INTRODUCTION

Guaranteeing the rule of law is perhaps the most critical task facing any democracy. While the importance of the rule of law for underpinning contracts and promoting basic law and order is often emphasized, designing and enforcing just laws are even more fundamentally the basis of a fair society, providing the only checks and balances to protect the weak against the strong.

On paper, India has a long tradition of upholding the rule of law, distinguishing it from many of its autocratic peers and neighbors. This tradition is enshrined in India’s constitution and subsequent statutes, protected fiercely by the courts, and held together by democracy and free elections. According to 2012 World Justice Project data, India fares well on indicators related to the openness of government and democratic controls. In the

* The authors would like to thank Madhav Khosla and Ananth Padmanabhan for valuable inputs on the Indian legal system, Danielle Smogard for her excellent research assistance, and Govind Mohan and T. V. Somanathan for helpful conversations. We also acknowledge incisive comments from Bibek Debroy, Ashley J. Tellis, and Reece Trevor. However, only the authors are responsible for the statements (and any errors) made herein. This article draws, in part, on Devesh Kapur, “The Law Laid Down,” Outlook India, January 7, 2013. Available at http://bit.ly/16eOmCa.
category “limited government powers,” which evaluates the checks on government, India ranks 37 of 97 globally, 1 of 5 regionally, and 2 of 23 among lower-middle-income countries.¹

Yet the rule of law that exists on paper does not always exist in practice. According to the same dataset, when it comes to procedural effectiveness, India fares poorly. In the categories of “absence of corruption” and “order and security,” India ranks 83 and 96, respectively.² The net result is that India has laws, but also a great deal of uncertainty about how those laws are actually implemented.

The literature on the rule of law distinguishes between its formal and substantive conceptions.³ In the majority of this chapter, we use the term “rule of law” in a way that encapsulates the former idea that focuses on the procedural legitimacy of laws and institutions—which demands that laws are prospective, clearly drafted, properly enforced, independently reviewed—and emphasizes state capacity in the context of law making and enforcement. In this manner, the rule of law is not a single entity, but rather a spectrum of activities. The upstream end of this chain is the structure of the laws and statutes that govern any society, not to mention the lawmakers who write them. Next come the investigative arms of the state, followed by the prosecutorial agencies. The judiciary and penal system constitute the downstream end. Each component of this chain influences the strength and quality of the preceding step(s). Referring to the substantive aspects of the rule of law—in which the actual content of the laws is evaluated—we will also assess the ability of certain laws to adequately protect equality and justice.

In India, the entire rule of law supply chain, never very strong to begin with, has become deeply dysfunctional. India’s legal undergirding is badly outmoded and constrained by a tendency to pass new laws rather than fix or eliminate old ones. Weak laws yoked to an even weaker enforcement system virtually guarantee that the powerful will transgress with abandon. Furthermore, the very lawmakers who write the laws are hardly exemplars of the rule of law themselves; nearly a third of state and national legislators faced pending criminal charges at the time of their election. This disturbing fact has a negative impact on the credibility of the entire rule of law supply chain, from lawmaking to enforcement.
Moving farther down the chain, the police and prosecutors need an overhaul. India’s investigative agencies have become politicized and starved of resources, infrastructure, and leadership. The judiciary in India has many bright spots: the Supreme Court of India, for instance, is one of the country’s most widely respected public institutions. Yet the courts, on the whole, face challenges from vacancies to backlogs and weak internal processes of self-regulation.

At the time of writing, India’s once-robust economy has been badly hobbled. While external factors played a role in the current economic slowdown, the country has also fallen victim to corruption, weak institutions, and legal and regulatory uncertainty. A large part of its population is apprehensive of physical insecurity, and a spate of large-scale corruption scandals has shaken the faith of its citizens. Whatever government comes to power in 2014 must acknowledge India’s mixed performance when it comes to enforcing the rule of law and take immediate steps to reverse this state of affairs.

