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.

Sudhir Krishnaswamy is on the faculty of Azim Premji University, Bangalore. He has served as the Dr. B.R. Ambedkar Visiting Professor of Indian Constitutional Law at Columbia University Law School and as the Director of the School of Policy and Governance at Azim Premji University in Bangalore.

Shishir Bail is completing a PhD in Anthropology at Columbia University. He has served as a law-clerk to Justice Anil R. Dave of the Supreme Court of India and as a Research Associate at the School of Policy and Governance at Azim Premji University.
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A Qualified Hope

THE INDIAN SUPREME COURT AND PROGRESSIVE SOCIAL CHANGE

Edited by

GERALD N. ROSENBERG
University of Chicago

SUDHIR KRISHNASWAMY
Azim Premji University, Bangalore

SHISHIR BAIL
Columbia University
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Notes on Contributors

Shishir Bail is a PhD student in the Department of Anthropology at Columbia University. Between 2012 and 2017 he was a research associate at the School of Policy and Governance at Azim Premji University, prior to which he was law-clerk to Justice Anil R. Dave on the Supreme Court of India. He holds a B.A-L.L.B from the West Bengal National University of Juridical Sciences.

M. Mohsin Alam Bhat is an assistant professor of law and the executive director of the Centre for Public Interest Law, at Jindal Global Law School, O.P. Jindal Global University (India). He works on legal and empirical dimensions of equality and exclusion, law and religion, and minority rights. He received his doctoral degree from Yale Law School and was a Peter and Patricia Gruber Fellow in Global Justice (2016–2017). He has previously served as the law clerk to the former Chief Justice P. Sathasivam, Supreme Court of India.

Alyssa Brierley is the executive director of the Centre for Equality Rights in Accommodation and a doctoral candidate in the Department of Political Science at York University. Her dissertation investigates how Indian social activists have used litigation to influence food policy. Prior to her PhD, Brierley completed a Juris Doctor at Osgoode Hall Law School, an MA in political science at York University, and a BA in economics and political science at the University of Waterloo. She also served as a research and policy advisor to the UN Special Rapporteur on the Right to Food, as the director of policy to Ontario’s Minister of Economic Development and Infrastructure, and as the health, social and justice policy advisor to the president of the Treasury Board of Ontario.

Aparna Chandra is an assistant professor of law and the research director of the Centre for Constitutional Law, Policy and Governance, National Law
University, Delhi. She works on constitutional law, human rights, gender and the law, and judicial process reform. Chandra has previously worked as a tutor in law at Yale Law School and has been on the faculty of the National Judicial Academy, Bhopal, and the National Law School, Bangalore. She holds a BA LL.B (Hons.) degree from National Law School Bangalore and LL.M and JSD degrees from Yale Law School.

Poorvi Chitalkar is the manager of analysis at the Global Centre for Pluralism (Ottawa, Canada) where she leads the Centre’s research on the sources of inclusion and exclusion in diverse societies and policy and normative responses to diversity. Her current research interests include diversity and pluralism, public interest litigation, and the role of courts in advancing social and economic rights. She holds an LL.B. from Symbiosis University (India) and an LL.M. from the University of Toronto (Canada). She serves on the editorial board of the African Conflict and Peacebuilding Review. Prior to the Global Centre for Pluralism, she worked at the International Development Research Centre, the Ombudsman of Ontario, and practiced Law at the Bombay High Court, India.

Rishad Chowdhury is an advocate-on-record at the Supreme Court of India, and a New Delhi-based partner with the Indian law firm VERUS. He holds an undergraduate degree in law from the National University of Juridical Sciences, Kolkata and LL.M. and JSD degrees from the University of Chicago Law School. His area of research interest is Indian and comparative constitutional law.

Rosalind Dixon is a professor of law at the University of New South Wales, Faculty of Law, and previously served as an assistant professor at the University of Chicago Law School and has been a visiting professor at the University of Chicago, Columbia Law School, Harvard Law School, and the National University of Singapore. Her work focuses on comparative constitutional law and constitutional design, constitutional democracy, theories of constitutional dialogue and amendment, socioeconomic rights, and constitutional law and gender, and has been published in leading journals in the USA, Canada, the UK, and Australia. She was recently elected as copresident of the International Society of Public Law.

