

A QUANTITATIVE ANALYSIS OF THE INDIAN SUPREME COURT'S WORKLOAD

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Abstract:

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 is 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. Amongst other findings, this analysis shows 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 thirty-one judges, sitting in over a dozen courtrooms, the Indian Supreme Court is both powerful and sprawling.¹ In scores of

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¹ Currently, 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 court room 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 court room 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 2 to 3 regular hearing cases (although a bench may hear only one such matter or more than ten). On these regular hearing days, admission cases may also be mentioned (which in a typical court room could add from 0 to 25 more cases). It is important to note cases and matters are not the same. A bench may have twenty cases

major cases each year its orders have far-reaching 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 is currently collected and categorized by the Court presents challenges in developing a full picture of its workload. 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

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 twenty 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.

² For 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 STUDIES LAW 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).

³ See RAJEEV DHAVAN, THE SUPREME COURT UNDER STRAIN: THE CHALLENGE OF ARREARS (1978); RAJEEV DHAVAN, LITIGATION EXPLOSION IN INDIA (1986)

⁴ Rajeev Dhavan cautioned against the expansion of the Court's docket back in the 1970's. 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 1 (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>

nearly doubled from 24,747 to 48,677 (an increase of about 97%).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%). All these new matters have helped to increase the Court's backlog. In 2004, 7% of regular hearing matters had been pending for more than five years. In 2011, it was 17% of regular hearing matters.

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

⁵ Note 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.

⁶ For 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 ENV. L. 293 (2007)

⁷ Some 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); Rishad Ahmed Chowdhury, *Missing the Wood for the Trees: The Unseen Crisis in the Supreme Court*, 5 NUJS L. REV. 351 (2012)

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 is currently collected by the Supreme Court faces several challenges.

A. Acquiring Data

The first is the availability of the data itself. 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 reportedly 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 which list backlog by subject matter

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

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

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 by petition type. For this article, access was gained to such annual statements for 1993 to 2011.

Some data is also produced by the Court on special request. The Supreme Court began computerizing its data collection systems in the early 1990's. 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 was 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.

Table 1: Data Sources

Source	Type of Data	Years Available
Supreme Court Annual Report (Public)	Institution, Disposal and Pendency of Admission and Regular Hearing Matters by Year (1950-2008); Letter Petitions Received/Accepted (2000-2008)	2005-2009
Court News	Institution, Disposal and	2006-2011

¹⁰ The 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.

(Public)	Pendency of Admission and Regular Hearing Matters by Year Broken Down by Civil and Criminal Matters (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 presents is determining its 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% 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.

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

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 (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 appear 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 though 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

¹² Generally, 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 1970’s and 1980’s.

¹³ Also, 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 lists 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).

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 has not been a resolution to 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, labour, 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 is Available (and Unavailable)

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

¹⁴ SUPREME COURT OF INDIA, PRACTICE AND PROCEDURE 23 (2010)

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 per cent 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. In order 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

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

¹⁵ This data would probably be even more telling for the lower courts, where uncontested cases are presumably more common, but where such data is also not currently available. Pre-independence this data was kept track of. THE CIVIL JUSTICE COMMITTEE REPORT 1924-1925 (otherwise known as the Rankin Committee Report (1925)), for example, found that only 10% of cases in the Bengal courts were contested. In the rest, either one party defaulted or there was an out-of-court settlement.

¹⁶ Confusion is created about what these matters actually were in part because today many Supreme Court lawyers refer to all admission matters as “miscellaneous matters”.

“miscellaneous” matters accounted then (and now) for a sizeable per cent 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 non-miscellaneous. 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 is available.

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).

¹⁷ One 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, it does 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 6002 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 then there would be 3001 regular hearing decisions and 37,677 admission decisions or 40,678 orders total (leaving just 1133 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 1133.

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 8 at independence to 11 in 1956, and then, again 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 1037 to 5549. 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 1960's to just 15 a year in the second half of the 1970's.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 2705 in 1976 (more than quadrupling the institution rate of regular hearing matters). Five years later it had increased to 6566 cases (more than doubling).

