.69$). The rapid drop off on the correlation with geographic proximity makes some intuitive sense. After a certain distance, the Supreme Court becomes more or less equally far for all litigants in that their lawyer in the high court is less likely to also have a Supreme Court practice or local connections to the Supreme Court bar. Barriers of time and expense to reach the Supreme Court become roughly equal. The correlation between GNP per capita and appeal rate is stronger than geographic proximity (0.76 , significant at $p < 0.0001$). However, it becomes far less strong if one removes the high courts with the four highest rates of appeal (0.31 , significant at $p < 0.24$). Part of the explanation for this phenomenon may be that three of the poorer states (Madhya Pradesh, Rajasthan, and Uttar Pradesh) are also relatively close to the Supreme Court. It may be that they are close enough that their proximity drives up their appeal rate, while their relative poverty acts in the other direction, driving it down, which then ends up dampening the perceived correlation between GNP per capita and geographic proximity. Also, in removing four high courts, the sample set becomes significantly smaller (going from 20 to 16), thereby making it more difficult to show a significant correlation.

Table 6: Appeal Rate from Each High Court to the Supreme Court in Percent (Approximately)

	2006	2007	2008	2011	Average	Distance from S. Ct. (km)	GNP per Capita 2010–2011 (Rs)
Delhi	6.6	9.1	10	12	9.4	2	150,653
Punjab and Haryana	6.2	8.1	6.2	8.9	7.4	260	(69,737) (94,680)
Uttaranachal	5.2	4.9	6.2	7	5.8	272	66,368
Himachal Pradesh	2.9	3.1	2.7	4.3	3.3	362	65,535
Bombay	3.2	2.8	2.4	3.8	3.1	1,395	83,471
Karnataka	3.5	3.6	2.4	2.2	2.9	2,073	60,946
Andhra Pradesh	2.6	3.1	2.9	2.8	2.9	1,506	62,912
National Average	2.4	2.6	2.5	2.7	2.6		60,972
Madhya Pradesh	2.3	2.4	2.8	2.4	2.5	800	32,222
Rajasthan	3.1	2.7	2.5	1.2	2.4	572	42,434
Uttar Pradesh	2.4	2.3	2.3	2.2	2.3	693	26,355
Jharkhand	1.7	2.8	2.2	2.1	2.2	1,191	29,786
Gujarat	1.5	1.5	1.8	3.2	2.0	932	75,115
Kerala	1.5	2	1.8	2.5	2.0	2,574	71,434
Chattisgarh	2.1	1.5	1.2	2.8	1.9	1,186	41,167
Calcutta	1.5	1.8	1.7	1.7	1.7	1,439	48,536
Assam	1.6	1.6	1.4	1.2	1.5	1,805	30,569
Bihar	1	1.7	1.3	1.6	1.4	1,026	20,708
Madras	0.8	1.3	1.1	1.1	1.1	2,118	72,993
Jammu and Kashmir	1.2	0.7	1	1.2	1.0	867	37,496
Orissa	0.6	0.8	1	1.2	0.9	1,688	40,412

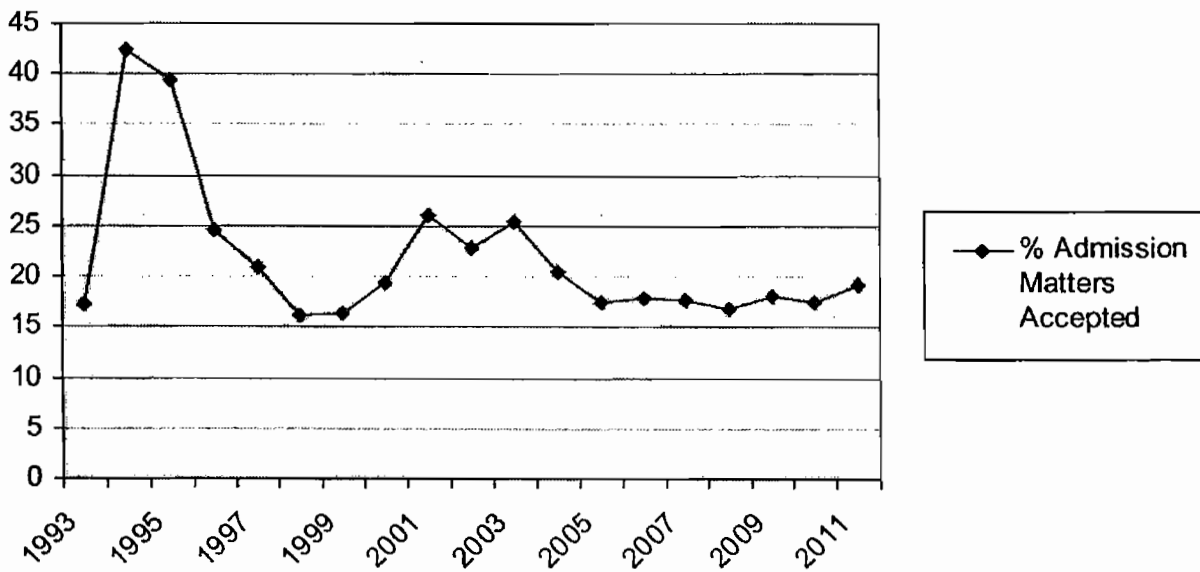
NOTE: The table lists the approximate percent of cases appealed from each high court to the Supreme Court and the distance of the primary high court bench in each jurisdiction to the Supreme Court as well as the GNP per capita of the state.

SOURCE: State-wise origin of Supreme Court appeals (2006–2008, 2011) provided by the Supreme Court of India; *Court News* (2006–2008, 2011); distances calculated using shortest driving route (in distance) on Google Maps from the respective high court to the Supreme Court; Directorate of Economics & Statistics of respective state governments, and for all India, the Central Statistics Office.

VII. ACCEPTANCE RATES

One way to attempt to determine the number of admission matters accepted by the Supreme Court for regular hearing is to compare the number of admission matters disposed of with the number of regular hearing matters instituted in a given year. However, as mentioned before, the annual report includes unregistered matters in its admission totals. Therefore, to come up with an approximate acceptance rate of the number of admission matters disposed of that are accepted for regular hearing one needs to subtract unregistered matters from the total number of admission matters. Doing this, one finds that since 1996 the Court's acceptance rate of admission matters has been between 15 percent and 26 percent. In 1994 and 1995, there was a spike in the percent of cases accepted for regular hearing. It is not certain why this occurred, although it was during the period that the Court was quickly reducing its admission pendency and so the spike may be related to those efforts.

Figure 6: Percent of admission matters accepted (approximately).



NOTE: The figure shows the percent of admission matters accepted for regular hearing per year by the Supreme Court of India by dividing the number of instituted regular hearing matters by the number of disposed of admission matters each year.

SOURCE: Supreme Court of India Annual Statement (1993–2011).

VIII. BACKLOG

The Indian Supreme Court's backlog is notorious. Figure 7 shows—from 1993 to 2011—the number of years it would take the Supreme Court to clear all its pending regular hearing matters if it received no new matters and disposed of regular hearing matters at the rate of disposal from that year. This has averaged from 1.25 years in 1995 to 3.67 years in 2011 (1993 seems like an anomaly in this data set).

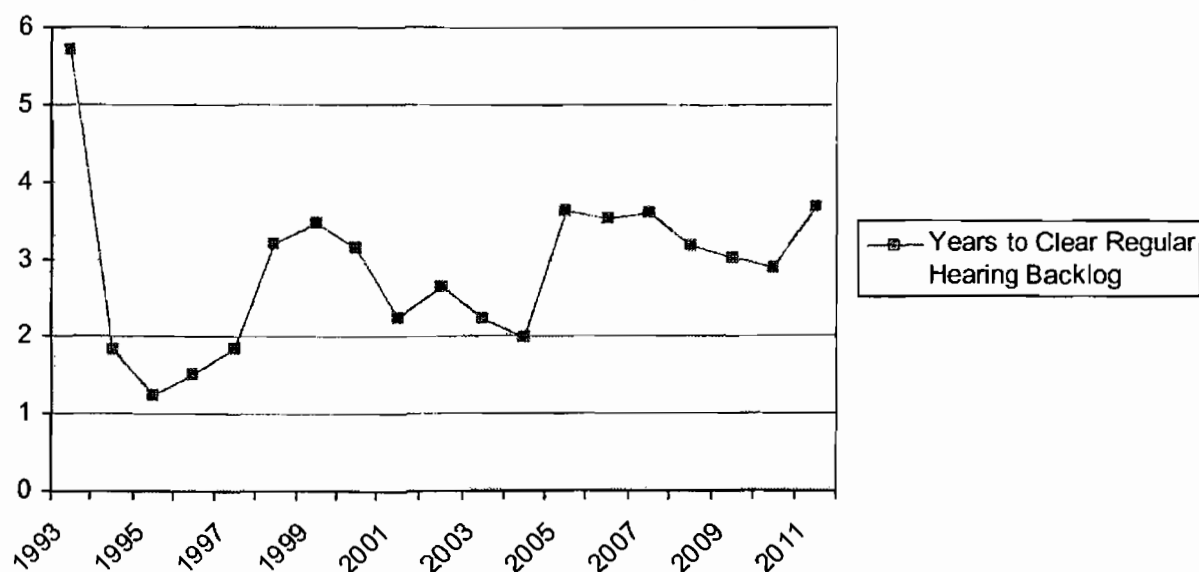
Using more detailed backlog data that are available since 2004, one finds that between 2004 and 2011, as more cases have been instituted, cases have also on average taken increasingly longer to be decided. This is true of both admission and regular hearing matters, but is more pronounced for admission matters.

IX. CASES BY SUBJECT MATTER CATEGORY

Tables 9 and 10 on admission and regular hearing disposals by subject matter allow one to get a sense of what types of cases the Court decides.³⁷ Perhaps not surprisingly, criminal, ordinary civil, service, labor, land acquisition, and tax matters make up the bulk of the Court's caseload, with other types of matters being much less numerous. It is noteworthy that service matters (i.e., matters involving the employment of government officials) are the

³⁷For a full list of all 47 subject matter categories, including subcategories, see Supreme Court of India List of Revised Subject Categories 30/6/2010 & 8/7/2010, available at <<http://supremecourtindia.nic.in/subcat.pdf>>. Note that the data obtained for this article did not include breakdowns by subcategory.

Figure 7: Years to clear regular hearing backlog (approximately).