**LAWS**

**The Problems**

The first element in the supply chain is India’s archaic laws, many of which date to a colonial era that was very different from circumstances prevailing in contemporary India. Unfortunately, India does not require the expiration of certain laws after a fixed period of time. At the central level, poorly drafted laws with ambiguities, amendments, clarifications, and exemption notifications (or their withdrawal) have led to contrary interpretations (and judgments) by various high courts and increased litigation. In part this reflects an enfeebled capacity in the Law Ministry at the central and state levels.

Furthermore, India’s legal obsession is typically about enacting new laws and rarely about repealing or modifying existing laws. In 1998, the Jain Commission, a committee established by the Department of Administrative Reforms and Public Grievances, reviewed existing administrative legislation and identified laws to be amended or repealed. In its report, the commission sought the repeal of more than 1,300 central laws out of the 2,500 it reviewed. The Law Commission has also periodically
given recommendations for the revision of laws. Yet, apart from a onetime repeal of 315 amendment acts in 2002, progress has been decidedly modest. When it comes to similar state laws, which number into the many thousands and directly affect the day-to-day workings of business, India still lacks a reliable inventory. The multiplicity and complexity of laws make compliance, deterrence, and effective enforcement difficult and, in many cases, impossible. The result is circumvention by business while state functionaries harass and extract rents.

Potential Solutions

While line ministries often have little incentive to reform outmoded legislation, the union and state law ministries simply lack the capacity to do so. The revising, repealing, and updating of old laws are sorely needed, and the Law Commission should be given additional resources to undertake this task. Dedicating additional human resources at the upstream end to ensure greater precision in the drafting of laws could also attenuate future litigation.

One example of legislative consolidation and simplification is the model established by the Financial Sector Legislative Reforms Commission (FSLRC). Like many other activities of the government of India, the financial sector’s legislative framework contains regulations that date back decades when the objectives and demands of the financial system were quite different. The FSLRC was given a two-year mandate to evaluate and modernize the regulatory framework of the financial sector, identify any overlaps and inconsistencies, and develop a lasting unified financial code.

The FSLRC team was split into multidisciplinary working groups, composed of experts from finance and academia as well as regulators, to ensure a comprehensive evaluation. With each issue, the commission developed objectives for that area of the market, identified the sources of market failures, critically assessed the role of government in that area, and evaluated the costs and benefits of redrafting the legislation. This model could be adopted for other sectors in order to rid the legal system of outdated laws.
LAWMAKERS
The Problems
At the end of the day, lawmakers write the laws. The fact that many of India’s leading lawmakers are also its foremost lawbreakers has a subtle but pervasive negative impact on the credibility of the rule of law in India. According to data compiled by the Association for Democratic Reforms, as of September 2013, roughly one-third of India’s elected lawmakers at the state (31 percent) and national (30 percent) levels faced pending criminal charges at the time of their election. About half of these cases involve charges of a serious nature, which include murder, attempted murder, kidnapping, and crimes against women.  
To address the supply of “tainted” candidates in the electoral domain, the Supreme Court recently issued two landmark judgments. The first found that any member of the Legislative Assembly or member of Parliament currently holding office, upon being convicted by a court of law, would be immediately disqualified from the date of conviction. Under prior statute, convicted lawmakers could hold on to their seat as long as a court has stayed their conviction and appeals are pending before the courts. A bill introduced in Parliament by the government to supersede the court’s judgment justifiably came under heavy fire. After Parliament balked, the government flirted with introducing an executive ordinance but wisely and swiftly reversed course.  
The second judgment found that any individual who was in jail or in police custody would no longer be allowed to run for office, even if that person was not formally charged. The court, in its decision, reasoned that, “if a jailed person can’t vote, a jailed person can’t contest elections.” Parliament swiftly moved to pass a bill, later signed by the president, that negated the court’s ruling. The court’s ruling was problematic, given the temptation of politicians to misuse the police to punish political rivals. 