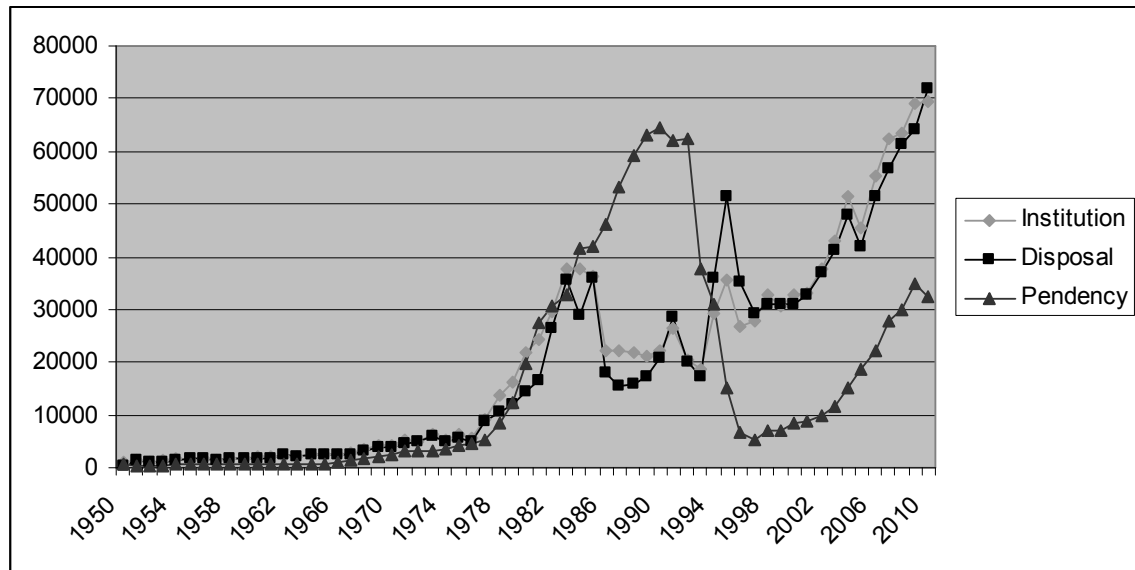
Figure 1: Supreme Court Admission Matter Workload (1950-2010)

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

¹⁹ The 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)

²⁰ For more on this 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) *ECONOMIC AND POLITICAL WEEKLY* 27 (2011). The table below on "Number of Five Judge of Larger Benches Decided Each Year" is taken from that article.

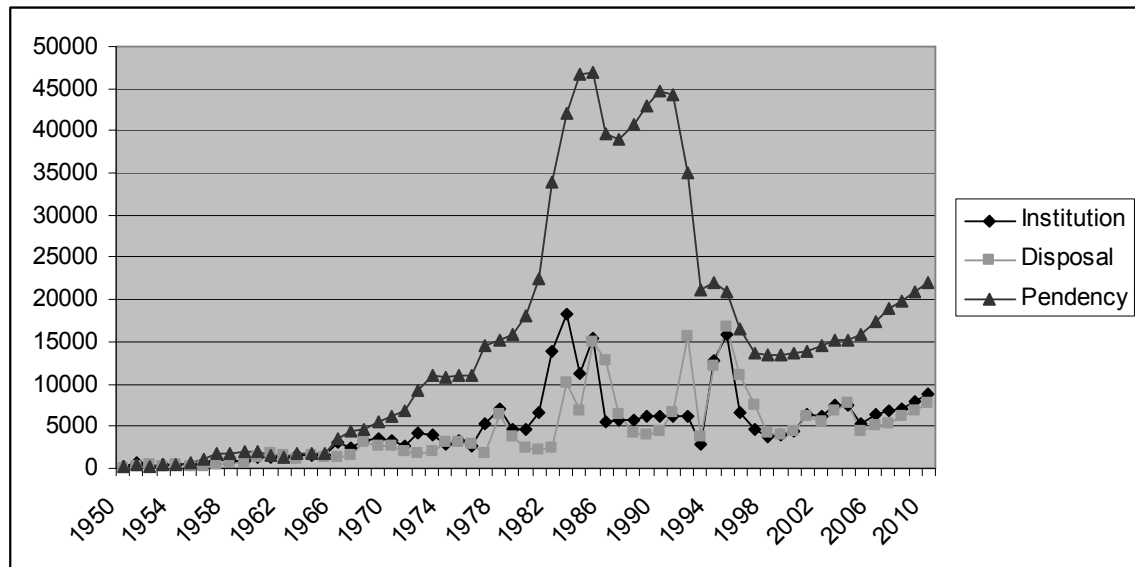
²¹ Robinson, *supra* note 8.



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.

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-1980's. However, the number of new petitions increased significantly in the 1990's and the first decade of the 2000's. 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 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 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 over night). 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

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

	Five+ Judge Benches	Regular Hearing Disposals	Pending Regular Hearing Matters	Five+ Judge Benches as % of Disposals
1950-54	45.6	293	364	15.5
1955-59	49.8	435	1458	11.5
1960-64	134.4	1441	1635	9.3
1965-69	69.4	2018	3957	3.4
1970-74	45	2292	8785	2
1975-79	15	3561	13522	0.42
1980-84	9	4785	32643	0.19