NOTE: The figure shows the number of years it would take the Supreme Court to clear the current regular hearing backlog, calculated by dividing the number of pending regular hearing matters in a year by the number of disposed of regular hearing matters.

SOURCE: Supreme Court of India Annual Statements (1993–2011).

Table 7: Age of Pending Admission Matters

	<i>One Year or Younger</i>	<i>Two Years or Younger</i>	<i>Older than Two Years</i>
2004	71%	93%	7%
2005	62	88	12
2006	62	84	16
2007	57	82	18
2008	50	76	24
2009	50	73	27
2010	44	67	33
2011	46	67	33

NOTE: The table shows what percent of pending admission matters were filed less than one year before, less than two years before, and how many were filed more than two years earlier.

SOURCE: Supreme Court of India monthly statements (2004–2011).

second most frequent type of regular hearing matter disposed of after criminal matters. This finding will undoubtedly reinforce the reputation of government employees as being doggedly litigious. It may also indicate deeper problems with the terms of government employment that cause so much litigation in the first place and seem to require the Supreme Court to keep revisiting service law cases so frequently. Public interest litigation (PIL) matters, despite being heavily covered by the media, made up only 1–2 percent of the Court's admission and regular hearing disposals between 2005 and 2011.

Five-judge bench matters, which this article has already indicated have been in decline in recent decades, made up 1 percent or less of its disposals in each year between

Table 8: Age of Pending Regular Hearing Matters

	<i>Two Years or Younger</i>	<i>Five Years or Younger</i>	<i>Older than Five Years</i>
2004	53%	93	7
2005	45	90	10
2006	41	87	13
2007	41	83	17
2008	39	79	21
2009	39	77	23
2010	44	82	18
2011	43	83	17

NOTE: The table shows what percent of pending regular hearing matters were instituted as a regular hearing matter less than two years before, less than five years before, and how many were instituted more than five years earlier.

SOURCE: Supreme Court of India monthly statements (2004–2011).

2005 and 2011. In fact, in 2009 the Court disposed of no regular hearing five-judge bench matter. The reason no five-judge bench matter was disposed of that year is likely because of the preference of Chief Justice Balakrishnan. The Chief Justice of the Supreme Court plays a dominant role in governing the institution.³⁸ He can set up special benches to hear tax or environmental matters. He assigns which judges will sit on benches together. He also decides when five judge or larger matters will be heard. In 2008 and 2009, the Court disposed of a low rate of five-judge bench matters (just seven in 2008 and none in 2009). This time period corresponded with Chief Justice Balakrishnan's tenure as chief justice, perhaps indicating that during 2008 and 2009 he prioritized other goals of the Court (such as clearing as many matters as possible) over scheduling larger, and more time-consuming, five-judge benches.³⁹ However, in 2010 (Chief Justice Balakrishnan retired in May 2010) the number of five-judge matters disposed of spiked to 68. It is unclear if Chief Justice Balakrishnan or the next chief justice, Kapadia, was responsible for this increase. In 2011, while Chief Justice Kapadia was still chief justice, the number of five-judge bench disposals dropped again to just five.

A. Acceptance Rate by Subject Matter Category

Acceptance rates for admission matters for different types of subject categories vary considerably. Acceptance rates can be approximated by taking the number of instituted regular hearing matters in each subject category for the years 2005–2011 and dividing them by the respective number of disposals for admission matters in the same subject category. For example, in 2007, 2,406 labor admission matters were disposed of; in the same year, 276

³⁸For a description of the dominant role the chief justice plays, see Robinson, *supra* note 8.

³⁹The tenures of these chief justices were taken from a list of former chief justices on the Supreme Court of India website, available at <<http://supremecourtindia.nic.in/judges/rcji.htm>>.

Table 9: Disposal of Admission Matters by Subject Category (Percent)

	2005	2006	2007	2008	2009	2010	2011	Average
Criminal matters	25.5	23.3	25.3	26.1	25.5	25.6	25.9	25.3
Ordinary civil matters	13.0	14.5	14.4	14.4	14.4	14.8	14.4	14.3
Service matters	14.0	15.3	12.9	12.6	13.0	12.9	14.2	13.6
Land acquisition and requisition matters	5.1	5.9	5.3	5.6	6.2	9.0	8.3	6.5
Direct tax matters	2.5	3.4	4.7	5.8	7.4	5.7	6.2	5.1
Indirect tax matters	6.2	5.3	6.2	4.0	4.1	3.4	3.4	4.6
Labor matters	4.4	5.6	4.2	3.8	3.9	3.8	3.2	4.1
Rent Act matters	3.9	3.8	4.0	3.5	3.0	3.0	2.8	3.4
Compensation matters	1.9	2.1	2.6	3.5	3.0	2.7	2.9	2.7
Matters relating to consumer protection	4.2	2.2	2.1	2.2	2.4	2.4	1.8	2.5
Land laws and agricultural tenancies	2.5	2.1	2.1	2.2	2.2	1.9	2.2	2.2
Personal law matters	2.1	1.8	2.2	2.3	1.9	2.1	2.0	2.1
Letter petition and PIL matters	1.7	1.7	1.6	1.7	1.7	1.6	1.3	1.6
Arbitration matters	1.3	1.7	1.8	1.6	1.3	1.5	1.4	1.5
Matters pertaining to armed forces and paramilitary forces	0.9	1.3	0.9	1.3	1.5	1.2	0.9	1.1
Mercantile laws, commercial transactions including banking	1.1	1.0	1.1	1.1	1.0	0.8	1.0	1.0
Family law matters	0.8	0.8	0.7	0.8	1.0	1.1	1.1	0.9
Contempt of court matters	1.0	0.9	1.1	0.8	0.6	0.6	0.6	0.8
Company law, MRTP, and allied matters	0.7	0.8	0.8	0.6	0.6	1.1	0.8	0.8
Election matters	0.6	0.9	0.7	0.8	0.8	0.8	0.7	0.8
Admission/transfer to engineering and medical colleges	0.9	0.9	0.6	0.7	0.7	0.6	0.5	0.7
Religious and charitable endowments	0.6	0.5	0.8	0.8	0.6	0.4	0.5	0.6
Matters relating to judiciary	0.6	0.6	0.5	0.5	0.5	0.6	0.4	0.5
Matters relating to leases, gov't contracts, and contracts by local bodies	0.7	0.7	0.4	0.5	0.4	0.4	0.4	0.5
Establishment and recognition of educational institutions	0.4	0.4	0.3	0.4	0.2	0.1	0.4	0.3
Three-judge bench matters	0.9	0.5	0.4	0.1	0.2	0.1	0.1	0.3
Simple money and mortgage	0.3	0.2	0.3	0.3	0.3	0.3	0.6	0.3
State excise trading in liquor privileges, licenses—distilleries, breweries	0.4	0.6	0.3	0.3	0.3	0.2	0.2	0.3
Appeal against statutory bodies	0.3	0.2	0.3	0.1	0.2	0.2	0.7	0.3
Mines, minerals, and mining leases	0.3	0.2	0.3	0.2	0.3	0.2	0.2	0.2
Academic matters	0.1	0.1	0.2	0.1	0.2	0.1	0.2	0.2
Five-judge bench matters	0.2	0.1	0.0	0.2	0.0	0.0	0.0	0.1

NOTE: The table shows what percent of cases relate to a given subject category in the admission matters the Court disposed of from 2005 to 2011. The Court uses 47 subject categories to track its workload. However, this table and Table 10 track only 32, as many subject matter categories tally a negligible number of matters.

SOURCE: Supreme Court of India, subject matter category institution and disposal for admission (2005–2011).

labor matters were instituted for regular hearing at the Supreme Court. Therefore, presuming that all admission disposals that are accepted are instituted as regular hearing matters that same year, the acceptance rate for labor matters is 15.6 percent.

This approximation of the percent of acceptances by subject matter category, though, is not precisely accurate. First, admission disposals by subject matter category

Table 10: Disposal of Regular Hearing Matters by Subject Category (Percent)

	2005	2006	2007	2008	2009	2010	2011	Average
Criminal matters	18.6	20.8	19.3	20.7	21.0	19.7	24.0	20.6
Service matters	9.1	17.5	14.6	13.9	14.3	11.7	23.7	15.0
Ordinary civil matters	11.5	13.7	11.9	14.6	7.8	11.7	11.8	11.8
Land acquisition and requisition matters	10.0	3.7	6.9	7.4	7.9	15.3	7.6	8.4
Indirect tax matters	13.2	9.4	12.9	9.1	5.6	3.9	4.6	8.4
Direct tax matters	3.7	3.1	6.2	5.2	9.8	7.4	1.6	5.3
Labor matters	5.5	7.2	4.2	5.0	4.6	3.2	2.4	4.6
Matters relating to consumer protection	6.4	1.6	1.4	1.9	5.8	2.6	1.5	3.0
Rent Act matters	2.8	2.9	3.1	1.6	3.8	2.2	1.0	2.5
Compensation matters	1.2	1.0	2.6	3.6	2.4	2.2	2.2	2.2
Land laws and agricultural tenancies	1.0	1.4	1.3	2.2	3.0	2.6	2.2	1.9
Arbitration matters	1.1	1.8	2.6	2.0	2.8	1.1	1.4	1.8
Personal law matters	1.1	1.5	1.1	1.6	1.8	1.7	1.7	1.5
Letter petition and PIL matters	0.8	2.1	0.8	0.8	1.5	0.7	2.6	1.3
Three-judge bench matters	3.7	1.1	0.5	0.7	0.4	2.3	0.3	1.3
Mercantile laws, commercial transactions including banking	0.8	1.8	1.2	1.4	0.7	1.1	0.6	1.1
Company law, MRTP, and allied matters	1.3	1.5	1.3	1.3	0.5	0.2	0.8	1.0
Admission/transfer to engineering and medical colleges	0.3	0.7	0.6	0.2	1.2	2.2	1.3	0.9
Matters pertaining to armed forces and paramilitary forces	0.6	1.5	0.9	0.5	0.6	1.6	0.8	0.9
Election matters	0.6	0.9	1.5	0.4	0.6	0.9	0.9	0.8
Contempt of court matters	0.6	0.7	0.8	0.6	0.6	0.6	1.1	0.7
Family law matters	1.6	0.5	0.5	0.4	0.5	0.7	0.4	0.6
Religious and charitable endowments	0.5	0.3	0.6	0.7	0.2	0.7	0.7	0.5
Matters relating to leases, gov't contracts, and contracts by local bodies	0.8	0.6	0.4	0.5	0.4	0.2	0.3	0.5
Establishment and recognition of educational institutions	0.8	0.2	0.2	1.4	0.1	0.1	0.3	0.4
Matters relating to judiciary	0.3	0.1	0.1	0.2	0.5	1.0	0.8	0.4
State excise trading in liquor privileges, licenses—distilleries, breweries	0.0	0.7	0.4	1.0	0.4	0.1	0.4	0.4
Five-judge bench matter	0.8	0.3	0.3	0.1	0.0	1.0	0.1	0.4
Mines, minerals, and mining leases	0.2	0.3	0.3	0.3	0.2	0.2	0.6	0.3
Academic matters	0.1	0.0	0.5	0.1	0.2	0.1	0.9	0.3
Appeal against statutory bodies	0.3	0.4	0.3	0.0	0.3	0.1	0.4	0.3
Simple money and mortgage	0.3	0.3	0.4	0.3	0.3	0.2	0.2	0.3

NOTE: The table shows what percent of cases relate to a given subject category in the regular hearing matters the Court disposed of from 2005 to 2011.