Potential Solutions
Beyond the issue of convicted politicians or those in jail, there is a larger issue at work: that lawmakers rarely face conviction due to shortcomings of the justice system. Despite the plague of politicians who have cases pending
against them, since 2008, only 0.5 percent of elected members of Parliament and the Legislative Assembly have declared ever being convicted by a court of law, according to the Association for Democratic Reforms.

At the time of writing, the law minister had sought the opinion of the Law Commission on a bill to bar persons charged with heinous crimes (those such as rape, murder, and kidnapping that carry a minimum sentence of seven years in prison) from running for office. While the doctrine of presumption of innocence is rightly invoked in criminal jurisprudence given that the life and liberty of an individual is at stake, in public law, a larger public interest might necessitate invoking the Latin dictum *ei incumbit probatio qui dicit, non qui negat* (the burden of proof lies with who declares, not who denies).12

Restricting this penalty to heinous crimes helps guard against the predictable response from politicians that they are victims of politically motivated cases. The government could consider establishing special electoral tribunals charged with adjudicating serious criminal cases against political aspirants. This would be tantamount to a fast-track court—a policy of last resort—but there is hardly a better case for speedy justice than when it comes to those actually making the laws.

Because of the well-known complementarities of “money” and “muscle,” the Election Commission of India has recommended additional reforms, which the next government should champion in an effort to forge an all-party consensus on reforming election finance.13 For instance, the Election Commission could be given additional authority to regulate the functioning and potential de-registration of political parties. In addition, the commission should have the mandate to legally require that all parties get their accounts independently audited on an annual basis and that the results be made publicly available.

Furthermore, there are no clear guidelines for the Election Commission to act against a candidate who files affidavits containing false or misleading information. This loophole also applies to campaign expenditure statements.14 The next government must ensure that candidates file accurate information about themselves and their campaigns and should authorize the Election Commission to take strong measures against those who do not make proper disclosures.
POLICE AND PROSECUTORS

The Problems

A citizen’s first encounter with the justice system is typically with the police, a demoralized arm of the state, still governed under colonial-era statutes such as the Police Act of 1861. The primary objective of the police remains the maintenance of law and order rather than the prevention of crime. The former stems from the pre-Independence period in which the function of the police was essentially to act as crowd control by maintaining public order. This militaristic function is starkly different from the modern-day mandate of police forces to provide a public good that prevents crime and protects victims. Outdated colonial-era laws, rivalries between the Indian Police Service and rank-and-file officers, deep politicization of police institutions, and an overcentralized police hierarchy have also burdened the police.15

Over the years, several attempts have been made to reform India’s police. Yet there are several reasons that the recommendations of numerous police commission reports gather dust. If there is one principle that unites Indian politicians, it is that a competent, autonomous police force is a threat to their common interests. Societal pressure to reform the police has also been limited. The middle class and the rich have exited public services across a broad spectrum, including relying on the police (as evidenced by the huge growth in private security services). And the centrality of identity politics for India’s political and social movements has further weakened a common societal interest by making social representation in the police, rather than police effectiveness, their prime focus.

As a result, the police in India are somewhat in shambles, caught in a vicious cycle of demoralization and low popular support, continued politicization, and consistent starvation of resources. India has the lowest rate of police officers per capita—122.5 per 100,000 people—of any member state of the Group of 20. Furthermore, across India, the police vacancy rate stands at 25 percent.16 Understaffed and undertrained, the police also lack many of the technological capabilities necessary to perform quality investigations. All of these factors, in turn, contribute to the low conviction rate that discredits both the police and the courts, highlighting one
example of how inextricable the inefficiencies are in every branch of the criminal justice system.17

Indeed, the higher up the food chain one travels, the problems plaguing the police do not disappear. Take, for instance, the Central Bureau of Investigation (CBI)—the premier investigative police agency in India. The CBI investigates major cases in which the central government is a protagonist or where there are interstate disputes. Unfortunately, the CBI is widely perceived today to be a partisan arm of a capricious executive, used to reward or punish individuals on the basis of political imperatives.18 Corruption investigations of several leading politicians, for instance, wax and wane according to the political alignment between these officials and the government of the day.19