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

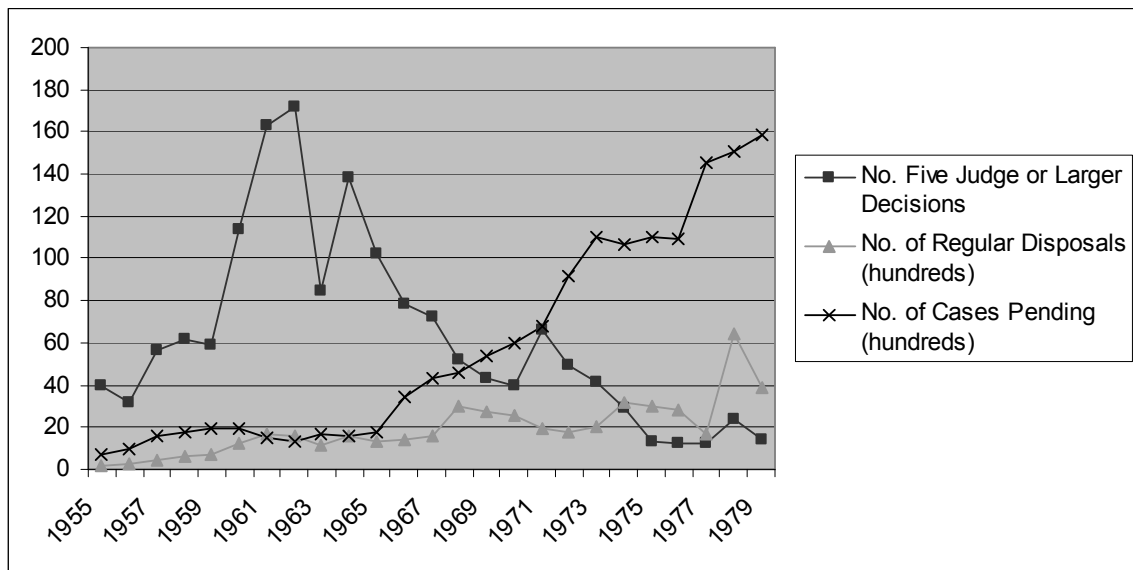
²³ The Supreme Court's annual reports describe how between 1992 and 1993 the Court changed how it counted clubbed matters. The description of how the court brought in judicial officers to club matters during this period was shared during interviews with retired Supreme Court judges.

1985-89	12.6	8483	41830	0.15
1990-94	10.6	8476	33470	0.13
1995-99	9.2	8651	15595	0.1
2000-04	14	6119	14489	0.23
2005-09	6.4	5557	18574	0.12

NOTE: Showing the average number of five judge or larger benches per year during each five year period between 1950 and 2009. Also showing 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) EC. & POL. WEEKLY (Feb. 26, 2011)

Figure 3: Supreme Court Workload vs. Five-Judge Benches Per Year (1950-1979)



NOTE: Showing 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) EC. & POL. WEEKLY (Feb. 26, 2011)

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.

Table 3: Relative Growth of the Judiciary

	Lower Ct Disposal	High Ct Disposal	S Ct Appealed	S Ct Accepted
2005	17263362	1338245	28478	5198
2006	15623712	1440354	35229	6437
2007	15164847	1450996	38498	6822
2008	16410217	1531921	39591	7006
2009	16965198	1593369	42707	7980
2010	17993311	1677863	43243	8824
2011	18617095	1785432	41233	9070
% Increase	7.8	33.4	44.8	74.5

NOTE: Showing both the actual and per cent 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 above is that from 2005 to 2011 the number of matters disposed of by the High Courts grew by 33.4%. Meanwhile, the growth in admission matters instituted in the Supreme Court increased by 44.8%. 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%.

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. Once the Supreme Court

²⁴ ART. 141 CONSTIT. OF INDIA ("The law declared by the Supreme Court shall be binding on all courts within the territory of India.")

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 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%. 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 towards 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

²⁵ See generally, Theodore Eisenberg, Sital Kalantry, and Nick Robinson, *Litigation as a Measure of Well-Being*, DEPAUL LAW 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.)

²⁶ For 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)

²⁷ ART. 136 CONSTIT. OF INDIA

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 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 below, using data from annual statements, presents the per cent 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% of petitions.

Table 4: Per Cent of Supreme Court Admission Docket by Petition Type

	SLP	Writ	Appeal	Transfer	Review	Contempt
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

²⁸ ART. 134A CONSTIT. OF INDIA

²⁹ In 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)

³⁰ ART. 139A CONSTIT. OF INDIA; SUPREME COURT OF INDIA PRACTICE AND PROCEDURE, 14-15 (2010)