SOURCE: Supreme Court of India, subject matter category institution and disposal for admission (2005–2011).

include unregistered matters. Unregistered matters are not kept track of separately by subject matter category and so could not be removed from the data set to make these calculations. Second, for a reason that could not be determined, the tallies for the total number of admission and regular hearing cases categorized by subject category did not match the annual report tallies for the same years, although they were relatively close.

However, despite these shortcomings, the data that are available should give a fairly accurate relational sense of the acceptance rate of different kinds of matters.

As one can see from Table 11, larger bench, tax, company law, arbitration, and land acquisition matters all had an above average chance of being accepted for regular hearing. Meanwhile, ordinary civil matters, personal and family law matters, consumer protection cases, and compensation matters had far less chance of being accepted. It is difficult to know precisely why certain categories of cases are accepted more than others. Perhaps some categories of cases, like tax, arbitration, company law, or mining, that are accepted at a higher rate involve clients who can afford to pay for prestigious lawyers who could be more skilled at having their matters accepted.⁴⁰ Alternatively, these tax and arbitration matters may involve more sophisticated repeat players before the Court who better understand what types of cases would likely be accepted by the Court on appeal, and so do not bother appealing cases with a low likelihood of admission.⁴¹ Perhaps some matters that are not accepted as often, like personal or family law cases, are less likely to involve novel or complex questions of law that the Supreme Court feels it needs to address or clarify. Or maybe these appellants are more likely to have meritless claims and are instead appealing to the Supreme Court simply to delay following an adverse lower court order. Some high acceptance matters like tax and service matters involve appeals from tribunals, perhaps indicating that the Court is less trustful of these bodies than of high courts.

Although most of the subject matter categories show acceptance rates that are remarkably stable over the seven years of data, several categories show curious volatility. For example, from 2005–2007, appeals against statutory bodies were highly unlikely to be accepted (at a rate of less than 1 percent).⁴² However, starting in 2008, the data show over 20 percent of such appeals were accepted. There are several possible reasons for this anomaly. It might be that this shift marks a real increase in skepticism by the Court toward these statutory bodies. Alternatively, at least until 2011 no more than 200 admission matters that were against statutory bodies were ever brought before the Court in any given year. It may be that the relatively small data set skewed the results. Finally, this anomaly might point to some error in the data. Still, in 2011 there was a recorded jump in the number of admission matters for appeals against statutory bodies brought before the Court, which is exactly what one would expect if litigants now believed there was a greater chance of this type of appeal being accepted by the Court.

One of the more suspicious anomalies in the acceptance rate data is the shift in direct tax and indirect tax matters acceptance rates in 2008. Although direct tax matters dropped from an acceptance rate of over 20 percent to below 10 percent in 2008, indirect tax matters increased from an acceptance rate of about 15 percent to almost 30 percent in 2008. There

⁴⁰For an in-depth study of the role of elite, and generally very highly priced, litigators at the Indian Supreme Court, see Marc Galanter & Nick Robinson, *India's Grand Advocates* (forthcoming).

⁴¹For the most famous theoretical description of this phenomenon, see Marc Galanter, *Why the Haves Come Out Ahead: Speculation on the Limits of Legal Change*, 9(1) *L. & Soc'y Rev.* 95 (1974).

⁴²These statutory bodies include tribunals such as the Telecom Dispute Settlement Appellate Tribunal or the Railways Rates Tribunal.

Table 11: Acceptance Rate for Regular Hearing (Percent Accepted)

	2005	2006	2007	2008	2009	2010	2011	Average
Five-judge bench matters	11.5	17.8	55.6	60.4	35.3	76.5	66.7	46.3
Three-judge bench matters	34.0	38.8	21.7	60.5	16.7	64.6	25.7	37.4
Indirect tax matters	11.6	15.2	14.8	29.4	26.0	25.3	35.6	22.6
Company law, MRTP, and allied matters	13.2	12.6	10.9	31.3	18.6	16.5	20.5	17.7
Mines, minerals, and mining leases	21.1	17.0	10.4	14.2	16.7	15.7	24.5	17.1
Direct tax matters	27.3	25.3	20.7	9.6	7.3	15.9	11.7	16.8
Appeal against statutory bodies	0.9	3.0	0.7	24.7	22.4	22.1	33.5	15.3
Land acquisition and requisition matters	12.7	18.2	13.9	14.7	12.2	18.3	15.7	15.1
Arbitration matters	17.3	15.1	19.5	11.6	11.8	10.1	11.1	13.8
Establishment and recognition of educational institutions	10.6	10.2	11.9	37.6	16.3	6.1	3.4	13.7
Service matters	11.6	14.0	16.1	10.9	14.3	11.3	16.9	13.6
Labor matters	14.4	12.4	15.6	10.1	10.2	12.0	15.5	12.9
Matters relating to consumer protection	8.0	9.5	9.1	14.1	19.7	15.0	14.6	12.8
<i>Average</i>	<i>11.8</i>	<i>12.4</i>	<i>12.1</i>	<i>11.3</i>	<i>11.4</i>	<i>12.0</i>	<i>13.0</i>	<i>12.0</i>
Mercantile laws, commercial transactions including banking	12.5	14.5	11.1	11.7	14.6	10.0	8.5	11.8
Religious and charitable endowments	11.9	7.5	7.8	10.5	13.3	17.8	11.0	11.4
Criminal matters	12.2	11.4	11.4	10.9	10.9	10.7	11.3	11.2
Compensation matters	9.8	9.9	9.8	11.2	11.9	9.9	14.1	10.9
Matters relating to judiciary	15.7	10.5	9.9	1.8	6.0	13.0	18.1	10.7
Letter petition and PIL matters	11.9	13.8	7.5	5.0	4.4	8.6	20.6	10.3
Family law matters	13.1	9.2	9.5	11.1	9.0	8.7	7.2	9.7
Personal law matters	9.0	10.6	7.5	9.1	10.3	9.7	9.2	9.3
Matters pertaining to armed forces and paramilitary forces	5.9	7.6	9.7	4.3	8.4	15.5	9.5	8.7
Ordinary civil matters	9.1	8.6	8.7	8.8	8.5	8.8	7.8	8.6
Election matters	9.9	10.5	3.9	5.6	7.0	13.8	9.7	8.6
Land laws and agricultural tenancies	7.8	7.8	9.9	7.3	8.8	8.9	7.5	8.3
Rent Act matters	8.6	7.3	7.8	5.6	4.8	4.9	4.0	6.2
Contempt of court matters	1.7	5.6	5.6	7.2	8.0	4.7	7.6	5.8

NOTE: The table shows percent of matters accepted for regular hearing by subject category. Matters in bold indicate those that on average from 2005–2011 comprised over 2 percent of the Court's admission disposals per year, which is over 1,200 matters a year.

SOURCE: Supreme Court of India, subject matter category institution and disposal for admission and regular hearing matters (2005–2011).

are on average over 3,000 admission direct tax matters and over 2,900 admission indirect tax matters per year between 2005 and 2011, so this shift in 2008 is not the result of simply having volatility within a small data set. Instead, it is more likely that this swing represents either a real change in how the Court decided these types of matters, an error in the data, or a change in how the data were collected (perhaps, e.g., some cases that were once considered direct tax matters were reclassified as indirect tax matters or vice versa).

Finally, it is worth noting, that the acceptance rates in Table 11 might portray an overall inaccurate picture insofar as many admission cases are not accepted for regular hearing, but dismissed at the admission stage with a short order that actually does resolve the dispute. This could potentially be more likely in personal or family law cases, for example, because the judge feels that the Court should come to a decision more quickly and so takes some time on an admission day to hear the merits of the case.

B. Backlog by Subject Matter Category

When one examines backlog at the Supreme Court by subject matter category one finds that family law matters, criminal matters, and labor and service matters are heard more quickly on average. Tax, arbitration, company law matters, and mining matters all take longer than average to be decided (see Table 12).

It is striking that the matters that are more backlogged—like tax, arbitration, and company law matters—also have higher acceptance rates. Intuitively, one would not expect that just because a certain type of matter is accepted more that this type of matter would then be more backlogged. Still, this may make sense for tax matters as the Supreme Court has a specific tax bench that deals primarily with tax matters. If other benches do not generally deal with tax matters, then the more tax matters that are accepted the more this bench will become backlogged, resulting in longer disposal times. Other explanations for these different backlog averages might also be at work. For example, criminal and family matters often involve children or persons in prison and so may be prioritized by the Court for this reason.

Larger benches—that is, three-, five-, and seven-judge bench matters—are all backlogged by the most years. Given the flood of cases it faces, the Court does not seem to have the time or spare judges to prioritize these pressing matters, which make up a core part of its constitutional mandate. Public interest litigation also seems to be backlogged more than other types of matters. This is perhaps to be expected. Much public interest litigation is decided through a series of interim orders. For example, the *Right to Food* case, which was filed in 2001, has still not been decided, although the Court has issued dozens of interim orders during this time.⁴³ The *Right to Food* case, like many other PIL, would appear in the Court's statistics as backlogged for many years even though the Court has been diligently making orders in this ongoing matter.

⁴³For a list of the orders to date in the *Right to Food* case, see Legal Action: Supreme Court Orders, Right to Food website, available at <<http://www.righttofoodindia.org/orders/interimorders.html>>.