The CBI’s lack of independence can be traced to the rules governing how its director is chosen and the limitations on its jurisdiction.20 For instance, the CBI can open investigations at the state level only if the respective state government explicitly approves. The Supreme Court, referring to a recent dispute with the executive branch, remarked that the CBI was little more than a “caged parrot speaking in a master’s voice.”21 Similar issues plague the Central Vigilance Commission, which has no independent investigative powers and thus must rely on other government agencies to take up any corruption allegations it forwards.22

India’s prosecutors, too, suffer from a variety of maladies. In almost every case where the defendant has deep pockets, there is a major mismatch between the quality of legal counsel. Government lawyers are poorly briefed, while corporate and political defendants have a battery of highly paid lawyers who have had much more time and often competence to undercut the public prosecutor’s case.23

Potential Solutions

Police reform commissions set up by successive governments have articulated steps that both the central government and the states could take. Any future reform must be guided by five principles:

- **Subsidiarity:** The police are highly centralized at the state level yet need both greater centralization (empowering federal investigative agencies for such issues as terrorism) as well as decentralization (at the local government level such as traffic police).
• **Autonomy:** The police require greater autonomy from pernicious political control.

• **Accountability:** Greater autonomy needs to be complemented by investments in accountability, such as the creation of independent supervisory boards.

• **Personnel:** The gap between a tiny, very selective Indian Police Service and a large, ill-trained constabulary reflects the deep social stratifications of India. This requires changes in organizational structures and promotion pathways and much greater efforts at training lower-level recruits.

• **Resources:** Ultimately, change will be hard to come by without sharply increasing the resources available for the police, especially at the station house, or thana, level.

Even modest steps to address these issues can have positive effects on police functioning. A recent study undertaken on the Rajasthan state police found that simple reforms such as freezing the transfers of police officers and training officers in professional skills had positive effects both on public satisfaction with police forces and the quality of actual police work.\(^{24}\) Such low-cost, administratively simple reforms have the potential to contribute to lasting change.\(^{25}\)

After the Anna Hazare–led anticorruption demonstrations of 2011, there was a brief period of sustained focus on legislating a Lokpal, or anti-corruption ombudsman, to bring greater accountability to elected officials and senior-level government functionaries. The Lok Sabha passed the Lokpal and Lokayuktas Bill in December 2011, and, after much dithering, the Rajya Sabha eventually passed the bill two years later and the president signed it into law.

While it is too soon to tell whether the Lokpal will be an effective corruption-fighting agency, its very creation speaks to the degree to which politicians in India have been forced to come to grips with popular disquiet over malfeasance in government at all levels. There are a few provisions in the Lokpal law that will require special attention as the agency gets off the ground if it is to add value over the long term. For starters, the Lokpal law mandates that states establish Lokayuktas to address corruption
charges against state and local government officials within one year, but it does not provide any further direction. At least eighteen states have already established *Lokayuktas*, but they vary considerably in terms of their authorities. As with the passage of the 73rd and 74th amendments on decentralized governance, there is scope for states to sabotage these institutions from the outset. Furthermore, regarding the functioning of the Lokpal itself, the agency requires approval by state authorities in order to investigate central government officials seconded to state governments. This defeats the purpose of creating a unified body that will decide all cases of sanction for prosecution. Second, rather than experimenting with an open selection process for the nine members of the Lokpal, the bill establishes a selection committee as well as an advisory search committee. The creation of multiple substructures overseeing what is essentially a closed process will limit the pool of candidates considered for the agency and reduce transparency—an ironic outcome for an agency in charge of transparency and accountability in government. Finally, it remains unclear how the Lokpal will receive complaints from those who are affected by or witness corrupt acts. The bill provides no assurance that either the local authorities will cooperate with the initial gathering of evidence or that, once a complaint is made to local authorities, they will act swiftly to refer the case to the Lokpal and begin a process of preliminary inquiry.

