

[In]Complete Justice?
The Supreme Court at 75

Critical Reflections

Edited by

S Muralidhar



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 juggernaut

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Table of Abbreviations

Additional Solicitors General for India	ASG
Advocate-on-Record	AOR
Aligarh Muslim University	AMU
All-India Trade Union Congress	AITUC
Alternative Dispute Resolution	ADR
Annual Confidential Reports	ACRs
Artificial Intelligence	AI
Attorney General for India	AG
Bar Council of India	BCI
Bharat Sanchar Nigam Limited	BSNL
Bharatiya Janata Party	BJP
Bharatiya Nagarik Suraksha Sanhita, 2023	BNSS
Bharatiya Nyaya Sanhita, 2023	BNS
Brain Electrical Activation Profile	BEAP
Case Information System	CIS
Central Bureau of Investigation	CBI
Code of Civil Procedure/Central Project Co-ordinator	CPC
Central Vigilance Commission	CVC
Centrally Empowered Committee	CEC
Centrally Sponsored Scheme	CSS
Centre for Development of Advanced Computing	C-DAC
Chief Justice	CJ
Chief Justice of India	CJI

Chief Minister	CM
Child Welfare Committee	CWC
Code of Civil Procedure, 1908	CPC
Code of Criminal Procedure, 1973	CrPC
Committee on the Elimination of Discrimination Against Women	CEDAW
Common Law Admission Test	CLAT
Common Service Centre	CSC
Constitution Benches	CBs
Crime and Criminal Tracking Networks and Systems	CCTNS
Curriculum Development Centre	CDC
Data Protection and Privacy Act, 2023	DPDP Act
Dental Council of India	DCI
Department of Justice	DoJ
Designing Innovative Solutions for Holistic Access to Justice	DISHA
Digital Supreme Court Reports	Digi SCR
Directive Principles of State Policy	DPSP
Director General of Police	DGP
Directorate of Enforcement	ED
District Child Protection Unit	DCPU
District Committees for the Protection of Child Rights	DCPCR
District Court Digitization Centres	DCDCs
District Legal Services Authority	DLSA
Double Tax Avoidance Convention, 1983	DTAC
Double Taxation Avoidance Agreement	DTAA
Economically Weaker Sections	EWS
Eco-Sensitive Zones	ESW
e-High Court Reports	e-HCR
Election Commission of India	ECI

Electronic Case Management Tools	ECMT
Environmental Impact Assessment	EIA
Exclusive POCSO	e-POCSO
Expert Appraisal Committee	EAC
Fact Check Unit	FCU
Fast and Secured Transmission of Electronic Records	FASTER
Fast Track Courts	FTCs
Fast Track Special Courts	FTSCs
First Information Report	FIR
Free and Open Source Software	FOSS
Free, Prior and Informed Consent	FPIC
General Agreement on Tariffs and Trade	GATT
Goan People's Party	GPP
Government Electronic Market	GeM
Government of India	GoI
Gujarat Control of Terrorism and Organised Crimes Act, 2015	GujCTOCA
High Court Collegium	HCC
High Court	HC
Hindu Undivided Family	HUF
Increasing Diversity by Increasing Access	IDIA
India International University of Legal Education and Research	IIULER
Indian Law Institute	ILI
Indian National Congress	INC
Indian Penal Code, 1860	IPC
In-House Procedure	IHP
Intelligence Bureau	IB
Internal Complaints Committees	ICC
International Covenant on Civil and Political Rights	ICCPR