Table 12: How Many Years Regular Hearing Petitions Have Been Pending by Subject Category (2009–2011) (Percent)

	+2 Years	+5 Years
Family law matters	42.2%	4.1%
Labor matters	43.7	8.5
Service matters	47.5	7.4
Criminal matters	51.3	9.6
Matters relating to consumer protection	51.5	13.8
Land acquisition and requisition matters	51.8	16.4
Compensation matters	55.1	17.5
Ordinary civil matters	56.0	20.3
Personal law matters	56.8	23.2
Election matters	56.9	24.6
Rent Act matters	57.7	12.5
<i>Average</i>	58.3	19.3
Direct tax matters	61.8	18.9
Land laws and agricultural tenancies	63.5	26.9
Indirect tax matters	63.7	24.6
Arbitration matters	65.4	16.3
Company law, MRTP, and allied matters	68.9	30.5
Letter petition and PIL matters	74.0	40.2
Mines, minerals, and mining leases	77.5	41.8
Five-judge bench matters	91.9	41.0
Three-judge bench matters	94.5	67.8
Seven-judge bench matters	100	100

NOTE: This table, which shows what percent of matters are backlogged over two and five years, averages regular hearing backlog by subject matter category over three years (2009–2011) in order to minimize year-to-year variations.

SOURCE: Supreme Court of India monthly statements (2009–2011).

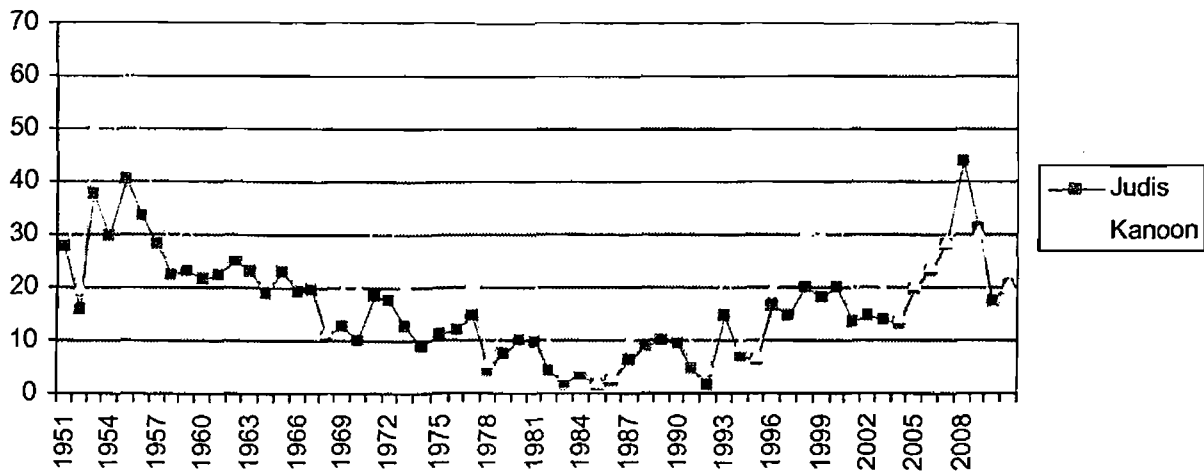
X. PUBLISHING RATE

Decisions of the Supreme Court are often not published. Figure 8 compares the number of regular hearing matters the Court claims were disposed of in a year to the number of reported judgments on the searchable Indian law databases of Judis or Indian Kanoon for that year.⁴⁴ This provides only a rough estimate of what percent of decisions result in published opinions. Frequently, several matters will be clubbed together in one case. In other words, one judgment may dispose of several regular hearing matters, meaning there should be fewer judgments than the number of disposals indicated.⁴⁵ Overall, there are 18

⁴⁴The Judis database is available at <www.judis.nic.in> and Indian Kanoon is available at <www.indiankanoon.org>.

⁴⁵A sample set of official cause lists from one week in November 2012 and one week in January 2013 indicates that on average a regular hearing case involves two regular hearing matters clubbed together. In other words, in 2011 since 6,002 regular hearing matters were disposed of this would indicate that there had been about 3,001 regular hearing

Figure 8: Percent of cases reported by Judis and Indian Kanoon compared to the number of disposed of regular hearing matters.



NOTE: The figure shows percent of reported judgments in Indian Kanoon and Judis per year compared to the number of disposed of regular hearing matters per year.

SOURCE: Indian Kanoon and the Judgment Information System; Supreme Court Annual Report (2008–2009); Supreme Court of India Annual Statements (2009–2011).

percent as many reported judgments as regular hearing disposals on Judis compared to 24.5 percent on Indian Kanoon. From 2000–2010, this figure was about 21.5 percent on Judis and 23.7 percent on Indian Kanoon. The lowest reporting is from the mid-1980s when the ratio of reported judgments to regular hearing disposals slipped into single digits. The highest reporting rate came just after Independence. These data seem to suggest that the Supreme Court publishes opinions in only a portion of regular hearing matters, meaning that many of its decisions effectively create no precedent. Further, during the admission stage many cases are dismissed with a short order that often affects its outcome. These orders are rarely reported in public law databases and often are not reported as “daily orders” on the Supreme Court’s website, although some are.

XI. PUBLIC INTEREST LITIGATION LETTER PETITIONS

Public interest litigation (PIL) is often in the news and involves some of the Court’s most controversial and far-reaching judgments.⁴⁶ In actuality though, PIL makes up a relatively

decisions. In actuality, in 2011 Indian Kanoon indicates there were 1,217 reported judgments. So although clubbing of matters into one case may account for a significant portion of the “missing” judgments, it does not seem to account for all of them. This is an area that deserves further research, including creating a larger sample set to determine more accurately how many regular hearing matters are typically clubbed together in one case, and so resolved in one decision.

⁴⁶For a critique of some of the Supreme Court’s judicial activism, see Justice B.N. Srikrishna, *Skinning a Cat*, 8 SCC (Jour) 3 (2005); for a more sympathetic analysis, see S.P. Sathe, *Judicial Activism in India: Transgressing Borders and Enforcing Limits* (2002).

Table 13: Number of Letter Petitions Received by Supreme Court and Number Accepted for Admission Hearing

	<i>Letter Petitions</i>	<i>Accepted</i>	<i>Percent Accepted</i>
2000	17,764	183	1.0
2001	17,198	182	1.1
2002	15,518	199	1.3
2003	14,293	177	1.2
2004	15,653	193	1.2
2005	14,261	227	1.6
2006	19,840	243	1.2
2007	18,200	258	1.4
2008	24,666	226	0.9

SOURCE: 2008–2009 Annual Report of the Supreme Court of India.

small percent of the Supreme Court's docket (between 1–2 percent of both its admission and regular hearing docket from 2005–2011), and these cases are accepted for regular hearing less often than average. This does not mean, though, that public interest litigation only takes up 1–2 percent of the time of Supreme Court judges as these cases may require more or longer hearings than other types of cases.

The Court is well known for accepting letters from citizens that it may then turn into petitions if it sees fit.⁴⁷ However, most of these letters never appear before a judge. Instead, they are combed through by Court staff and those letters that meet the requirements for public interest litigation listed on the Supreme Court website are then listed as admission matters before the judges.⁴⁸ For example, in 2008, 24,666 letters were sent to the Court, of which only 226 were then placed before judges, who then accepted or rejected them for regular hearing. This high rejection rate of letter petitions may be in part because the criteria for accepting a letter and turning it into a petition are much narrower than accepting a writ petition as public interest litigation.

XII. CONCLUSION

Data on the Indian Supreme Court's workload allow one to quantify trends not only in the Court's overall backlog or admissions, but also in what types of cases the Court hears, how these cases are appealed, how they fare, and where they come from. This information can help judges, policymakers, and the public gain a deeper understanding of the institution's

⁴⁷See *People's Union for Democratic Rights v. Union of India* (2) S.C.C. 253 (1982) (reiterating that where a disadvantaged person cannot approach the Court directly, that person or a public spirited individual or institution may do so through a letter).

⁴⁸Supreme Court of India, *Compilation of Guidelines to be Followed for Entertaining Letters/Petitions Received*, available at <<http://supremecourtindia.nic.in/circular/guidelines/pilguidelines.pdf>>.

ever-expanding docket and so better target interventions to reshape the Court to better meet the country's needs.

The analysis in this article has highlighted many potentially troublesome concerns about the Court's work. For example, is the reason the admission rate to the Supreme Court is disproportionately increasing compared to the high courts and lower courts because the system of precedent is breaking down within the Indian judicial system? What, if anything, should the Court do to make sure it does not disproportionately accept cases from states that are close to Delhi or wealthier? Does the disproportionate acceptance of tax, commercial, and arbitration cases indicate that high-priced lawyers are influencing the Court's judgment in an unhealthy manner or is this higher acceptance rate merely a sign of more meritorious claims? These and other questions that are raised in this article will require further quantitative (and qualitative) investigation to adequately answer.

Yet, too often, the data the Supreme Court collects about itself are not as useful as they could be and rarely are these data proactively disclosed.⁴⁹ These limitations inhibit a broader judicial and public discussion about the workings of the Court. In a country such as the United States, scholars and court watchers can relatively easily keep track of the 80 or so judgments the U.S. Supreme Court decides each year.⁵⁰ It is far more difficult for outside observers to follow the Indian Supreme Court's thousands of decisions. Only the institution itself is in the position to give a complete picture of its workload. The Court has become more sophisticated over the years in the types of data it tracks, but there are clearly areas in which data collection can and should improve, many of which this article has highlighted.

Scholars such as George Gadbois and Rajeev Dhavan pioneered quantitative research on the Indian Supreme Court.⁵¹ More recent quantitative work by academics working on the Indian legal system, such as that of Abhinav Chandrachud, Bibek Debroy, Ted Eisenberg, Marc Galanter, Arnab Kumar Hazra, Sital Kalantry, Sudhir Krishnaswamy, Robert Moog, Varun Gauri, and Shylashri Shankar, have reenergized the field.⁵² This development

⁴⁹In 2004, the well-known lawyer Fali S. Nariman introduced the Judicial Statistics Bill into the Raj Sabha. It would have required the Supreme Court to make public more detailed statistical information about its functioning, as well as the high courts and lower courts. The bill never became law. Bill No. XII of 2004, The Judicial Statistics Bill, 2004; V. Venkatesan, *For Judicial Transparency*, Frontline, Aug. 14–27 2004.

