

DISSENTING JUDGMENTS; THE HIDDEN CATALYST FOR LEGAL RESEARCH

INTRODUCTION

Legal research stands as the bedrock of judicial systems across the world. The arena of legal research is not confined to a mere recitation of statutory provisions or established case law; it is an ongoing process of critical engagement that involves the analysis, comparison, and synthesis of diverse legal opinions to uncover new insights and pathways for resolving contemporary issues. Only then the true meaning of research as encapsulated in the concept 're-search,' can be made true.

Over the years, the landscape of legal research has undergone a profound transformation, evolving from conventional methodologies to incorporate advanced technological tools. While modern techniques and technological advancements have significantly reshaped many areas of legal practice, the study of precedents remains a static yet integral method. Precedent, as an established norm, continues to be a cornerstone of legal analysis, as it reflects the evolving and reforming nature of a country's judicial system. The significance of precedent is firmly enshrined in Article 141 of the Constitution of India, 1950, which asserts: *"The law declared by the Supreme Court shall be binding on all courts within the territory of India."* Thus, a precedent always have a binding nature and in fact, precedent is the starting point of judges' attitude because they follow the authorities for maintaining certainty, it shapes the attitude of judges, who rely on established authorities to maintain consistency and legal certainty within the judicial system.

However, when a bench renders a decision, only the majority opinion becomes binding, while the dissenting or minority views often receive limited discussion. Despite their non-binding status, dissenting judgments play a crucial role in the legal landscape, offering alternative perspectives that challenge the prevailing reasoning. Although they do not establish formal precedents, dissenting opinions can spark future legal debates, influence subsequent rulings, and even contribute to the evolution of law.¹ The dynamic between precedent and dissent highlights

the complex relationship within the judicial process, where both majority and dissenting views, while differing in authority, collectively shape the development of legal principles.

While the majority opinion in a judicial decision is binding, dissenting judgments, though non-binding, these dissenting opinions, although not creating formal precedents, play a crucial role in shaping future legal discussions². They contribute to the ongoing evolution of law by creating new interpretations and highlighting potential areas for reform. Together, precedents and dissenting opinions form a dynamic relationship within the judicial process, influencing the development of legal principles over time.

DISSENTING JUDGMENTS; A CONCEPTUAL UNDERSTANDING

“Dissenting judgment is an appeal to the brooding spirit of the law, to the intelligence of a future day when a later decision may possibly correct the error into which the dissenting judge believes the court to have been betrayed.”

Charles Evan Hughes

Taking notion from the above said words of Charles Evan Huges, an eminent jurist, it can be comprehended that a dissent or a dissenting judgment is not just about opposing the decision at the time but is a message for the future. When a dissenting judge is calling upon the deeper, enduring principles of law that guide justice forming "intelligence of a future day" by enabling the judges to see the mistake made in the current decision. It is often prophetic, for what may have been a minority opinion may become the majority in future. Thus, the dissent helps in maintaining the dynamic character of the Constitution by making it evolving to the requirements of the changing times.

The Constitution of India permits judges who do not concur with the majority to deliver a dissenting opinion vide Art. 145(5)³. The dissenting opinions are welcome feature of free society, for it shows the fallibility of law and the judges. It opens the marketplace of judicial discourse

¹ Lakshminath A., Precedent in Indian Law: Judicial Process, 2 (EBC, Delhi, 3rd edn., 2009)

² George H. Gadbois, Jr., Judges of the Supreme Court of India, (Oxford Univ. Press, New Delhi, 2011)

³ Article 145 (5), Constitution of India, 1950; No judgment and no such opinion shall be delivered by the Supreme Court save with the concurrence of a majority of the Judges present at the hearing of the case, but nothing in this clause shall be deemed to prevent a Judge who does not concur from delivering a dissenting judgment or opinion.

between the judges and public at large, thus, it contributes integrity, transparency and sanctity to the judicial process, also allowing the judgement to be redrafted, clarified and circulated, so as to remove the mistakes that may creep in.