**COURTS**

The Problems

While India’s judiciary forms the bedrock of the legal system, the courts in India suffer from an apparent paradox. On the one hand, in the face of a weakened executive and gridlocked legislature, the courts (particularly the Supreme Court) have attempted to fill a vacuum of authority and policymaking. Yet, on the other hand, the institutional underpinnings of the judiciary are growing weaker over time.26

The single biggest affliction of the Indian justice system is the snail’s pace at which it proceeds. Each year, the courts take on more cases than they are able to process. As of June 2012, the Indian judiciary faced a backlog of roughly 32 million cases. As of 2011, approximately 24 percent
of court cases had been pending for at least five years, while 9 percent had been pending for more than ten years.27

But there is also the issue of judicial capacity, which raises questions of manpower as well as quality. As of June 2012, the Supreme Court had a vacancy rate of 13 percent. This rate is relatively low compared to the High Courts and District Courts, which have vacancy rates of 29 and 21 percent, respectively. To provide a sense of manpower shortage, in the United States there are 108 judges per million citizens, while there are a mere twelve judges in India for the equivalent population. Underlying these weaknesses is a lack of financing. With the caveat that these figures do not account for state-level judicial spending, the Planning Commission allocated Rs. 1,470 crore for modernizing and upgrading the court system during the Eleventh Plan period (2007 to 2012).28 This allocation amounts to only 0.07 percent of total plan outlays, on par with the meager resources budgeted for the Ninth (1997 to 2002) and Tenth (2002 to 2007) Plans.29

Judicial appointments with respect to the upper judiciary are decided by a collegium consisting of the chief justice of India and the four most senior judges of the Supreme Court. While the collegium evolved in part as a method of protection against political interference, it lacks transparency, does not deliberate according to a fixed set of criteria, and does not stipulate any recourse for addressing issues of malpractice.30

In many ways, the judicial process itself has become the punishment.31 The extraordinary alacrity with which the courts grant adjournments has ensured that the powerful will always outlast the weak, making a mockery of what constitutes justice. The ease with which the judiciary takes on and intrudes on the space of the executive is in sharp contrast to timid efforts to improve the effectiveness of the courts for more basic tasks. Modest efforts in reforming the administrative organization of the courts have been outstripped by the sheer growth in caseloads.

To address the massive backlog, the government set up a National Mission for Justice Delivery and Legal Reforms in August 2011 with a five-year mandate. It has coupled this with Rs. 5,000 crore to state governments to improve the delivery of justice, from increasing the number of court working hours to creating “court managers” in every judicial district to assist the judiciary in its administrative functions.
As an additional method of reducing the burden on the judiciary, successive governments have moved to establish quasi-judicial tribunals and other alternative dispute resolution mechanisms (arbitration, mediation, conciliation, and Lok Adalats). Unfortunately, to date, tribunals have a rather checkered record overall. For starters, tribunals offer a mechanism for speedy justice but they leave unaddressed the core institutional problems that led to their creation.\(^3\)\(^2\) Second, tribunals have been established in areas where specialized knowledge is required, yet they have been largely staffed by retired judges and bureaucrats who are generalists.\(^3\)\(^3\) Third, they routinely lack even the most basic requirements of any office, such as office space and equipment, personnel, and an adequate administrative apparatus.

**Potential Solutions**

The next government must move toward streamlining the judicial process. For starters, the next government should simplify the process of case management. Most problems of delay in cases actually arise due to the excessive emphasis on procedural fairness during the first hearing. All the tasks covered in this stage can be outsourced to private case managers, the way many governmental functions are now handled.