³¹ ART. 137 CONSTIT. OF INDIA

³² ART. 129 CONSTIT. OF INDIA

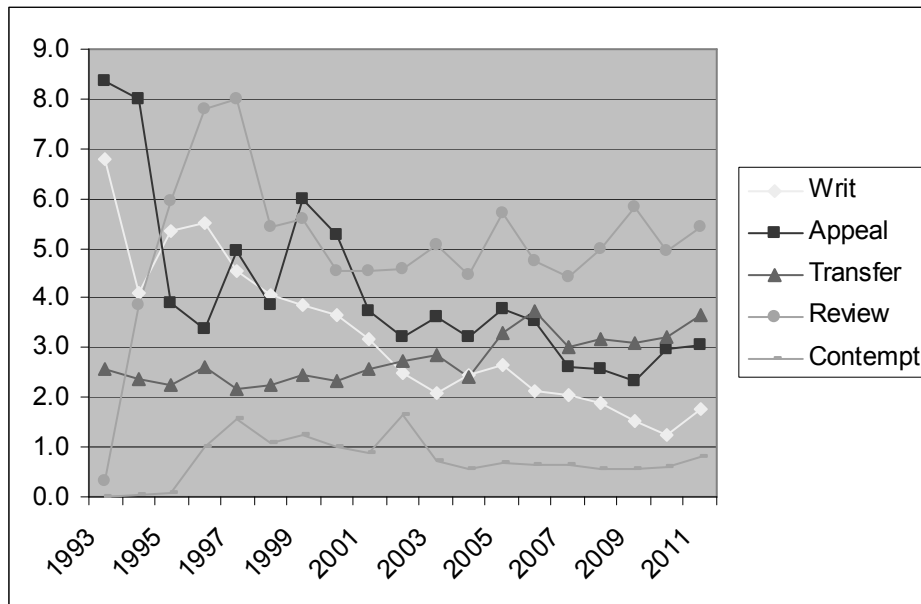
1996	79.6	5.5	3.4	2.6	7.8	1.0
1997	78.7	4.6	4.9	2.2	8.0	1.6
1998	82.9	4.1	3.9	2.2	5.4	1.1
1999	80.6	3.9	6.0	2.5	5.6	1.3
2000	83.0	3.7	5.3	2.3	4.5	1.0
2001	84.9	3.2	3.7	2.6	4.5	0.9
2002	85.1	2.5	3.2	2.7	4.6	1.6
2003	85.2	2.1	3.6	2.8	5.0	0.7
2004	85.8	2.5	3.2	2.4	4.4	0.6
2005	83.2	2.7	3.8	3.3	5.7	0.7
2006	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: Table showing what per cent 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

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

Figure 4: Petition Types by Per Cent of Admission Docket



NOTE: Showing what per cent 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

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% of admission matters in 1971.³³ However, with the advent of the Emergency in 1975, the number of writ petitions had increased to 26% in 1975, then 31% in 1980, and 41% in 1985, before beginning a rapid decline to reach 15% by 1990, and eventually the 1-2% 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

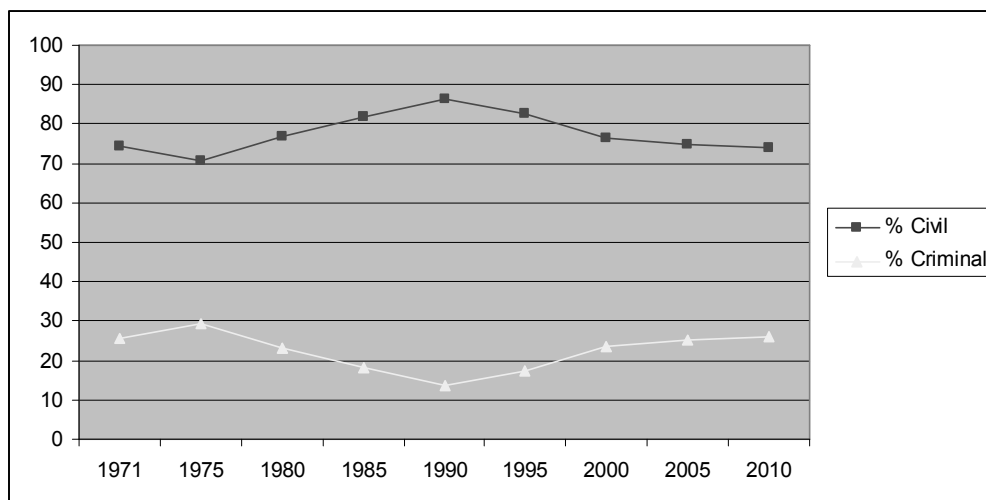
³³ Monthly statements from 1971 to 1990 tell us the number of SLPs and writ petitions filed for admission although they do not separately keep track of certified appeals, or transfer, review, or contempt petitions.

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

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 forty years. In 1971 74% of admission SLPs were civil (26% criminal). This dipped to 71% in 1975, before, for reasons that are unclear, increasing to 77% in 1980, 82% in 1985, and 86% in 1990. It then began dipping again to 83% in 1995, 77% in 2000, 75% in 2005, and 74% in 2010. In recent years, both certified appeals and writs have been more likely to be civil cases than SLPs with writs being about 80% civil matters and certified appeals 83-84% 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% of their instituted cases being civil and 32.5% criminal. In the subordinate courts during this period 24.4% of cases were civil and 73.6% criminal.