International Labour Organization	ILO
Internet of Things	IoT
Inter-Operable Criminal Justice System	ICJS
Inter-State Migrant Workers Act, 1979	ISMW Act
Janata Party	JP
Judicial Appointments Commission	JAC
Judicial Service Centres/Judicial Service Commission	JSC
Juvenile Justice Committees	JJCs
Labour Appellate Tribunal	LAT
Law Commission of India	LCI
Leader of the Opposition	LoP
Legal Services Authorities	LSAs
Legal Services Authorities Act	LSAA
Liberalization, Privatization and Globalization	LPG
Life Insurance Corporation of India	LIC
Litigation Management System	LMS
Local Area Network	LAN
Machine Learning	ML
Maha Vikas Aghadi	MVA
Maharashtrawadi Gomantak Party	MGP
Maoist Community Centre	MCC
Medical Council of India	MCI
Members of Legislative Assemblies	MLAs
Members of Parliament	MPs
Memorandum of Procedure	MoP
Minimum Support Price	MSP
Ministry of Electronics and Information Technology	MeitY
Ministry of Environment and Forests	MoEF
Most Favoured Nation	MFN
National Commission of Farmers	NCF

National Company Law Tribunal	NCLT
National Core	NC
National Council of Applied Economic Research	NCAER
National Court Management Systems	NCMS
National Democratic Alliance	NDA
National Eligibility cum Entrance Test	NEET
National Green Tribunal	NGT
National Human Rights Commission	NHRC
National Informatics Centre	NIC
National Informatics Centre Network	NICNET
National Judicial Academy	NJA
National Judicial Appointments Commission	NJAC
National Judicial Digital Grid	NJDG
National Knowledge Network	NKN
National Law School's Admission Test	NLSAT
National Law School of India University	NLSIU
National Law University	NLU
National Legal Services Authority	NALSA
National Security Act, 1980	NSA
National Service and Tracking of Electronic Processes	NSTEP
Nationalist Congress Party	NCP
Non-Miscellaneous Day	NMD
Organization for Economic Co-operation and Development	OECD
Other Backward Classes	OBCs
People's Union for Democratic Rights	PUDR
Persons with Disabilities	PwDs
Prime Minister	PM
Progressive Democratic Front	PDF
Provincial Armed Constabulary	PAC
Public Interest Litigation	PIL

Public Private Partnership	PPP
Rarest of Rare test	R-R test
Research and Analysis Wing	R&AW
Right to Information	RTI
Royal Commission of Labour	RCL
Scheduled Castes	SCs
Scheduled Tribes	STs
Shiv Sena Legislature Party	SSLP
Social Action Litigation	SAL
Social Justice Bench	SJB
Solicitor General of India	SG
Special Investigation Team	SIT
Special Leave Petition	SLP
State Judicial Academies	SJAs
State List	List II
State Pollution Control Board	SPCB
State-Wide Area Network	SWAN
Strategic Litigation Against Public Participation	SLAPP
Structured Query Language	SQL
Supreme Court Bar Association	SCBA
Supreme Court Collegium	SCC
Supreme Court Legal Services Committee	SCLSC
Supreme Court of India	SCI
Supreme Court Reporter	e-SCR
Tata Consulting Services	TCS
Tax Deduction at Source	TDS
Telugu Desam Party	TDP
The Great Indian Bustard	GIB
Union List	List I
Union Minister of Law and Justice	MLJ

Union Ministry of Home Affairs	MHA
Union Public Service Commission	UPSC
United Kingdom	UK
United States	US
University Grants Commission	UGC
Vice-Chancellor	VC
Virtual Private Network	VPN
Visual Basic	VB
Vulnerable Witnesses Deposition Centres	VWDC
World Trade Organization	WTO



About the Authors

Amit George is an Advocate practicing before the High Court of Delhi and the Supreme Court of India, and frequently appears before various arbitral tribunals in domestic and international arbitrations. He read law at NALSAR, Hyderabad, and went on to earn an LL.M. (with merit) from the University of London International Programmes, with a specialization in International Dispute Resolution and a Ph.D. in law from the National Law University (NLU), Delhi. He is the author of the book titled *Minority Rights in a Cosmopolitan World*, and frequently contributes opinion pieces and articles on contemporary legal issues.