Marc Galanter is Professor of Law Emeritus at the University of Wisconsin, Madison. He was previously a Fulbright Scholar at the University of Delhi, a Fellow of the American Institute of Indian Studies, and consultant on legal services to the Ford Foundation in India. He has taught South Asian Law, Law and Social Science, Legal Profession, Religion and the Law, Contracts, Dispute Processing, and Negotiations. He has authored numerous books and
Notes on Contributors

Varun Gauri is a senior economist in the Development Economics Vice Presidency of the World Bank. He coleads the Mind, Behavior, and Development Unit (eMBeD), which integrates behavioral science into the design of anti-poverty policies worldwide. He was the codirector of the World Development Report 2015: Mind, Society, and Behavior and serves on the editorial boards of the journals Behavioral Public Policy and Health and Human Rights. He has also been a member of the World Economic Forum Council on Behavior, the Advisory Board of Academics Stand Against Poverty, and the Board of the Behavioral Economics Action Research Centre at the University of Toronto. His research has appeared in journals spanning the fields of economics, philosophy, political science, and law, and has been covered in the New York Times, The Economist, the Washington Post, Forbes, The Hindu, and Frontline, among others. He has published three books: Courting Social Justice, School Choice in Chile, and Bringing Law to Life.

William H. J. Hubbard is a professor of law and Ronald H. Coase Teaching Scholar at the University of Chicago Law School. His scholarly work involves empirical studies of courts and economic analysis of civil procedure and litigation, and he serves as an Editor of the Journal of Legal Studies. He received his JD with high honors from the University of Chicago Law School in 2000, where he was executive editor of the Law Review. He then clerked for the Hon. Patrick E. Higginbotham of the US Court of Appeals for the Fifth Circuit, practiced law as a litigation associate at Mayer Brown LLP in Chicago, and completed a PhD in economics at the University of Chicago. Before joining the faculty in 2011, he was a Kauffman Legal Research Fellow and a lecturer in law at the Law School.

Sital Kalantry is a clinical Professor of law at Cornell Law School where she founded the International Human Rights Clinic and cofounded the Avon Global Center for Women & Justice. Her scholarly work focuses on using quantitative approaches to understand and promote the enforcement of international human rights law. She received a Fulbright-Nehru Senior Research Scholar grant to conduct research in India. Her works have been published in, among other places, the Human Rights Quarterly, the National Law Journal, and the Stanford Journal of International Law. Her book Women’s Human Rights and Migration: Sex-Selective Abortion Law and Politics in the United States and India was published in 2017.

Sudhir Krishnaswamy is the director of the School of Policy and Governance at Azim Premji University. Previously he was the Dr. B. R. Ambedkar Visiting Professor of Indian Constitutional Law at Columbia Law School, and
a professor of law at the West Bengal National University of Juridical Sciences, Kolkata, India, where he taught constitutional law and jurisprudence. He has engaged with the government at various levels, including the Prime Minister’s Committee on Infrastructure and the Kasturirangan Committee on Bangalore’s Governance. Krishnaswamy has published widely in various academic and non-academic journals and newspapers. His book *Democracy and Constitutionalism in India* was published in 2009. His research interests include constitutional law, administrative law, and intellectual property law, as well as reform of the legal system, legal profession, and legal education in India.

**Robert Moog** is Associate Professor Emeritus of Political Science at North Carolina State University, and ex-Chair of that department. His research, reflecting interests in both law and South Asia, includes the book *Whose Interests Are Supreme? Organizational Politics in the Civil Courts in India*, as well as numerous articles on India’s courts and alternative dispute resolution fora. He also jointly edited the June 2012 issue of the *Election Law Journal*, which focused on the Indian electoral system. Additionally, he has published articles on judicial selection and trial rates in the USA. Professor Moog has received two Fulbright awards among other fellowships to conduct research in India and acted as a consultant on justice system reform projects in India, Nepal, and Afghanistan.

**Arindam Nandi** is a senior fellow at the Center for Disease Dynamics, Economics & Policy, Washington, DC. His research focuses on the long-term effects of early childhood interventions on cognitive, educational, and labor market outcomes in low- and middle-income countries. His past work has evaluated the economic benefits of various health interventions and policies in India, and the political economy of gender, particularly sex-selective abortions, in India and the USA. In the past, he has been the associate director of research of the Data Centre for Development at the University of Chicago and a visiting scholar at the Public Health Foundation of India. He received his PhD in economics from the University of California, Riverside.