When it comes to the trial phase, courts should enforce a strict timetable with monitoring by judicial officers and imposition of costs to ensure strict compliance with prescribed time lines and the creation of predetermined events that can be easily tracked, such as the filing of motions.\(^3\)\(^4\) The filing of a case often has negative externalities, but the moment a part of these externalities is shifted to the litigant and errant lawyers, the number of frivolous cases filed is likely to be considerably reduced. One method is to impose costs when civil cases do not disclose a cause of action or are hopelessly barred by the law of limitation or any other law.\(^3\)\(^5\)

In May 2012 the Supreme Court established a National Court Management System to address issues of case management, court management, and setting measurable standards for performance of the courts. Under the court management system, a National Framework of Court Excellence is being prepared, which will set measurable standards of performance for courts, addressing the issues of quality, responsiveness, and timeliness. These are positive steps, and the next government must support them with sufficient human and financial capital. A better organized case
management system also needs to be supplemented by addressing a major obstacle to the speedy delivery of justice: adjournments. The only way litigants can be forced to take adjournments seriously is by tying case outcomes to the prompt and timely manner in which they comply with case management deadlines. Ironically, even though both the Supreme Court and the executive have been interested in this issue, courts continue to lavishly grant adjournments, which substantially delays trial proceedings.

The clogged, dilapidated plumbing of Indian courts has led to multiple efforts to create alternative systems. For instance, the Gram Nyayalayas Act in 2008 ensures inexpensive and speedier justice in rural India. This scheme suffers from inadequate physical and human infrastructure. But perhaps the most difficult challenge is staffing the courts with a sufficient number of judges who are both competent and have integrity. One solution, recommended by the Law Commission of India and endorsed by several advisory bodies, is to create an all-India judicial service. This has obvious benefits, such as standardizing court functioning, the powers of lower court judges and their conditions of service; facilitating greater ease in bringing about judicial reform on a national scale; and expanding the applicant pool to the entire country rather than a particular state.

An all-India judicial service would complement the newly introduced Judicial Appointments Commission Bill, 2013, which seeks to scrap the opaque collegium system and replace it with a Judicial Appointments Commission. The Judicial Appointments Commission Bill should also be considered alongside another bill that seeks to reform the judiciary, the Judicial Standards and Accountability Bill.36 This bill proposes several sensible steps to improve the quality and integrity of the judiciary, such as mandating that judges publicly declare their assets; establishing a judicial code of conduct; and creating formal processes for removing judges who violate this code of conduct.37

Finally, successive governments have established tribunals in order to circumvent the pathologies of the formal justice system. The next government must rationalize and rethink these alternative dispute resolution mechanisms. With the government having created 62 tribunals at last count, it has become even more important for Parliament to create a permanent mechanism that is well staffed and charged with settling intra-government disputes.
CONCLUSION

As India undergoes massive economic and political changes, its society is also gradually moving from a status to a contract society. If this change is to continue, further attenuating status hierarchies, improving India’s rule of law institutions—and enforcing contracts—must be a top priority for the new government.

For far too long, reform of India’s administrative and legal institutions was seen as a “second order” issue that could be addressed after critical economic reform measures were dealt with first. This sequencing, while understandable from a policymaker’s point of view, was shortsighted given that the rule of law is the sine qua non not just for sustaining economic activity in a market economy, but also for upholding democracy itself, especially for the weak and marginalized. Even modest changes can have substantial impacts.

Many of the reforms recommended here do not entail huge budgetary outlays. This is not to deny that India’s rule of law apparatus is badly starved of resources. But despite budgetary pressures, higher court fees, especially in the case of appeals filed by the government or corporations, can address these resource shortfalls. However, one should not minimize the large impact that even modest legal or administrative changes can have on the functioning of India’s rule of law institutions writ large.
NOTES


2 In these same categories India ranks 3 and 4 regionally, and 14 and 22 in the lower-middle-income group.


8 “Rahul Gandhi Has the Final Word, Cabinet Withdraws ‘Nonsense’ Ordinance,” Indian Express, October 3, 2013.