Justice Ajit Prakash Shah was a judge of the Bombay High Court from December 1992 to November 2005. He was the Chief Justice of the Madras High Court from November 2005 to May 2008 and the Delhi High Court from May 2008 to February 2010. Thereafter, he served as the founding Chairperson of the Broadcasting Content Complaints Council from 2011 to November 2013 and Chairperson of the Law Commission of India from November 2013 to August 2015.

Arvind P Datar began his practice in the High Court of Madras in 1980. He was designated as a Senior Advocate in 2000. He has argued several landmark cases of constitutional importance in the Supreme Court of India. He is the author of several treatises on indirect taxes, direct taxes and constitutional law. He is also a qualified cost and works accountant.

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Introduction

S MURALIDHAR

The imposing structure of the Supreme Court of India (SCI) stands on a triangular piece of land in the heart of New Delhi. Shaped to resemble a balance with two scales when viewed from above, this triangular plot has Bhagwan Das Road at its base, Tilak Marg on the left axial and Mathura Road on the right. Since 1958, when the Court moved to this location, it has expanded from being an eight-judge institution to one that has thirty-four judges, including the Chief Justice of India (CJI).¹

The first sitting of the Court was held on 28 January 1950, two days after the Constitution of India became operational. During the period of seventy-five years of its existence, its workload has expanded from around 690 pending cases in 1950 to over 81,735 pending cases as of 31 May 2025.²

Arguably the biggest apex judicial body in the world in terms of judge strength and workload, the SCI never sits *en banc*.³ It usually sits in Benches of two or three judges each.⁴ On an average, over the past five years, around 37,000 cases have been instituted annually and around 35,000 cases disposed of.

¹ The strength has been increased on seven occasions. The strengths have been: eight judges in 1950, eleven in 1956, fourteen in 1960, eighteen in 1978, twenty-six in 1986, thirty-one in 2009 and thirty-four in 2019.

² Of the total caseload of around 81,735 cases, nearly half, i.e., 41,297 cases, comprised SLPs filed under Article 136 of the Constitution against just about any order of a high court (HC), even interlocutory orders and even of statutory tribunals. There are as many as 12,136 unregistered SLPs, i.e., those with diary numbers but with defects remaining to be cured. These figures have been taken from the data available on the National Judicial Data Grid as on 31 May 2025.

³ The largest Bench of the SCI thus far has been the one that decided the *Kesavananda Bharati* case, which had thirteen judges, including the then CJI, SM Sikri. It is stated that a Bench of the same strength was set up to review the judgment when AN Ray J was the CJI; see TR Andhyarujina, *The Kesavananda Bharati Case: The Untold Story of Struggle for Supremacy by the Supreme Court and Parliament* (Universal Law Publishing 2011) 94. Barring this one instance, the maximum Bench strength has been eleven.

⁴ This creates its own set of problems since under the principle of *stare decisis*, the order or decision of a three-judge Bench is usually binding on a two-judge Bench. As a result, there are a large number of three-judge Bench matters pending in the SCI (till 31 May 2025, there were 1,146 such cases).

With the prospect of increased filings in the years to come being a near certainty, no other body at the highest level in the judicial hierarchy in a country has a more arduous and daunting task on its hands.

Headed by the Secretary General of the SCI, the administrative side, which comprises ministerial staff, has also expanded to 3,770 persons at present.⁵ The physical infrastructure has grown over seventy-five years by the addition of courtrooms, buildings, lawyers' chambers and most recently, a multi-storied state-of-the-art annexe for the offices of the SCI on the other side of Mathura Road, connected to the main building through a tunnel.⁶ The number of lawyers practising before it has increased to 22,734.⁷ Technology has facilitated online filing in the SCI.⁸ Post the COVID-19 pandemic, hybrid hearings – with some or all lawyers involved in a case appearing online – are routine.⁹

These are the most obvious tangible changes that are immediately apparent. However, the more intangible changes are in the nature of litigation, the types of cases, manner of presentation of cases by lawyers, the time devoted by the Court to the consideration of a case depending on the stage at which it is, variance in the approaches of the judges to issues and in the ability to cope with the tremendous pressures brought upon it as the 'third pillar' of

⁵ This would include the drivers, peons, court masters, stenographers, registrars, assistant registrars and perhaps even the law researchers. Each judge of the SCI can have up to four law researchers, who are chosen through a rigorous process of written tests and interviews.

