

EDITORIAL: SPECIAL ISSUE

„THE INDIAN SUPREME COURT IN CRISIS?“

2018 has been a spectacular year for the Supreme Court of India. It began with a political earthquake when four judges of the Court publicly claimed in a press conference that the Chief Justice of India (CJI), Dipak Misra, had been assigning cases in an arbitrary manner and ended with one of the four judges, Ranjan Gogoi, being sworn in as India's new CJI. In between, for the first time in history, seven political parties filed an impeachment motion against the Chief Justice of India (which, however, remained unsuccessful). Once again, the press conference and its turbulent aftermaths triggered a public discussion if we can think of the Supreme Court as a functioning institution or whether the Court and its institutional design are in dire need of reform.

However, 2018 has not only been a remarkable year regarding the institutional structures and problems of the Court. It has also been a year in which the Court delivered an astonishing number of widely discussed landmark judgments. Most notably, the Court decriminalized homosexuality by striking down Section 377 of the Indian Penal Code, a colonial-era law from the 19th century. The judgment was not only acclaimed for its progressive stance on LGBT rights, but also triggered a wave of LGBT activism against similar colonial relics in other countries of the Global South. Likewise, the Court struck down a religious ban on women to enter the Sabaramila temple in South Kerala and made a strong case for gender justice. Finally, one of the largest hearings in the history of the Supreme Court, the so called Aadhar case, ended with a ruling upholding the validity of the world's biggest biometric scheme.

This Special Issue takes the events of 2018 as an occasion to ask whether the press conference and its aftermaths might point us to a deeper crisis of the Court and its institutional structure. It brings together various scholars working on the Supreme Court who use a variety of methods to assess the Court's performance. As it is so often the case with the Supreme Court of India, this Special Issue, too, draws a rather ambivalent and mixed picture instead of providing a clear narrative. While some institutional structures work surprisingly well (for instance maintaining the geographical and religious diversity of the country through the judicial appointment procedure), other procedures turn out to be clearly flawed (for instance the listing practice employed by successive Chief of Justices). Likewise, while the Court's ruling on the Section 377 has been acclaimed as a progressive judgement among the LGBT community, the Court's recent stance on the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 has led to serious resentment and violent protests among the members of SC and ST in India.

Yet, this issue does not end on the note that the Court is too complex and multifaced to come to any conclusion. Some of our authors suggest very concrete reform proposals while others point to avenues of judicial interpretation which the Court should avoid in future. The clearest conclusion, however, is that the Supreme Court of India is not only a fascinat-

ing object of study, but still receives far too little attention in comparative constitutional law. This Special Issue hopes to contribute to shifting more attention to this powerful institution and to convey some useful insights both to readers familiar and unfamiliar with the Supreme Court of India.

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