Figure 5: Special Leave Petition (SLP) by Civil or Criminal



NOTE: Showing the per cent 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.

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% of the Court's admission docket was appealed to it from Punjab and Haryana while 10.6% 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.

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

	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: Per cent 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 was not able to be acquired for 2009 and 2010.

SOURCE: State-Wise Origin of Supreme Court Appeals (2006-2008, 2011) provided by Supreme Court of India

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 per cent of cases disposed of by a high court that are appealed to the Supreme Court. The approximate per cent of cases appealed from a high court can be calculated by dividing 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%. 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%. All other High Courts besides Himachal Pradesh (3.2%) and Bombay (3.0%) had an appeal rate of less than 3%. Madras had an appeal rate of just 1.1% and Orissa less than 1%.³⁶ Information concerning from which High Court regular hearing matters, as

³⁵ This approximation can only be 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. It though does not disaggregate this data to distinguish between the two sorts of appeals from any given state. At the same time, the available high court data does 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.

³⁶ The affect of proximity to the Supreme Court seems to only have an impact 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% of the appeals to the Supreme Court, but represented only 7.2% 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 then the correlation between appeal rate and distance from the Supreme Court goes from being very strong to practically non-existent (from a correlation coefficient of -0.63, significant at $p < .003$, to a correlation coefficient of -0.11, significant at $p < .69$). 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 $p < .0001$). However, it becomes far less strong if one removes the High Courts with the four highest rates of appeal (0.31, significant at $p < .24$). 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.

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.

Table 6: Appeal Rate from Each High Court to the Supreme Court in % (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	150653
Punjab and Haryana	6.2	8.1	6.2	8.9	7.4	260	(69737)(94680)
Uttaranachal	5.2	4.9	6.2	7	5.8	272	66368
Himachal Pradesh	2.9	3.1	2.7	4.3	3.3	362	65535
Bombay	3.2	2.8	2.4	3.8	3.1	1395	83471
Karnataka	3.5	3.6	2.4	2.2	2.9	2073	60946
Andhra Pradesh	2.6	3.1	2.9	2.8	2.9	1506	62912
National Average	2.4	2.6	2.5	2.7	2.6		60972
Madhya Pradesh	2.3	2.4	2.8	2.4	2.5	800	32222
Rajasthan	3.1	2.7	2.5	1.2	2.4	572	42434
Uttar Pradesh	2.4	2.3	2.3	2.2	2.3	693	26355
Jharkhand	1.7	2.8	2.2	2.1	2.2	1191	29786
Gujarat	1.5	1.5	1.8	3.2	2.0	932	75115
Kerala	1.5	2	1.8	2.5	2.0	2574	71434
Chattisgarh	2.1	1.5	1.2	2.8	1.9	1186	41167
Calcutta	1.5	1.8	1.7	1.7	1.7	1439	48536
Assam	1.6	1.6	1.4	1.2	1.5	1805	30569
Bihar	1	1.7	1.3	1.6	1.4	1026	20708
Madras	0.8	1.3	1.1	1.1	1.1	2118	72993
Jammu and Kashmir	1.2	0.7	1	1.2	1.0	867	37496
Orrisa	0.6	0.8	1	1.2	0.9	1688	40412

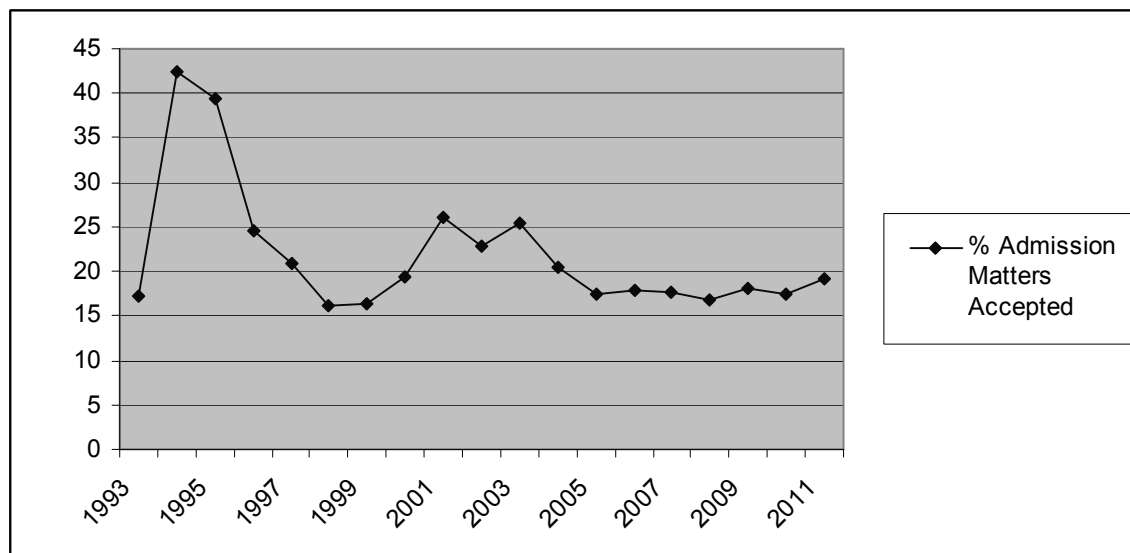
NOTE: Listing the approximate per cent of cases appealed from each High Court to the Supreme Court and the distance of the primary High Court bench in each jurisdiction to the Supreme Court as well as the GNP per capita of the state.