⁶ While the main building has 4 separate blocks of 134 lawyer chambers (named after Senior Advocates AK Sen, RK Garg, GL Sanghi and RK Jain) across the Bhagwan Das Road, there are the MC Setalvad and CK Daphthary chamber blocks with 172 and 72 chambers, respectively. In 2022, along with the inauguration of the new administrative block of the SCI, across Mathura Road, a separate D-Block of 263 lawyer chambers (along with 68 cubicles) was also inaugurated. A metro line runs behind the rear of the Court. The metro station there has been renamed as 'Supreme Court'. In October 2024, the foundation stone for a new building within the SCI complex was laid.

⁷ Although the SCBA directory lists out 'outstation' advocates as well, it may still not accurately reflect the number of lawyers actively practicing before the SCI. It is not unusual for a HC lawyer outside Delhi to make a day visit to argue cases before the SCI. There are around 3,500 Advocates-on-Record (AoRs).

⁸ The e-filing system commenced in the year 2020, but is yet to be embraced in full measure by the lawyers. Each Bench of the SCI has digital devices placed on the dais on which the judges can read documents and reported judgments while the case is in progress. The bookmarked copies of every case listed before the Court is made available to the lawyers involved on the website of the SCI. Judges can also bring their own laptops to the dais. Since some of the judges are not comfortable with soft copies yet, lawyers tend to file the hard copies in addition.

⁹ Not all of the Benches of the SCI have been welcoming of this change. It is, therefore, not unusual for lawyers to appear physically before certain Benches (as a strategy).

democracy.¹⁰ The analysis of these intangible changes can help us understand if the SCI has been able to deliver on the constitutional promise of equal justice.

It is trite that the institution has played a significant role in shaping the legal and political landscape while having a lasting impact on lives of individuals and artificial persons, including the State and corporate entities. Consistent with the need to preserve institutional memory and guard against institutional amnesia, there has to be a constant endeavour to document, analyse and critically evaluate the functioning of the SCI.¹¹ For an institution controlled by time in every aspect of its functioning, it is not unusual for legal scholars to review the performance of the SCI over periods of time, say yearly, decennially, twenty-five, fifty or seventy-five years.¹² With the advent of online legal news platforms, the manner of reporting on the happenings in the courts as well has undergone a dramatic shift.¹³

How does one view the SCI, which has, while undergoing changes in its composition and functioning, also been the driving force of changes in other organs of the State? What has been its performance on the parameters of

¹⁰ Regular practitioners before the SCI for over four decades vouch for the fact that much of the working hours of the SCI are now taken up by the fresh cases and 'after-notice' cases that are yet to be formally admitted and that very little time available to deal with the regular 'final hearing' of already admitted appeals. It is therefore not unusual that there are a sizable number of appeals of the '10+ years' category. See Nick Robinson, 'A Quantitative Analysis of the Indian Supreme Court's Workload' *J Empirical Legal Stud* (2012) <<https://ssrn.com/abstract=2189181>> accessed 28 December 2024; Aparna Chandra, Sital Kalantry and William HJ Hubbard, *Court on Trial: A Data-Driven Account of the Supreme Court of India* (Penguin Random House India 2023).

¹¹ To commemorate the fiftieth year, a museum of curated artefacts was launched. This is permanently housed in the campus of the SCI at its rear. Taking a cue from the practice adopted by the US SC, in the year 2011, the SCI commissioned 'restatements of the law' on specific topics including parliamentary privilege, PIL. During the tenure of CJI TS Thakur, the SCI brought out in 2014 a publication titled *Courts of India: Past to Present* containing a detailed exposition of the history of the judiciary in India, which has since been translated and digitally republished in thirteen regional languages. The SCI also has a separate research wing, Centre for Research and Planning, which periodically publishes research material. In 2024, it published reports titled 'Prisons in India' and 'Handbook Concerning Persons With Disabilities'.