**Vasujith Ram** is a graduate of the LL.M. program at Harvard Law School. He completed his B.A.-L.L.B degree from the National University of Juridical Sciences in Kolkata, India.

**Karthik Rao-Cavale** is an assistant professor at Ahmedabad University and obtained his doctoral training from the Department of Urban Studies and Planning at the Massachusetts Institute of Technology (MIT). His theoretical interests lie in heterodox political economy and historical geography. He is currently working on a social history of regional road networks, regimes of circulation, and rural development in southern Tamil Nadu in the early twentieth century. His earlier work has been published in leading journals.
such as Transportation Research Record (2012) and Landscape and Urban Planning (2017). He has also edited an issue of Projections: MIT Journal of Urban Planning (June 2016), with articles exploring the intersection between law and urban planning.

Nick Robinson is a legal advisor at the International Center for Not-for-Profit Law (ICNL). Prior to joining ICNL, Robinson was a lecturer and fellow at Yale University and before that a post-doctoral research fellow at the Center on the Legal Profession at Harvard Law School. He spent seven years in South Asia, where he served as a clerk to the Chief Justice of the Indian Supreme Court, worked at Human Rights Law Network in New Delhi, taught at law schools in India and Pakistan, and was a senior fellow at the Center for Policy Research. His research has been published in a number of leading academic journals. His writing has focused on the judiciary, the legal profession, and public law in South Asia, as well as on occupational licensing and the legal profession in the USA. He holds a JD from Yale Law School and a BA from the University of Chicago.

Gerald N. Rosenberg teaches political science and law at the University of Chicago. He has taught at Yale University, Northwestern University School of Law where he served as the Jack N. Pritzker Distinguished Visiting Professor of Law, at the Law School of Xiamen University in China as a Fulbright Professor, and at the National Law School of India University in Bangalore. In the 1995–1996 academic year he was a visiting fellow in the law program of the Research School of Social Sciences at the Australian National University in Canberra, Australia. He holds a BA from Dartmouth College, an MA in politics and philosophy from Oxford University, a law degree from the University of Michigan, and a doctorate in political science from Yale University. His work focuses on the interaction between courts, social movements, and the society and culture in which they are embedded. His work has appeared in numerous law reviews and journals. He has contributed to multiple edited collections and is the author of The Hollow Hope: Can Courts Bring About Social Change? (1991, 2nd edition 2008, 3rd edition forthcoming, 2020) and a textbook on American government.

Shylashri Shankar is a senior fellow at the Centre for Policy Research in New Delhi. She is the author of Scaling Justice: India’s Supreme Court, Anti-Terror Laws and Social Rights (2009), coauthor, with Raghav Gaiha, of Battling Corruption: Has NREGA Reached India’s Rural Poor? (2013), both published by Oxford University Press, coeditor, with Mirjam Kunkler and John Madeley, of A Secular Age beyond the West: Religion, Law and the State in Asia, the Middle East and North Africa (Cambridge University Press 2018), and author of A Moveable Indian Feast: A Food Biography (Speaking Tiger,
Notes on Contributors

2019). She has held academic positions at the University of Texas at Austin and the Center on Religion and Democracy, University of Virginia. She was a Bellagio Fellow, a co-convener of an international research cluster at ZiF, University of Bielefeld, and a co-coordinator of CORD, Collaboration of Research on Democracy, a research network.

Siddharth Swaminathan is a professor at Azim Premji University. He earned his MA and PhD in political science from the Claremont Graduate University. His research focuses on political demography, voter behavior, citizenship, and urban governance in India. Prior to joining Azim Premji University he held faculty positions at the Institute for Social and Economic Change, La Sierra University, and California State University.
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.

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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.

*Upendra Baxi*

*Emeritus Professor of Law*

*University of Warwick and Delhi*
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.

Professor Tom Ginsburg of the University of Chicago Law School provided continual support and counsel. He, along with John Berger of Cambridge University Press, demonstrated remarkable patience in seeing this project to completion. We are grateful for their understanding. We are also grateful to the thoughtful suggestions for revisions from the anonymous reviewer engaged by Cambridge University Press.

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