⁵⁰The U.S. Supreme Court's decisions are scrutinized closely by contributors on blogs like <<http://www.scotusblog.com/>>, as well as in annual summaries and analysis like that found in the *Harvard Law Review*. See, for example, 125(1) *Harv. L. Rev.* (2011).

⁵¹See, for example, George H. Gadbois Jr., *Indian Judicial Behaviour*, 3(5) *Econ. & Pol. Wkly.* 149 (1970); Dhavan, *supra* note 4.

⁵²See, for example, Ted Eisenberg, Sital Kalantry & Nick Robinson, *Litigation as a Measure of Well-Being*, *DePaul L. Rev.* (2013, forthcoming); Abhinav Chandrachud, *An Empirical Study of the Supreme Court's Composition*, 46(1) *Econ. & Pol. Wkly.* (2011); Varun Gauri, *Fundamental Rights and Public Interest Litigation in India: Overreaching or Underachieving?* 1(1) *Indian J.L. & Econ.* 71–93 (2011); Shylashri Shankar, *Scaling Justice: India's Supreme Court, Anti-Terror Laws, and Social Rights* (2009); Marc Galanter, *India's Tort Deficit: Sketch for a Historical Portrait*, in *Fault Lines: Tort Law as Cultural Practice* (David M. Engel & Michael McCann eds., 2009); Arnab Kumar Hazra & Bibek Debroy, *Judicial Reforms in India: Issues and Aspects* (2007); Robert Moog, *Indian Litigiousness and the Litigation Explosion: Challenging the Legend*, 33 *Asian Survey* 1136–50 (1993).

is indeed promising. More, and different types of, data and analysis is needed to better describe the workings of the Supreme Court, and the Indian judiciary more broadly. However, there are also potential perils to this quantitative turn. For example, although better data that track the voting behavior of judges can add needed scrutiny to the potential biases of judges, such data can also be misinterpreted—finding biases where there is just statistical noise—or used to unduly push judges to uniformity in their actions—for example, by pressuring judges to clear a set number of cases per year. Further, becoming lost in the details of quantitative analysis, no matter how useful those particulars are, can sometimes blind us to the larger issues of justice or public policy at stake before the Court. More quantitative study of the Court's functioning will place welcome pressure on the institution to explain its actions and better articulate the role it sees for itself in public life, but we should not lose sight of the potentially misleading impact and biases of these studies themselves.

Justice System Journal
1992***19 DELAYS IN THE INDIAN COURTS: WHY THE JUDGES DON'T TAKE CONTROL [FN1]**

Robert Moog [FNaa1]

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for State Courts; Robert Moog

Largely in response to the problem of delays, a trend has emerged in the United States in which judges are taking greater control over the flow of cases through their courts. A significant factor in explaining this movement toward "managerial judging" is the substantial autonomy generally enjoyed by judges from bureaucratic, as well as political, controls. In the case of **India** as well, trial judges have few constraints placed upon them by bureaucratic and outside political forces. Delays plague **India's** courts, yet there is little evidence of efforts at reform by the judges. This paper explores the reasons why neither the will nor the ability to institute grassroots innovations appears to be present in **India's** lower courts.

Introduction

Much has been said and written in the United States about delays in courts and the reforms suggested to remedy them. The conventional cure, and once said to be "the one certain remedy for delay in any court system," was "the creation of a sufficient number of additional judgeships" (Zeisel et al., 1959: 4). However, during the last decade much of the emphasis has shifted to a more efficient use of existing resources. To facilitate this rationalization of the judicial process, some reformers have advocated a movement toward "managerial judges." That is, those who readily depart from the more traditional and relatively passive ***20** role of judge to more actively manage their courtrooms and the cases that come before them. By taking control of the pretrial process from the parties (or their attorneys) and, in certain cases, actively encouraging settlements, those advocating such changes argue that justice often can be distributed in a more efficient and rational manner (see, for example, Flanders, 1977; L. Sipes, 1980, 1985; Church, 1982: 405; Connolly, 1984; Miller, 1984-85; D. A. Sipes, 1988: 68, 85). [FN1]

Opposed to such reforms are those who see in them a potential tradeoff of quality for quantity and a threat to the adversarial process (see, for example, Landsman, 1980; Clark, 1981-82; Resnick, 1982, 1984; Fiss, 1984; Heydebrand and Seron, 1990: 194). Despite such concerns, there seems little doubt that in the United States the recent trend in many jurisdictions has been for judges to become more actively involved in case management and the pursuit of pretrial settlements (see, for example, Provine, 1987; Rosenberg, 1987-88: 818; Provine and Seron, 1988-89; Heydebrand and Seron, 1990: 3). [FN2]

While the actual use of enhanced case management by judges as at least a partial cure to the problem of delays (as well as the related ones of high costs and restricted accessibility) has not progressed as rapidly outside the United States, [FN3] the drawbacks attributed to litigant (or attorney) control of the process have been recognized elsewhere (see, for example, Damaska, 1984: 210). Even in one civil-law system, where the conventional understanding is that the judge has greater control of the process than under the common law, the relative lack of judicial control has been lamented. [FN4]

India, with a common-law system inherited from the British, currently confronts serious problems of delays at all three levels of its judiciary (supreme court, high court, and subordinate or district court). [FN5] The most common reaction to the problem has been the *21 conventional one-- urging the creation of more judgeships. [FN6] Echoing Zeisel, Kalven, and Bucholtz, the Law Commission of India in its 77th Report noted that "delay is the product of too much business for too few judges." It is a situation in which "demand" simply "exceeds the supply of court resources" (1978: 5). At the same time, however, there has been encouragement from some quarters for the judges to implement more effective judicial management techniques and effectively take greater control of the pretrial, as well as trial, process. The Law Commission, also in the 77th Report, effectively provided a step-by-step manual for managerial judging, although never referring to it as such. Its recommendations ranged from ways in which judges could expedite the service of summons through the drafting of the decree, and included the suggestion that they become more active in conciliation efforts (1978: 11-30; see also Baxi, 1982: Ch. 3; Rao, 1982: 280-81).

It has been suggested that the comparatively rapid movement toward managerial judging in the United States is largely the result of grassroots innovations, rather than changes imposed from above. Significant to this process is the relative insulation of individual judges from hierarchical or direct political controls that might inhibit such change (Provine and Seron, 1988-89: 164). But are these the only controls that can block such reforms? The Indian case suggests the existence of others that may pertain to certain jurisdictions in the United States. With no direct political controls, limited hierarchical control from within the judiciary, [FN7] and urgings from above to move toward more-effective management of cases, the lower Indian courts would seem to be fertile ground for such innovations. But the changes have not been forthcoming.

*22 Previous studies have provided a number of explanations for the delays in these courts, and for what one author referred to as the "pathology of the Indian legal system." [FN8] This study explores the reasons why there is little evidence to date that Indian trial judges, as a group, have made any effort to follow the urgings of others within India and exert greater control over the judicial process. The hypothesis presented is that a series of structural constraints, combined with an imbalance of power between the judges and attorneys, has resulted in a local legal culture [FN9] in which judges lack not only the incentive but also the ability to exert greater control over the pace of litigation.

Structural Impediments

The district-level presiding officers in U.P. are provincial civil servants selected through a process of examination and interview and hired at the state level, not locally. [FN10] The system was designed to insulate presiding officers from partisan political pressures that would arise from the election of judges, as well as preventing the lower judiciary from becoming a reservoir of potential patronage positions under a system of executive appointment. But the notion of an independent judiciary extends beyond these partisan political concerns to caste, kinship, and friendship ties. This is significant in a society in which corporate identities are often paramount. Loyalty to the group may take precedence over loyalty to a legal system that emphasizes the rights of the individual, particularly if those rights are being exercised at the expense of group solidarity (see, for example, Rudolph and Rudolph, 1967: 263).

Two policies, in particular, are designed to limit the temptation to favor friends, relatives, or castefellows. Presiding officers are not allowed to work in their home districts, and they are transferred between districts at least every three years. [FN11] It is not so much the success or failure of these policies in achieving their stated goal that is of concern here but, rather, their unintended consequences of turning judges into outsiders, enhancing their passivity in their own courts, and restricting their commitment to their work. There are two additional practices in these lower courts that reinforce these results. The first is the frequent *23 transfers between courtrooms of presiding officers within the same katcheri (that is, court compound), and the second is the system of promotion based largely upon seniority.

The policy of barring presiding officers from working in their home districts, while limiting somewhat the potential for bias on the part of these judges, also leaves them in the position of outsiders, intruding on an institution

that is in many ways highly localized. [FN12] In the two districts studied, for example, it is not unusual for litigants and witnesses to testify in the local dialect (Bhojpuri). On occasion, this may present a problem for an officer from another part of the state where a different dialect is spoken. [FN13] If there was wholesale movement of presiding officers from one end of the state to the other, this would be a major administrative concern of the courts. However, presiding officers are allowed to list their preferences for transfers, and many request postings close to their home district.

What adds to the sense of the presiding officer as an outsider is that nearly everyone else involved with the district courts is local. In both Varanasi and Deoria, virtually all of the process servers, peons, clerks, and advocates (attorneys) live in the district in which they work, [FN14] and the vast majority of them are originally from that district. [FN15]

Besides being the only nonlocal actors at these courts, the presiding officers are also the only ones who are not permanent. There is very little movement between districts by the advocates and, it can safely be assumed, virtually none by the staff. Advocates in Varanasi and Deoria rarely handle cases outside their own districts or move in midcareer to new districts. However, it is the policy of the high court in U.P. to transfer subordinate court judges at least once every three years, although for a number of reasons, transfers often come more rapidly. Normally, presiding officers are transferred at the end of May when the civil courts shut down for the month of June. [FN16] However, there are occasions when one of them is transferred in midterm (for example, as a disciplinary measure). While this policy is designed to discourage the cementing of relationships between presiding officers and members of the community or bar, at the same time it has certain unintended consequences. It inhibits any sense of cohesiveness among the judges themselves, adds to their isolation from the other actors with whom they have to deal on a daily basis, and leaves them as the only temporary players on the scene, thereby reducing any sense of commitment to a *24 particular caseload. The transfer policy was originally instituted by the British, and the link between it and a possible reduction in work standards is not a recent discovery. A government committee investigating the functioning of the courts in 1925 expressed concern over the possibilities of succumbing to the temptation to put off the more difficult cases and taking less interest in cases in which evidence will not be given until after the transfer of the current presiding officer. The committee noted this is particularly so when the number of pending cases is high.