SOURCE: State-Wise Origin of Supreme Court Appeals (2006-2008, 2011) provided by 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, 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% and 26%. In 1994 and 1995 there was a spike in the per cent 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: Per Cent of Admission Matters Accepted (Approximately)



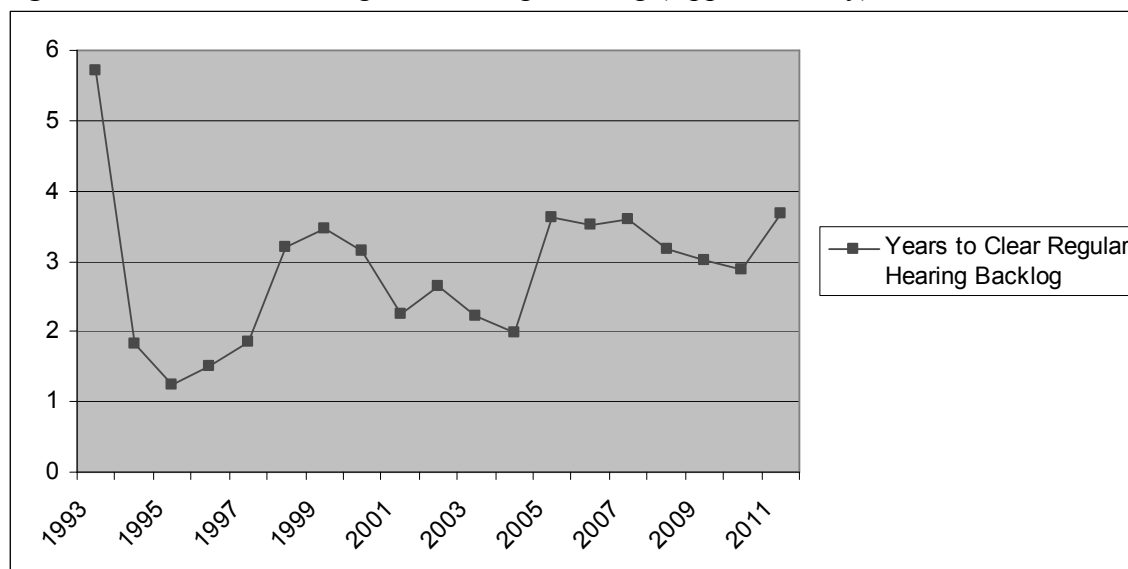
NOTE: Showing the per cent of admission matters accepted for regular hearing per year by the Supreme Court of India by dividing the number of instituted regular hearing matters by the number of disposed of admission matters each year.

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

VIII. BACKLOG

The Indian Supreme Court's backlog is notorious. Below, 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).

Figure 7: Years to Clear Regular Hearing Backlog (Approximately)



NOTE: 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)

Using more detailed backlog data that is 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.

Table 7: Age of Pending Admission Matters

	One Year or Younger	Two Years or Younger	Older than Two Years
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: Showing what per cent 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)

Table 8: Age of Pending Regular Hearing Matters

	Two Years or Younger	Five Years or Younger	Older than Five Years
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: Showing what per cent 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)

IX. CASES BY SUBJECT MATTER CATEGORY

The below two tables 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 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

³⁷ For a full list of all forty-seven subject matter categories, including sub-categories 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 sub-category.

employment which cause so much litigation in the first place and seems 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% 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% or less of its disposals in each year between 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 7 in 2008 and 0 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's 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 5.