9 However, the court ruled that disqualification would not apply to a person subjected to preventive detention.

10 Although Parliament passed a bill to negate the court’s judgment, it nevertheless asked the court to review its judgment. The court has agreed to do so. For an overview of this legislation, see PRS Legislative Research, “Bill Summary: The Representation of the People (Amendment and Validation) Bill, 2013,” August 26, 2013, www.prsindia.org/uploads/media/Representation/Bill%20Summary%20-%20The%20ROPA%20Amendment%20Bill%202013.pdf.

11 While the government could consider denying those in jail the right to run for office, these restrictions should be circumscribed—for instance, limiting it to those who were jailed six months before elections were called—so as to not incentivize politicians’ merely placing people in temporary custody for political gain.

12 The Election Commission of India has made a similar proposal: it recommends that candidates be disqualified from seeking office if charges have been framed against them by a court for an offense punishable by imprisonment of five years or more and if such charges were framed at least six months prior to an election.


14 For instance, the Election Commission of India has been pursuing a case against the former chief minister of Maharashtra, Ashok Chavan, for allegedly paying off journalists during his 2009 campaign. The government has openly challenged the commission’s power to disqualify a candidate for falsifying election finance filings.

16 National Crime Records Bureau, “Prison Statistics India 2012,” 2013, http://ncrb.gov.in/PSI-2012/Full/PSI-2012.pdf. India’s corrections system also suffers from human resource constraints. According to the 2012 Prison Statistics India report, roughly one-third of sanctioned positions are vacant. Yet the jails are operating above capacity; the occupancy rate for all of India is 112 percent. On both dimensions, of course, significant variations exist across states.


19 The most recent instances of such behavior involve the winding down of corruption cases against former Uttar Pradesh chief ministers Mayawati and Mulayam Singh Yadav, both of whose fortunes have improved with their support of the ruling government. See Mihir Srivastava, “The Congress Bureau of Investigation,” Open Magazine, April 6, 2013, www.openmagazine.com/article/nation/the-congress-bureau-of-investigation.


22 Verma, “The Police in India.”


25 According to a senior Indian Police Service officer interviewed by the authors, only 1–2 percent of the police budget is dedicated toward human resource development activities, community policing, and crime prevention programs. Research and training accounts for even less (roughly 0.8 percent).


27 A. I. S. Cheema and Bibhuti Bhushan Bose, “Court News,” 2012, 4–8, http://supremecourtofindia.nic.in/courtnews/2012_issue_2.pdf. Between 2000 and 2010, the number of cases admitted to the Supreme Court doubled (24,747 to 48,677). And in 2004, 7 percent of regular hearing matters had been pending for more than five years, while it was 17 percent in 2011.


33 Unfortunately, the quality of justice tribunals have been able to deliver has varied considerably, in part because they are perceived as “excellent source of post-retirement opportunities” for those facing mandatory retirement from public service. Arvind P. Datar, “Tribunals: A Tragic Obsession,” India Seminar 642 (2013), www.india-seminar.com/2013/642/642_arvind_p_datar.htm.
34 We thank Ananth Padmanabhan for bringing this idea to our attention.
35 The Civil Procedure Code allows the defendant in a civil action to file an application for rejection of the complaint in such cases. Where such applications are allowed—and the threshold for a plaint to survive such early frontal attacks is pretty low—some reasonable costs would act as a deterrent, forcing the plaintiff to factor in this cost at the earliest stage of the litigation, that is, when deciding whether to file a case or attempt to settle the matter.
37 In addition to increasing both the quality and quantity of judges, thought should be given to extending the courts’ working hours. On average a workday in an Indian court lasts between 5 and 5.5 hours, compared with 6.5 or 7 in other countries. Also in terms of working days, the Supreme Court is operational for only 180 days a year, while the High Courts and District Courts work 200–210 and 240–270 days a year, respectively. Some estimates claim that cutting down judges’ leave is equivalent to increasing the number of actual strength by up to 25 percent. Debroy, “Reforming the Legal System,” 28–29.