The existence of a mass of arrears (i.e., pending cases) takes the heart out of a presiding officer. He can hardly be expected to take a strong interest in preliminaries, when he knows that the hearing of the evidence and the decision will not be by him but by his successor after his transfer. So long as such arrears exist, there is a temptation, to which many presiding officers succumb, to hold back the heavier contested suits and devote attention to the lighter ones (Civil Justice Committee, 1925: 21-22).

Absent any counterbalancing external pressures (or incentives) to closely manage their caseloads and rationalize the process, such a policy tends to foster among some judges a lack of interest in the cases pending before them. [FN17] The constant movement from district to district and their role as outsiders also means that judges must often adapt to different informal rules and practices. It is easier for one judge to adjust than to attempt to reform the habits of several thousand advocates, as well as a new ministerial staff, every three years.

Exacerbating the tendency toward disinterest in any particular caseload is the practice of not having cases move with a judge when the judge shifts positions within that district. In U.P., judges are ranked by seniority within each of the three levels of the courts in a particular district. [FN18] A judge transferred from the district in midterm may not be replaced by an officer of comparable seniority at that level, but rather by someone just promoted to that grade. [FN19] It then creates a situation in which other officers of that level move up a notch in the numbered hierarchy, while leaving many, if not all, of their cases behind. They inherit the caseload of the numbered position into which they move. [FN20] The same situation arises *25 each June when, in the normal course of events, those judges completing their third year in a district receive their transfers. Besides disrupting many of the cases pending in these courts by displacing the presiding officer responsible for each one, [FN21] such a system does little to promote an interest in the efficient disposal of cases or a commitment to a particular caseload. The realization that within the foreseeable future most or all of their cases will be left behind encourages a wait-and-see attitude.

The combination of shifting caseloads within a district with the constant movement of judges between districts discourages any sense of commitment to a particular caseload, as well as any strong sense of responsibility to any particular district. The general complacency generated by these policies with regard to the institution of any reforms designed to rationalize the process is strengthened by the system of promotion, which is almost exclusively based on seniority. The Law Commission of India in its 14th Report recognized that "(a)bility has yielded place to mere seniority Almost invariably officers are selected for promotion solely on the ground of seniority" (1958, vol. I: 209; also see the Uttar Pradesh Judicial Reforms Committee, 1950-51, 131). Although periodic reports are sent to the high court regarding the performance of judges, barring a serious breach of ethics, promotions appear to be relatively secure. Such a policy only institutionalizes the inefficiencies in the system and provides no incentive for reform. [FN22]

Informal Relations: Judge-Advocate

Role of Advocates

While the structural features noted above tend to encourage greater passivity among Indian judges than among their counterparts in the United States, the failure on their part to more closely control their cases is not merely a question of incentive. Even if the will was there, the judges, in light of their relationship with the advocates, appear to lack the power.

As has historically been the case in common-law systems, Indian advocates exercise extensive control over the flow of a case through the pretrial process. To a great extent, this control continues through the trial stage as well. In the United States, at least in some jurisdictions, studies suggest little resistance from attorneys to reforms designed to increase judicial involvement in managing cases and, thereby, expediting the process (see, for example, L. Sipes, 1980: 38; Miller, 1984-85: 21). Others have gone farther by suggesting *26 active attorney support for such reforms. [FN23] In India, on the other hand, there is little evidence to suggest any interest on the part of advocates in relinquishing that control in exchange for expediting the process, while the lower court judges lack the power, if not the authority, to overcome such resistance to reform. [FN24]

The advocates often do not perceive their interests, or those of their clients, as being served by acquiescing in a system in which judges could closely manage the progress of the cases before them. Much of this has to do with the realities of surviving in a very competitive market.

In the districts observed, the predominant method of billing is to charge by the appearance in court. This has a significant influence on the dispute settlement process in that it discourages compromises of any sort, thereby emphasizing and placing a great burden on the adjudicatory function of the courts. Advocates earn their living by litigating, not by negotiating or settling cases. It also encourages adjournments (for which advocates generally get paid), as well as the filing of applications (motions), revisions, reviews, and appeals, meritorious or otherwise. [FN25]

What also discourages any sentiment toward expediting matters is the severe underemployment within the profession. There is fierce competition among advocates, particularly the younger ones who fight over a disproportionately small share of the potential business (see Galanter, 1989: 283). [FN26] In each of the districts observed, there are perhaps one- to two- dozen senior practitioners who dominate the civil practice, some of whom will routinely have as many as 25 matters scheduled in court for one day.

The problems of the remainder of the advocates, many of whom have very small practices and barely earn a livable wage, if they earn one at all, are compounded by the rapid *27 growth in their numbers. [FN27] (About 8 percent annual growth in the number of advocates in U.P. was the estimate provided by the bar council for the state.) At the same time, it is unclear how rapidly filings are increasing, if they are at all. The absence of any statewide data on

district court filings since 1976 leaves an enormous gap in any longitudinal study. However, based on the last statistics made available by the high court in the 1970s, the absolute numbers of new civil filings in U.P. dropped (Administration of Justice Reports for the State of Uttar Pradesh, 1970-76). If nothing else, this suggests that the perception of constant increases in filings by a highly litigious public should not be accepted uncritically.

Under these circumstances, the extending of existing cases becomes a significant consideration in an advocate's approach to a case. It not only provides a source of income but may give the impression of an active, busy advocate. This is part of an image that may be instrumental in retaining current clients and attracting new ones (see, for example, Kidder 1974-75, 14- 17; Krishnan 1981, 643). Probably more important than this, particularly for the better-established advocates, is the filing of new cases. A senior advocate noted that there must be a constant flow of cases to produce a constant flow of money. "The best advocates are those that file (new cases) all the time." [FN28]

The significance of such a comment is better understood in light of the perception advocates in India have of themselves (and which litigants also have of them). They see themselves as almost exclusively litigators. When clients come to them, typically at a late stage of the disputing process, they (the clients) almost invariably have their minds set on litigating (Galanter, 1989: 282). The advocates do not consider advising, planning, or negotiating as significant aspects of their job, if they consider them at all. [FN29] This limited role perception is significant in understanding the cause of the pressure they feel to file constantly and provides at least a partial explanation for the frequent charges with regard to the filing of nonmeritorious lawsuits. Many advocates deny they institute such actions, but others admit it, rationalizing that if they do not file, the would-be litigant will simply find another advocate who will.

The litigants themselves are not wholly blameless regarding delays. They may go to court for a variety of reasons other than for the rapid resolution of a dispute (see Moog, 1991: 551). In Varanasi and Deoria, it was not uncommon for both advocates and judges to comment that in every case at least one of the parties is interested in delaying the matter, thus providing advocates with a selfless rationale for extending cases.

*28 All these factors lead advocates to perceive their interests as being furthered by perpetuating lawsuits. Those who practiced in the districts studied generally showed little interest in the expeditious disposal of cases, and little inclination to assist parties in compromising and settling their disputes. Rather, what these factors encourage are filings, without regard for the merits or lack of merits of a particular case, delays, and additional appearances through an assortment of procedural devices. The resulting subordination of a broader public or social interest to the short-term interests of the advocates has drawn a rebuke from the highest level of the Indian judiciary. [FN30] Supreme court justice D. A. Desai, in reference to members of the bar, remarked:

The members may organize in groups to protect their interest, to advance their position, and to secure benefits to the group. This appears to be the only role the legal profession is fulfilling (Desai, 1981: 114-15).

Judge-Advocate Relationship

While many in the bar have their reasons for wanting to maintain control of the pace of litigation, in the formal structure of the courts, presiding officers are given extensive control over the flow of any particular case. Among other things, they have the authority to set their own calendars; consolidate segments of a trial (for example, final hearing, arguments, and judgment) to complete them on one date; enforce a time limit on the presentation of a written statement (that is, a response) and insist that documentary evidence be entered with the written statement, not at a later date for purposes of delay; examine the parties and others before framing issues to clarify possible points of contention or perhaps resolve some; and deny requests for adjournments in a wide variety of circumstances (see the Code of Civil Procedure, Order VIII Rule 1; Order X Rule 2; Order XVII). It was the strict enforcement of these types of provisions in the Code of Civil Procedure that the Law Commission encouraged in its 77th Report (1978: 11-30). The authority has been granted to the presiding officers to exercise far greater control than they now do over the pretrial and trial processes. But as has been noted in relation not only to courts, but other bureaucracies as well (assuming for the sake of argument that courts are bureaucracies), an incongruence may arise between authority and power (Jacob, 1983; Rudolph and Rudolph, 1979; and Crozier, 1964, 80-81). The rules are in place, but the ability to enforce them is

lacking. This is what has occurred in the district courts in India.

The presiding officer-advocate relationship turns out to be a decidedly one-sided affair. The keys to the informal relationship that exists between these two groups are the variety of methods that the advocates have at their disposal to promote their interests and their *29 ability to use them. Many of these can threaten a judge's job security and promotion, and the advocates are sufficiently well organized to use them quite effectively. (The civil judge at Varanasi referred to the methods of the bar as "trade unionism.") [FN31] Although the judges appear to be well armed themselves, the methods at their disposal turn out to be of relatively little practical use.

Perhaps the single most important factor tilting the scales in favor of the advocates is their cohesiveness when dealing with other groups or individuals. Most of them are organized into local bar associations, the offices of which are located on courthouse grounds. Since individual advocates ordinarily do not maintain private offices, nearly all of them are present at court whenever it is in session. This arrangement greatly facilitates mobilization for organized activities by the local bar. Meetings can literally be scheduled on a moment's notice. [FN32]

The organized power of advocates is demonstrated by their use of boycotts. These seem to be relatively common occurrences in which the advocates simply refuse to enter the courtroom of a particular judge. Normally, these are due to some act of "misbehavior" (a term several advocates used) by a presiding officer. "Misbehavior" usually refers to what is perceived as arrogant or insulting behavior toward a member of the bar. Included in this can be situations in which an advocate's control over the flow of a case is challenged by the judge. [FN33] Boycotts can be lengthy ordeals, damaging the reputation of a judge and possibly delaying a promotion. If the situation is serious enough, it may also result in a premature transfer, which can be disruptive to the judge's family and will almost surely place the judge under intense scrutiny by advocates, if not fellow presiding officers, at the next posting.