¹² Beginning 2005, the SCI has been publishing an annual report, available on its website. On the occasion of the fiftieth year, the SCI brought out an official publication of commemorative essays titled *Supreme But Not Infallible*, edited by BN Kirpal, Ashok Desai, Gopal Subramaniam, Rajeev Dhavan, Raju Ramachandran and published by OUP in 2000. The Indian Law Institute also published a book titled *Fifty Years of the Supreme Court of India: Its Grasp and Reach* (Oxford University Press 2000). For the seventy-fifth year, a book titled *Justice for the Nation: Reflections on 75 Years of the Supreme Court of India* was launched by the SCI in 2024 at a function held at the Rashtrapati Bhavan.

¹³ Two of the prominent online legal journals closely followed by the legal community, namely, *LiveLaw* and *BarandBench*, are able to deploy various technological tools of the social media to deliver legal news in real time. Live-tweeting from courts has also now become a regular phenomenon.

accountability, transparency and answerability to the people and the law? Has it always been able to maintain the balance between judicial activism and the demands of accountability for the exercise of judicial power? How consistent has the Court been? Given the quick overturning of its verdicts of its larger Benches, is the Court undermining its position as ‘final arbiter’ of disputes? By the reluctance shown in applying the general principles in its decisions to particular cases where it matters, is it becoming a Court defined by its contradictions? How far has the Court succeeded in being a counter-majoritarian institution that succeeds in keeping in check majoritarian and State excesses? On the administrative side, what have been the significant changes in the functioning of the office of the CJI and the *inter se* controls over the other courts in the judiciary? How has the SCI responded to the demand of interpreting the Constitution *per se* and specific laws in particular areas, in light of the overarching tapestry of desired constitutional values of liberty, equality, fraternity and dignity? What has been the response and role of the Bar in shaping the trajectory and course of the development of law? How has the institution adapted to technology in its functioning and what is the vision for the future?

II

This book, through the voices and thoughts of former judges, active practitioners, academics, law researchers and a journalist, attempts to answer some of these questions in the form of essays and interviews. These have been written, over eighteen months, preceded by discussions between the individual authors and the editor. The book’s ambitions are modest. It does not offer either a comprehensive or an exhaustive analysis of the topics listed. Constraints of space have led to the exclusion of some of the areas of the Court’s work like human rights, disability rights, sexual minorities, property law, rent control law, service law, corporate law, banking law, contempt of court, election law, consumer protection laws, right to information, interstate river water disputes, suits between states and between states and the centre, family law including cross-border child abduction, and niche areas like intellectual property rights, insolvency, competition, telecom, and electricity.¹⁴

¹⁴ To a regular practitioner, it is plainly discernible that some of these specific areas – for instance, corporate insolvency or even bails under the Prevention of Money Laundering Act, 2002 – with high litigating capacity, now occupy a disproportionate amount of the Court’s time even while other more pressing

The SCI's extensive use of its powers under Article 142 of the Constitution to do 'complete justice' could well justify a whole tome.¹⁵

The idea, nevertheless, is to provide the reader with the views of those actively engaging with and studying the functioning of the SCI: not only on what the Court has achieved in positive terms but an informed critique of where it may have failed to advance the constitutional project of preserving and enforcing democratic freedoms. The essays reflect on the challenges before the institution, its preparedness to face them and generally how its working may be improved. They also seek to ask whether, over seventy-five years, the SCI has taken measures that would make it more accessible and transparent in terms of both its judicial and administrative functioning.

