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### A QUALIFIED HOPE

The Indian Supreme Court is widely seen as a vanguard of progressive social change. Yet there are no systematic studies of whether its progressive decisions actually improve the lives of the relatively disadvantaged. This book presents the first collection of original empirical studies on the impact of the Indian Supreme Court's most progressive decisions. Combining original datasets with in-depth qualitative research, the chapters provide a rigorous examination of the conditions under which judicial decisions can make a difference to those in need. These studies reveal that the Indian Supreme Court, like its US counterpart, is largely constrained in its efforts. Yet, through its procedural innovations, its institutional independence, and the broad sweep of constitutional rights in the Indian Constitution, the Indian Supreme Court can sometimes make a difference to the lives of those most in need.

Gerald N. Rosenberg is Associate Professor of Political Science and Lecturer in Law at the University of Chicago. He is the author of *The Hollow Hope: Can Courts Bring About Social Change?* (2008) which was awarded the Laing Prize by the University of Chicago Press and the Wadsworth Award from the American Political Science Association.

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# A Qualified Hope

THE INDIAN SUPREME COURT AND  
PROGRESSIVE SOCIAL CHANGE

Edited by

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## Foreword

Cambridge University Press has made a considerable contribution to comparative jurisprudence by its series on comparative constitutional law and policy studies. It is a privilege to be associated with this painstaking work engaged with the wondrous, and often miraculous, itineraries of the Supreme Court of India. The judicial peregrinations have, overall, made impressive normative and socially progressive contributions. However, we do not know precisely what the impact may be of judicial governance, or of demosprudential adjudicatory leadership, across seven decades.

This work accentuates contributions that empirical and quantitative research may yet bring to global studies of Indian constitutionalism. The editors rightly maintain (in the Introduction) that a special focus on the American experience marks a new research pathway in binational constitutionalism spheres that enhances comparative constitutional analyses. They have brought home a wealth of empirical reasons why American judicial action does not bring about widespread social changes, despite lofty constitutional aims and aspirations.

The learned editors rightly maintain that “courts are constrained institutions” but that “there are three important reasons to suggest that the Indian Supreme Court might be less constrained and, therefore, more effective at bringing about progressive social change than its United States counterpart.” The notion of a “less constrained” apex court fascinates; so does the sister notion of types of constraints. The Indian story is interesting because what were once perceived to be historical constraints are now regarded as normative opportunities for social action by the apex court. The Indian landscape presents three features: a “broad sweep of constitutional rights,” “the procedural improvisations,” and high degree of “formal independence of the Court.” The diverse studies here assembled reinforce, in fine detail, these structural aspects of adjudicatory leadership of the nation.

But the editors also note three potential “roadblocks.” The first is a syndrome that I have described in my *Courage, Craft, and Contention: The Indian Supreme Court in Mid-Eighties* as “independence-within-dependence” – the fact that the orders and directions of the Court depends on state agencies for enforcement. Second, the Indian justices do not merely lack the US-style life tenure but have a relatively short presence in the Supreme Court. Third, “there are tremendous variations in the history, culture, and capacity of the individual states that make up the national unit.” The first and third factors are well-nigh universal but I suspect that these affect the constitutional unfolding in the USA as well. The striking differences in their playing out would, I think, advance more than a binational exploration,

Quantitative and empirical studies of judicial action for social change have great potential to expose the impact of judicial action, as this fine work demonstrates. There are broadly four outcomes: (1) no change in behaviors or values; (2) episodic behavioral changes; (3) structural changes in behavior; (4) sustained changes in behavior as well as values. Of course, what the agents intend as change matters, as do those people whose behaviors and values are sought to be transformed and their capacity to retard or resist change. This work studies these transformations (though under a range of different rubrics) and directs attention to contexts that provide many variables. It also archives the ways in which demosprudential adjudicatory leadership may consist of transforming constraints into opportunities for action. One hopes that a sister volume will eventually provide equally valued insights into the interfaces between activist adjudication and social movements.

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## Acknowledgments

This book owes its genesis to a dinner conversation in a restaurant in Bangalore, India, in April 2014. Sudhir Krishnaswamy had invited Gerald Rosenberg to give a talk at Azim Premji University on whether the US Supreme Court can further the interests of the relatively disadvantaged. After the talk there was a dinner attended by the editors and some of Krishnaswamy's colleagues and students. The question arose as to whether Rosenberg's argument applied to the Indian Supreme Court. We were intrigued by the question. After further conversation we determined that there was no published collection of empirical studies of the ability of the Indian Supreme Court to help the relatively disadvantaged. This led to our organizing two conferences, one in the USA and one in India, to address the question. The result is this volume.

For their generous financial support we thank Azim Premji University, Bangalore, India; the University of Chicago Center in New Delhi, India; and the Center for Constitutional Governance and the Dr Ambedkar Chair in Indian Constitutional Law at Columbia University Law School. In particular, we thank Professor Gillian Metzger of Columbia Law School for her support, wisdom, and good humor. Furthermore, we are very grateful to the paper presenters at the two conferences. To a person they presented serious scholarly studies. We regret that we couldn't include more of them in this volume.

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