The other device that the bar employs, which also requires organized action, is the bandh (general strike). These generally are not used against particular judges over disputes involving personal grievances, as boycotts most frequently are. Rather, they are organized in pursuit of other more general interests or grievances of the attorneys as a whole. Typical of this was a strike called by the high court bar in U.P. in 1980. It was precipitated by the chief justice's proposal to change the manner by which justices were selected to hear admissions matters. The advocates, perceiving a threat to their interests, struck, and ultimately the chief justice was transferred without the new policy being implemented (Dhavan, 1986: 100; Baxi, 1985: 30). Bandhs may also be called for a variety of other reasons unrelated to any direct or immediate threat to the interests of the group, but which, *30 in one way or another, serve their objectives (e.g., fostering good community relations with bandhs called in sympathy with others' causes). [FN34]

The threat of, or use of, organized action is not the only course advocates can pursue with regard to judges. They can also file applications for transfer of cases before the district judge. These are feared by presiding officers, not only because they constitute black marks on one's record, but they also normally carry an inference of bias on the part of the judge. Advocates also file complaints with the high court, often in the form of an anonymous letter. These may relate to allegations of corruption or misbehavior by a particular judge. Once the high court is notified, there is always the possibility of an investigation, which, at the least, will cause the judge involved enormous emotional distress, but can also result in transfer, demotion, compulsory retirement, or dismissal.

Formally, the presiding officers are not without tools of their own. In practice, however, these are by and large neutralized. Advocates can be held in contempt of court for misbehavior or disregarding orders of a court, or have complaints filed against them with the state bar council. But both of these turn out to be largely empty threats. [FN35] Recourse to either of these tends to be avoided in favor of what one officer referred to as maintaining good relations with the bar.

A few advocates voiced concern over retaliation by a judge in the form of adverse rulings in future cases. The realization by a presiding officer that under such circumstances an advocate will almost certainly apply to transfer the

case may be sufficient to prevent such a situation from arising. If more is needed, there is the specter of a complaint to the high court and, in extreme cases, a boycott. The relatively rapid movement of judges between districts, as well as between courtrooms within a district, increase the likelihood that stalling tactics will be successful in having a particular case decided by a different judge. Lastly, if the presiding officer in question is a munsif, the case will almost surely be appealed and an order passed to stay the execution of the decree pending the appeal. [FN36]

*31 It is not the case that the presiding officers have no organization of their own. All judges belong to the U.P. Judicial Service Organization, but no evidence was found of them ever taking an organized stand against the advocates on any issue. There appears to be little public support among the presiding officers for a fellow officer involved in a struggle with a member of the bar. Due to the lack of support, when such struggles involve procedural matters, some presiding officers expressed a fatalistic attitude. In the case of adjournments, which are a major cause of delays, judges have been given broad authority to deny them in many circumstances (Code of Civil Procedure, Order XVII Rule 1). But denying an adjournment and, thereby, dismissing a suit is considered both futile and antagonistic to the attorneys. As one judge in Varanasi noted, it is futile because an application for restoration of the suit will be filed and it will be restored, if not by the same officer, then by another. [FN37] As has been found to be the case elsewhere, when there has been resistance to reform, the rationale offered for restoring the case is often couched in due process terms (Provine and Seron, 1988-89: 162). That is, justice is not served unless the case is decided on its merits. Of course, this ignores the reality that in many cases the delays are so long that memories fade and the judgments, when finally delivered, may be worthless.

This is not to suggest that there are no judges willing to fight the system. Some are, but the lack of support often disabuses them of any notions of reform. It would require a concerted and organized effort among most or all of the presiding officers in a given district, along with the full backing of the high court, to establish a semblance of balance between advocates and presiding officers in such procedural matters.

The danger of overgeneralization in such an analysis is always present. Certainly there are variables that apply to individual judges and advocates that affect their relationship. Among the more obvious are their ages, years of experience, courtroom demeanor, and professional reputations. All can have a bearing on the extent of control exercised by a particular judge at both the pretrial and trial stages. A more assertive senior judge, who the advocates sense is fair, is likely to have greater control over the proceedings than the less assertive junior colleague. However, while these variables do come into play, it remains clear that the advocates have extensive power to control the processing of cases. When they have chosen to exercise that power, it has often resulted in additional delays and costs.

Conclusion

The absence of any noticeable trend towards rationalization of the judicial process in India does nothing to refute Marie Provine and Carroll Seron's assertion that the weakness or absence of bureaucratic discipline and direct political controls facilitates implementation of reforms at the grassroots level. Rather, it accentuates what else is necessary to produce such local bench-initiated change. As they note in their article, the absence of such controls only partly explains this movement (1988-89: 164). Under certain circumstances, there may be no reason to assume the will of the bench to institute such changes, nor that the restrictions on the autonomy of judges to act, are limited to bureaucratic and external political controls.

*32 The system of judicial assignments, transfers, and promotions as it is now structured in U.P. provides little incentive for a judge to become involved in the time-consuming process of reform, despite periodic urgings from outside to do so. Attempts to force change on the system will seemingly do little to promote one's career. It may also result in a confrontation with attorneys in which the judge sees little prospect for support or ultimate success.

Should the incentive be present, serious doubts about the ability to successfully exercise control over the process remain. It is not a matter of direct bureaucratic or political controls preventing or inhibiting change, but rather one of

relative power within the organization of the lower courts. In terms of direct constraints on the autonomy of judges, they are not those that operate within a conventional bureaucratic hierarchy or flow from external political actors; rather, they originate inside the organization itself. These result primarily from an imbalance of power between the advocates and the judges. The former effectively using that power to resist movement toward greater control of the process by the latter. [FN38] In the courts under study, bureaucratic control, in particular the high court's supervisory authority over the lower courts, becomes activated largely indirectly. That is, through its mobilization by members of the bar.

The failure of Indian trial judges to more closely manage cases coming before them can be traced to these structural impediments and the internal politics of the organization itself. Both of these shape the informal rules (that is, the local legal culture) by which the courts operate. This combination of factors results in a system not necessarily immune to, but highly resistant to, managerial judging and the rationalization of the judicial process.

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[FNal]. The material presented in this paper is based upon research funded by a Fulbright-Hays Fellowship and the American Institute of Indian Studies. The field work was conducted in 1987 and 1991-92 in the district courts of two districts (Varanasi and Deoria) in the state of Uttar Pradesh (U.P.). It is not possible to say how indicative these courts are of the subordinate courts as a whole in a country as diverse as India. However, based upon the limited material available, the factors restricting greater judicial control of the pretrial and trial processes do not appear to be unique to these two districts.

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[FN1]. Larry Sipes, in his study of eight trial courts in the United States, identified the steps in "total case management" as identifying the major events in the litigation process; setting time standards for each event; modifying administrative and clerical procedures to effectuate the policy; and implementing the management system (Sipes, 1980: 6-12). In implementing such a system, he cites the importance of judicial commitment to change, as well as support from both the bar and outside forces (for example, the chief justice of the state) (Ibid.: 25-30). All three of these are significant in understanding the lack of change in India.

[FN2]. A number of studies have been conducted of courts that have implemented case management plans emphasizing increased judicial control over the pace of litigation. Most have reported positive results, at least in reducing delay (see, for example, Miller 1983; Connolly and Smith 1984; Planet 1984-85; Mahoney, et al. 1988; Goerd, et al. 1989; Lynch 1989).

[FN3]. England appears to be one country where some reforms have been introduced (Plotnikoff, 1988-89). In Germany, on the other hand, the process is highly judge centered, and some reformers have urged greater attorney participation in the pretrial settlement process (Plett, 1988-89).

[FN4]. Italy, in particular, appears to suffer from serious delays (Ferrarese, 1988-89). Despite being a civil-law

country, the relative lack of control by the judges over the pace of litigation has been cited as one cause of this problem (Chase, 1988: 55-56).

[FN5]. Concerning the delays in the upper courts (that is, supreme court and high courts), see, for example, Law Commission of India, 1958; Law Commission of India, 1979; Dhavan, 1979; and Dhavan, 1986. As for delays in the lower courts, see, for example, Law Commission of India, 1978. The extent of the delays may differ among states or within a state. In Varanasi and Deoria districts, the minimum time for the trial stage alone was generally estimated at two years.

[FN6]. This concern over the seeming scarcity of judges is nothing new in independent India. It has been a common refrain, particularly in government reports (see, for example, Report of the Uttar Pradesh Judicial Reforms Committee, 1950-51; Report of the Committee for Investigation of Causes of Corruption in Subordinate Courts in U.P., 1963; Law Commission of India, 1958; Law Commission of India, 1978). Probably the most sweeping recommendation in this regard was made by the Law Commission of India in its 120th Report, when it noted that in both the preindependence and postindependence periods the state had "self-consciously" understaffed the judiciary (1987: 1). To reverse the effects of this policy, the Report urged an immediate increase from 10.5 judges per million population to "at least 50 judges per million," and that by the year 2000 there should be at least 107 judges per million (*ibid.*: 3).

[FN7]. While the lower judiciary is not totally void of political controls (the governor of a state has limited authority with regard to some district-level judges), even these are exercised only after consultation with the high court of the state (Constitution of India: Arts. 233, 234 and 235). Disciplinary, as well as supervisory jurisdiction of the day-to-day functioning of these courts resides with the High Court (*State of West Bengal v. Nripendra Nath* AIR 1966 SC 447 at 453; *B. Mishra v. Orissa High Court* AIR 1976 SC 1899 at 1902-03). In practice however, the high court in U.P. appears to be largely reactive in these capacities. While annual reports are required on all lower court judges in the state, and periodic visits are supposed to be made to the districts by the high court judge assigned to oversee them, the hierarchical links are necessarily attenuated. The physical distance from the high court to the various districts, the fact that high court justices have a number of districts assigned to them for supervision, the work load at a severely overburdened high court and varying levels of interest in pursuing this aspect of their job, all result in limiting the effectiveness of the high court as a supervisory body. The supreme court has taken notice of the relatively lax attitude of many high court justices toward their supervisory responsibilities, and in a recent decision has urged the high courts throughout the country to take a greater interest in the functioning of the lower courts (*All India Judges Association v. Union of India*, 1991 [2] SCALE 969-83).