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

	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
Labour 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 Matter	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

³⁸ For a description of dominant role the Chief Justice plays, *see*, Robinson, *supra* note 8

³⁹ The 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>

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 & PIL Matter	1.7	1.7	1.6	1.7	1.7	1.6	1.3	1.6
Arbitration Matter	1.3	1.7	1.8	1.6	1.3	1.5	1.4	1.5
Matters Pertaining to Armed Forces and Para Military 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 Matter	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, MRTTP, & 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 & 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 Judges Bench Matter	0.9	0.5	0.4	0.1	0.2	0.1	0.1	0.3
Simple Money & 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 Judges Bench Matter	0.2	0.1	0.0	0.2	0.0	0.0	0.0	0.1

NOTE: Showing what per cent 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 the following one 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)

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

	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
Labour 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 Matter	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 Matter	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 & PIL Matter	0.8	2.1	0.8	0.8	1.5	0.7	2.6	1.3
Three Judges Bench Matter	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, MRTTP, & 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 Para Military 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 Matter	1.6	0.5	0.5	0.4	0.5	0.7	0.4	0.6
Religious & 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 Judges 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 & Mortgage	0.3	0.3	0.4	0.3	0.3	0.2	0.2	0.3

NOTE: Showing what per cent 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 Regular Hearing Matters (2005-2011)

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 labour admission matters were disposed of. In the same year, 276 labour 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 labour matters is 15.6%.

This approximation of the per cent of acceptances by subject matter category though is not precisely accurate. First, admission disposals by subject matter category 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 is available should give a fairly accurate relational sense of the acceptance rate of different kinds of matters.

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

	2005	2006	2007	2008	2009	2010	2011	Average
Five Judges Bench Matter	11.5	17.8	55.6	60.4	35.3	76.5	66.7	46.3
Three Judges Bench Matter	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, & 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 Matter	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
Labour 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
AVERAGE	11.8	12.4	12.1	11.3	11.4	12.0	13.0	12.0
Mercantile Laws, Commercial Transactions Including Banking	12.5	14.5	11.1	11.7	14.6	10.0	8.5	11.8
Religious & 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 Matter	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 & PIL Matter	11.9	13.8	7.5	5.0	4.4	8.6	20.6	10.3
Family Law Matter	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 Para Military 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: Per cent of matters accepted for regular hearing by subject category. Matters in bold indicate those that on average from 2005-2011

comprised over 2% of the Court's admission disposals per year, which is over 1200 matters a year.

SOURCE: Supreme Court of India, Subject Matter Category Institution and Disposal for Admission and Regular Hearing Matters (2005-2011)

As one can see from the above chart, 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 getting 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 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%).⁴² However, starting in 2008, the data shows over 20% 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 towards these statutory bodies. Alternatively, at least until 2011 no more than 200 admission matters that were against statutory bodies

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

⁴¹ For 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) *LAW & SOCIETY REV.* 95 (1974)

⁴² These statutory bodies include tribunals like the Telecom Dispute Settlement Appellate Tribunal or the Railways Rates Tribunal

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. While direct tax matters dropped from an acceptance rate of over 20% to below 10% in 2008, indirect tax matters increased from an acceptance rate of about 15% to almost 30% in 2008. There are on average over 3000 admission direct tax matters and over 2900 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 was collected (perhaps, for example, 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 the chart above 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 below)

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 than 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 – i.e. 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.

Table 12: How Many Years Regular Hearing Petitions Have Been Pending By Subject Category (2009-2011) (%)

	+2 years	+5 years
Family Law Matters	42.2%	4.1%
Labour 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 & 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
AVERAGE	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

⁴³ For 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>

Company Law, MRTP & Allied Matters	68.9	30.5
Letter Petition & PIL Matters	74.0	40.2
Mines, Minerals and Mining Leases	77.5	41.8
Five Judges Bench Matters	91.9	41.0
Three Judges Bench Matters	94.5	67.8
Seven Judges Bench Matters	100	100

NOTE: This table, which shows what per cent of matters are backlogged over two and five years respectively, 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