Dissenting judgments are often dismissed at the time they are delivered, but over the years, many of them have proven to be prophetic in influencing the future of legal doctrines. *“Rule of precedent is not a rule of law at all, but a practice laid down by the court for its own guidance; and this practice can be amended or altered.”*, these words of Lord Denning has always been put in reality or we have witnessed this by analyzing the judicial trends. There were numerous judicial dissents in our country which have latter changed to the legal principal. Thus, dissents or the minority opinions of the courts cannot always be neglected or disregarded. However, they can sometimes be cited as a form of persuasive authority in subsequent cases when arguing that the court's holding should be limited or overturned. In some cases, a previous dissent is used to spur a change in the law, and a later case may result in a majority opinion adopting a particular rule of law formerly advocated in dissent.⁴

In India, the tradition of judicial dissent has played a crucial role in safeguarding individual rights and in the evolution of constitutional law. Dissenting judges have, on multiple occasions, challenged the prevailing majority opinion, advocating for a more just, fair, and reasonable interpretation of the rights of the citizens, as evidenced in the following decisions of the apex court;

1. The Impact of Justice Fazal Ali’s Dissent in A.K. Gopalan v. State of Madras⁵

The A.K. Gopalan v. State of Madras is one of the earliest instances where a dissenting judgment laid the foundation for future legal developments. In this case, the majority held that the right to personal liberty under Article 21 of the Constitution was limited to procedural safeguards, without offering substantive protection against arbitrary state action. Justice Fazl Ali dissented, arguing that the phrase "procedure established by law" in Article 21 required that any deprivation

⁴ Professor Orin S. Kerr George, “How to Read a Judicial Opinion: A Guide for New Law Students,” DC Version, 2 Washington University Law School, (August 2005).

⁵ A.K. Gopalan v. State of Madras, 1950 SCC 228

of personal liberty must conform to standards of justice, fairness, and reasonableness, rather than merely adhering to procedural norms.

Though Justice Ali's dissent was not accepted at the time, it was eventually recognized and incorporated in subsequent landmark judgment of **Maneka Gandhi v. Union of India** ⁶, thereby overruling the majority opinion in *A. K. Gopalan* and broadened the scope of Article 21, declaring that any law depriving a person of personal liberty must not only follow due process but must also be "fair, just and reasonable." Justice Ali's dissent thus anticipated the later expansion of the due process doctrine in Indian constitutional law, and his opinion became the cornerstone of the *Maneka Gandhi* judgment.

2. Justice Subba Rao's Dissent and the Evolution of Natural Justice

Another significant dissent that influenced future legal principles was delivered by Justice Subba Rao in **Radheyshyam Khare v. State of Madhya Pradesh** ⁷. In his dissent, Justice Rao laid down the premise for principles of natural justice, particularly in the context of administrative bodies. He emphasized that any action taken by an authority that affects an individual's rights must be accompanied by an opportunity to be heard. His opinion presaged the Supreme Court's recognition of natural justice in **A.K. Kraipak v. Union of India** ⁸, where the court acknowledged that the distinction between quasi-judicial and administrative functions was increasingly becoming blurred, and that administrative bodies must follow principles of natural justice when their actions affect individual rights.

Justice Rao's dissent in *Radheyshyam*⁹ was thus a precursor to judicial developments regarding administrative law and judicial review, which were formally recognized in later cases such as **State of Orissa v. Dr. Binapani Dei**¹⁰. By foreseeing the need for judicial review of administrative actions, Justice Rao's dissent highlighted the importance of ensuring fairness and

⁶(1978) 1 SCC 248

⁷ 1959 SCR 1440

⁸ AIR 1970 SC 150

⁹ 1959 SCR 1440

¹⁰ (1967) 2 SCR 652

justice in decisions made by authorities, which became a cornerstone of Indian administrative law.