The book is divided into parts. Part I of the book looks at the SCI and its actors. AP Shah and Madan Lokur JJ approach the issues concerning the appointments made of and by judges of the SCI from different perspectives. While Shah J explains the background leading to the evolution of the 'Collegium system' and its failures to achieve the objective behind the dramatic shift in the process in 1993, Lokur J, having been for many years part of the Collegium at the High Courts (HCs) of Delhi, Guwahati and Andhra Pradesh, and for more than two years in the Supreme Court Collegium, brings an 'insider's' perspective. The two essays complement each other and give the reader a rounded view of the working of the Collegium system. They reveal that the problem with getting the 'right' individuals appointed to the SCI and the HCs has not been made easier post the *Second Judges*, case in 1993 or the *Third Judges*, case in 1997. Both essays together give the reader a rather comprehensive analysis of the judgment in the *Fourth Judges*, case that struck down in 2018 the constitutional amendment to establish a National Judicial Appointments Commission (NJAC).

Senior Advocate Raju Ramchandran weighs in next with an incisive analysis of the processes involved in the impeachment and ultimate removal of

issues arising in the remaining areas are vying for the Court's attention. An assessment of the 'judicial impact' of new enactments or changes in the existing ones on the workload of the SCI requires to be studied in depth.

¹⁵ One egregious instance of the use of this 'all encompassing power' under Article 142 is the direction issued in *L Chandrakumar v. Union of India* (1997) 3 SCC 261 that a party aggrieved by the decision of an administrative tribunal should, before directly approaching the SCI under Article 136, challenge it before a HC in a writ petition under Article 226 of the Constitution, which will then be heard by a Bench of not less than two judges. Even today, no such provision exists in the Administrative Tribunals Act 1985, under which these tribunals function.

judges of constitutional courts, and why every attempt thus far has failed. Usha Ramanathan reflects on the vexed issue of delays in the judicial system generally and its effect in specific instances. She illustrates this by analysing a few of the significant decisions in particular areas, like the challenge to the scheme of electoral bonds, the challenge to the legislation passed as a Money Bill seeking to legitimize the unique identity scheme, the crumbling of the criminal law administration and the litany of judicial blunders in the aftermath of the Bhopal gas disaster.

Ravindra Bhat J offers an insider's perspective of issues faced, by the judiciary at all levels, on the administrative side. These include managing physical infrastructure, finances, staff and officers and caseloads. The essay also analyzes the reasons for many of these challenges continuing over seven decades of the functioning of courts in independent India. In Rohan Alva's essay on Constitution Benches, he examines how matters get referred to Constitution Benches and what have been the trends in their decision-making in particular areas over the past seventy-five years.

Before the commencement of Part II we have an interview with Professor Upendra Baxi on the topic of public interest litigation (PIL). India's leading legal academic insists on terming it as social action litigation (SAL) and tells us why. Drawing on his vast experience as a close observer of the SCI for over six decades, Baxi reveals how a few individual judges played a decisive role in the evolution and shape of the PIL jurisdiction, which has come now to stay as an important component of the SCI's functioning. Baxi does not share the pessimism of those who are critical of the Court overstepping its limits by using the PIL jurisdiction to indulge in what they term as unbridled judicial activism.¹⁶

Part II has three important contributions on the SCI and criminal law. The first is by Senior Advocate Rebecca Mammen John. She explains how, over the years, there has been a systematic dilution of the rigours of the Criminal

¹⁶ A much-discussed work in this regard is Anuj Bhuwania's book *Courting the People: Public Interest Litigation in Post-Emergency India*, which Prof. Baxi also responds to during his interview. The number of instances where the SCI or a HC in the PIL jurisdiction take up *suo motu* or otherwise an issue that the Court has with the government (which has remained unresolved on the administrative side) would make for an interesting study. For instance, the issue of the working conditions of the district judiciary (*All India Judges Association v. Union of India*) and finding more space for the expansion of HCs (*In Re: Heritage Building of the Bombay High Court and Allotment of Additional Lands for the High Court* SMW (C) No 5/2024.)