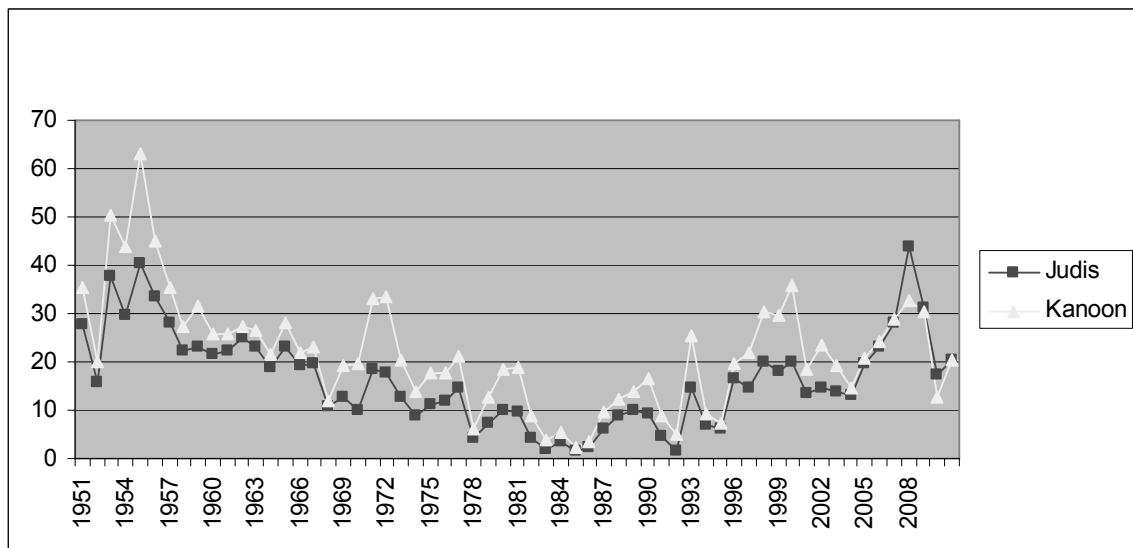
Decisions of the Supreme Court are often not published. Figure 8 below compares the number of regular hearing matters the Court claims were disposed of in a year to the number of reported judgments on the searchable Indian law databases of Judis or Indian Kanon for that year.⁴⁴ This provides only a rough estimate of what per cent 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% as many reported judgments as regular hearing disposals on Judis compared to 24.5% on Indian Kanon. From 2000-2010 this figure was about 21.5% on Judis and 23.7% on Indian Kanon. The lowest reporting is from the mid-1980's when the ratio of reported judgments to regular hearing disposals slipped into single digits. The highest reporting rate came just after

⁴⁴ The Judis database is *available at* www.judis.nic.in and Indian Kanon is *available at* www.indiankanon.org

⁴⁵ A sample set of official cause lists from one week from 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 6002 regular hearing matters were disposed of this would indicate that there had been about 3001 regular hearing decisions. In actuality in 2011 Indian Kanon indicates there were 1217 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.

independence. This data seems 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 effect 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.

Figure 8: Per Cent of Cases Reported by Judis and Indian Kanoon Compared to the Number of Disposed of Regular Hearing Matters



NOTE: Showing per cent 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) and Supreme Court of India Annual Statements (2009-2011)

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 small per cent of the Supreme Court’s docket (between 1-2% of both its admission and regular hearing

⁴⁶ For a critique of some of the Supreme Court’s judicial activism, *see*, Justice B.N. Srikrishna, *Skinning a Cat*, 2005 8 SCC (Jour) 3; for more a more complimentary analysis, *see*, S.P. SATHE, JUDICIAL ACTIVISM IN INDIA: TRANSGRESSING BORDERS AND ENFORCING LIMITS (2002)

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% 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.

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

	Letter Petitions	Accepted	Per Cent Accepted
2000	17764	183	1.0
2001	17198	182	1.1
2002	15518	199	1.3
2003	14293	177	1.2
2004	15653	193	1.2
2005	14261	227	1.6
2006	19840	243	1.2
2007	18200	258	1.4
2008	24666	226	0.9

SOURCE: 2008-09 Annual Report of the Supreme Court of India

XII. CONCLUSION

Data on the Indian Supreme Court's workload allows 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

⁴⁷ See, *People's Union for Democratic Rights vs. 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).

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

institution's 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 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 is not as useful as it could be and rarely is this data proactively disclosed.⁴⁹ These limitations inhibit a broader judicial and public discussion about the workings of the Court. In a country like the United States, scholars and court watchers can relatively easily keep track of the eighty 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 like 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 like Abhinav Chandrachud, Bibek Debroy, Ted Eisenberg, Marc Galanter, Arnab Kumar Hazra, Sital Kalantry, Sudhir Krishnaswamy, Robert Moog,

⁴⁹ In 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

⁵⁰ The 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 Harvard Law Review's, *see*, for example, 125 (1) HARV. L. REV. (2011)

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

Varun Gauri, and Shylashri Shankar have re-energized the field.⁵² This development 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 tracks the voting behaviour 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, getting 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 out 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.

⁵² See, for example, Ted Eisenberg, Sital Kalantry, and Nick Robinson, *Litigation as a Measure of Well-Being*, DePaul Law Review (2013, forthcoming); Abhinav Chandrachud, *An Empirical Study of the Supreme Court’s Composition*, 46(1) EC. & POL. WEEKLY (2011); Varun Gauri, *Fundamental Rights and Public Interest Litigation in India: Overreaching or Underachieving?* 1(1) INDIAN JOURNAL OF LAW AND ECONOMICS 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 AND BIBEK DEBROY, JUDICIAL REFORMS IN INDIA: ISSUES AND ASPECTS (2007); Robert Moog, *Indian Litigiousness and the Litigation Explosion: Challenging the Legend*, 33 ASIAN SURVEY 1136-1150 (1993)