[FN8]. Mendelsohn, 1981: 824. Among the explanations offered have been the incongruity between the British-imposed legal norms and the indigenous cultural norms (Cohn, 1959); the social structure of the judicial system itself, which is characterized by negotiation and an inability to give decisive outcomes (Kidder, 1973); and the unique character of village land relations, which inhibit courts from effectively settling disputes arising out of them (Mendelsohn, 1981).

[FN9]. The concept of local legal culture is adopted from Thomas Church's work, *Justice Delayed* (1978). It refers to a set of "established expectations, practices and informal rules of behavior of judges and attorneys" that guide the actual process (54). Although the concept is not without controversy (see, for example, Grossman, Kritzer, Bumiller, and McDougell, 1981; Luskin and Luskin, 1986), it has become a popular subject of research and a frequently cited explanation of delay in courts (see, for example, L. Sipes, 1980; Sherwood and Clarke, 1981; Church, 1981; 1985; Neubauer, 1986; Eisenstein et. al., 1988: 28-34).

[FN10]. There are a relatively few positions filled by appointment directly from the bar, and they comprise a small percentage of the presiding officers in the state. All subordinate court judges in U.P. are members of either the Provincial Civil Service (Judicial) or the Higher Judicial Service, depending on their rank.

[FN11]. Such movement of judges is not unheard of in the United States. In Massachusetts, some trial judges still periodically rotate around the state, and in North Carolina, superior court judges rotate within judicial divisions of the state.

[FN12]. Of course, this policy leaves untouched other relationships that may influence a weak-willed judge (for example, religion, law-school ties).

[FN13]. One judge in Varanasi, whose home district was at the opposite end of the state in western U.P., admitted that at times he had some problems understanding Bhojpuri. In such cases, he would rely on one of the advocates or his clerk to translate the testimony into a more standardized form of Hindi.

[FN14]. I found one exception to this rule. One advocate in Deoria lived in the district of Azamgarh just to the south of Deoria. He explained that his village was closer to the katcheri in Deoria than to the one in Azamgarh and, therefore, it made more sense to practice in Deoria.

[FN15]. Varanasi district, containing a major urban area in eastern U.P., does attract some advocates who are originally from neighboring districts, but almost invariably they now reside in Varanasi and most likely went to law school there. In a very informal survey of advocates, among 34 who were asked at the katcheri in Varanasi, 32 responded they had gone to law school in Varanasi or their family was from the district. The other two were originally from neighboring districts and received their LL.B.s from law schools in those districts (Allahabad and Jaunpur).

[FN16]. The courts located on the plains of U.P. are closed during June because of the heat. They reopen in July when the monsoon ordinarily arrives and the temperatures cool down somewhat.

[FN17]. The indifference generated by constant shuffling between districts has also been observed by John Paul in his historical study of the legal profession in Madras Presidency. In reference to the district judge's authority in the nineteenth century to allow or not allow individuals to practice law in a certain district, Paul notes, "Because he (the district judge) was frequently shunted between districts, he cared little about the quality of the bar or the character of the men who constituted it" (1990: 217).

[FN18]. In U.P., the subordinate judiciary is divided into munsifs, civil judges, and district judges in ascending order. Within each level, generally the seniormost officer is designated as Munsif, Civil Judge, or District Judge, with the remaining officers having the titles of first additional munsif, civil judge, or district judge and so on, based on their order of seniority.

[FN19]. Moving up within the same level is not considered a promotion. There is no change in pay or benefits.

[FN20]. This occurred in Varanasi District when the civil judge received a promotion to additional district judge and was transferred to another district. The first additional civil judge became civil judge, and all the other additional civil judges moved up one position. When this occurred, they left their old caseloads behind (and, at least in this instance, their old courtrooms, clerks, and peons) and took on the cases of the numbered additional civil judge they replaced, regardless of the stage at which a given case happened to be. The policy as to which cases remain and which move with the judge is apparently made at the district level. According to the district judge in Deoria, this practice may vary. In some instances, for example, cases in which all the evidence has been presented may go with the presiding officer to his next courtroom. He was unclear as to what the basis was for determining when this happens.

[FN21]. With the number of presiding officers at the katcheri in Varanasi fluctuating, but usually totaling somewhere in the thirties, such disruptions are not uncommon. One litigant complained that just such an instance had occurred prior to my arrival and it had delayed her case while the new munsif familiarized himself with his new caseload.

[FN22]. Maria Rosa Ferrarese found a similar situation in the Italian courts where there was a "complete absence of selectivity in promotion," other than that based on seniority (1988-89: 178).

[FN23]. Dale Ann Sipes has argued that "attorneys desire, and may in the foreseeable future demand, more judicial control of the judicial process" (D. A. Sipes, 1988: 85). Concerning this matter of active attorney support for greater judicial control of the process, see also the final report to the American Bar Association of the Action Commission to Reduce Court Costs and Delay. The commission strongly advocated greater caseload management and urged that "the court, from the outset, must take and maintain control over each case. The sequence of events in a case must be scheduled within short time periods of each other to minimize the time spent relearning the case and to sustain a sense of urgency in the participants" (Action Commission to Reduce Court Costs and Delay, 1984: 8).

[FN24]. Indian advocates are not alone in jealously guarding this power. Oscar Chase, in his study of delay in Italian courts, observed a similar reaction by attorneys there. He noted that "attorney resistance to the exercise of judicial power has apparently frustrated the statutory reforms intended to give the judges the necessary 'whip'" (Chase, 1988: 56).

[FN25]. It is not uncommon for litigants to make several appearances at the courthouse per month. One with whom I had spoken had his suit filed in 1981 and it still had not been tried as of April 1987. (It had gone to the high court on a jurisdictional issue and was now back at the district court.) He estimated that for the past seven years he had been making two to three appearances at court per month. He had come on this day simply to have a new date set for the hearing of an application.

[FN26]. Other studies have found this to be the case elsewhere in India as well (see Gandhi, 1982: 77; Sathe et al., 1983: 76-77; Menon et al., 1983: 573). In many Third World countries, attempts have been made to control the supply of attorneys, and several have apparently succeeded (Abel, 1982: 874- 78). However, in India there has apparently been little effort to do so.

[FN27]. It has been suggested elsewhere that the vast majority of advocates in India earn a "mere pittance" and have no steady flow of clients (Krishnan, 1981: 640; also see The Law Commission of India, 1988: 20). That was certainly the case in Varanasi and Deoria districts, where estimates of advocates who did virtually no pleadings or arguments, but who handled only administrative matters when they could get them, ran as high as 80 percent in the former and 60 percent in the latter.

[FN28]. Interview with the district government counsel, Civil, Varanasi, March 1987.

[FN29]. A series of anthropological and sociological studies found this to be true 15 to 25 years ago (see Galanter, 1968-69; Morrison, 1972; and Kidder, 1974-75). Morrison's study was in north India (Haryana), while Kidder's was in the south (Bangalore). However, based on scattered interviews, there are some indications that this role model may be breaking down somewhat, at least in western districts of U.P.

[FN30]. Such self-serving behavior by members of the bar is not peculiar to India. Eisenstein and Jacob in their study of criminal courts in Baltimore, Chicago, and Detroit observed, "The duties of defense attorneys as enunciated in canons of ethics, appellate decisions, and statutes is [sic] not irrelevant. But the desire to earn a decent living is probably more important in explaining retained attorneys' actions" (Eisenstein and Jacob, 1977: 298).

[FN31]. The characterization of the bar's **methods** as trade unionism has been made elsewhere as well (see, for example, Law Commission of **India**, 1988: 12; Pioneer (Lucknow), December 15, 1991).

[FN32]. The strength of the local bar associations in **India** is somewhat atypical. According to Richard Abel, throughout much of the Third World these associations are weak or nonexistent (Abel, 1982: 891).

[FN33]. Typical of such boycotts was one that took place in Varanasi in June 1986. It lasted ten days and involved a munsif who refused to hear a bail application on the day the advocate desired. Hard feelings developed and the advocate moved a resolution in the bar associations to boycott the munsif's court. A complaint was also filed with the district judge. As sometimes happens in such cases, the district judge mediated the dispute, an agreement was arranged, and the munsif apologized. See, Mahajan, 1989, for examples of boycotts called to protest the denial of requests for adjournments.

[FN34]. While bandhs by lawyers are not unusual occurrences (see, for example, Law Commission of **India**, 1988: 10; Report of the **Justice** DP Wadhwa Committee, 1990; The Times of **India** [New Delhi], December 5, 1991; The Statesman, [Delhi] December 16, 1991), they seem to be a particularly popular form of protest in Varanasi. During the 26 working days between January 19 and February 18, 1987, the katcheri in Varanasi was shut down by bandhs on at least five occasions. (One was for a holy day that the state did not recognize as a holiday, two were for a sympathy strike with students at a local university, one was in sympathy for a judge in the Punjab who had been shot, and one was in accordance with a statewide bandh called to protest alleged atrocities committed by the police on students.) In addition, the advocates closed the katcheri down for two afternoons due to the deaths of two senior advocates. This amounts to the katcheri being closed for 22 percent of its scheduled working hours during the period under consideration, yet there were no protests from judges, litigants, politicians, or anyone else with a possible interest in the efficient and expeditious functioning of the subordinate courts.

[FN35]. If any action is taken against an advocate, it is likely to be in the form of a contempt proceeding. While these are not entirely unheard of (see, for example, M.B. Sanghi, Advocate v. High Court Punjab and Haryana, 1991 [3] SC 318), three senior advocates stated that they could not recall any such occurrences in Varanasi (interviews conducted in January 1991).

[FN36]. Concerning the frequency of appeals in India, Duncan Derrett has suggested that it is greater there than in any other country (Derrett, 1978: 49). No statistics are available on appeal rates, but according to judges and advocates interviewed, appeals from munsifs' decrees in Varanasi and Deoria appear to be almost automatic. Estimates ran as high as 90 percent. Being a first appeal, it can either be on the facts or the law and is a matter of right. Financial and psychological restraints, which have been said to limit the number of appeals in the United States (Jacob, 1978, 214), are apparently not as effective in India.

[FN37]. Interview with the second additional district judge (Varanasi), February 11, 1987.

[FN38]. The power of the bar over procedural reforms has been characterized as a "right of veto" (Baxi, 1985: 32). Writing of the judges, Professor Baxi notes, "they must depend for their dignity, status, efficiency and success of their work almost entirely on the Bar" (Ibid.).

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