3. The Impact of Justice Khanna's Dissent in the Habeas Corpus Case

The Habeas Corpus case, also known as **A.D.M. Jabalpur v. Shivkant Shukla**¹¹, stands out as one of the most famous examples of a dissenting judgment with long-lasting consequences. At the height of Indira Gandhi's Emergency, the Supreme Court, in a 4-1 decision, upheld the suspension of fundamental rights, including the right to life and personal liberty, during the Emergency. Justice Khanna was the lone dissenter, arguing that fundamental rights could not be suspended under any circumstances, and that the Constitution's commitment to individual liberty was non-negotiable.

Justice Khanna's dissent was groundbreaking, but it was dismissed by the majority at the time. However, the importance of his opinion was vindicated in the years that followed. In 2017, the Supreme Court delivered a landmark judgment in **K.S. Puttaswamy v. Union of India**¹², recognizing the right to privacy as a fundamental right. The judgment also indirectly reaffirmed Justice Khanna's dissent, echoing his views on the protection of fundamental rights.

The Habeas Corpus case demonstrates how a dissent can anticipate future legal changes, guiding the judiciary in upholding constitutional values long after the original decision was made.

4. The Doctrine of Basic Structure: A Legacy of Dissent

The development of the Basic Structure Doctrine in Indian constitutional law also stems from judicial dissents. The matter began with doubts raised by Justices Hidayatullah and Mudholkar in the **Sajjan Singh v. State of Rajasthan**¹³, which led to the **Golak Nath v. State of Punjab**¹⁴. In **Golak Nath**, the Supreme Court ruled that the Parliament could not amend fundamental rights, a decision that forced the Indian Parliament to amend the Constitution in order to reverse the judgment. The issue was ultimately settled in the **Keshavananda Bharati v. State of Kerala**¹⁵,

¹¹ (1976) 2 SCC 521

¹² (2017) 10 SCC 1

¹³ (1954) 2 SCC 208

¹⁴ (1967) 2 SCR 762

where the Supreme Court, through a 13-judge bench, held that while Parliament could amend the Constitution, it could not alter or destroy its "basic structure."

The basic structure doctrine was first hinted at in *Sajjan Singh* and formally articulated in *Keshavananda Bharati*. The dissenting views expressed by Justice Mudholkar in *Sajjan Singh* were instrumental in shaping the legal basis for this important doctrine. Thus, the basic structure principle is a direct result of disagreement among judges, showing that dissents often have long-term legal consequences, even when not immediately adopted by the majority.

5. The Vindication of Dissents in Indian Constitutional Law

The vindication of judicial dissents over time highlights their enduring relevance. While majority opinions lay down the law for the present, dissents offer alternative legal visions that may come to fruition as societal and legal norms evolve. This is particularly evident in cases involving the protection of individual rights, where dissents have pushed the boundaries of constitutional interpretation and forced a rethinking of judicial precedents.

From the early dissent in *A.K. Gopalan* to the more recent *Habeas Corpus* case and the basic structure doctrine, dissents have shaped Indian constitutional law by highlighting the tension between state power and individual freedoms. The influence of these dissents shows how judicial disagreements can lead to progressive legal reforms, ensuring that the constitutional framework remains flexible and responsive to changing societal values.

Analyzing the recent dissenting opinions in Indian legal cases play a vital role in shaping future legal interpretations and ensuring a more robust judicial system. In the case of **Mineral Area Development Authority vs. M/S Steel Authority of India**¹⁶, the majority ruled that royalty is a contractual payment, while Justice B.V. Nagarathna dissented, arguing that royalty is a form of tax under the Mines and Minerals (Regulation and Development) Act. Her dissent highlighted the balance between state and Parliament's powers, showing the importance of contextualizing state powers within national law.

¹⁵ (1973) 4 SCC 225

¹⁶ (2024) 10 SC 257

In **State of U.P vs. M.S Lalta Prasad Vaish**¹⁷, the majority extended the term "intoxicating liquor" to include industrial alcohol, but Justice Nagarathna dissented, asserting that it should only apply to substances for human consumption. She emphasized the Union's power over industrial alcohol under the Industries (Development and Regulation) Act, limiting state authority.

These dissents highlight how minority opinions often provide critical insights into the law, offering alternative interpretations that could be revisited by future larger benches. While dissents do not have immediate binding authority, they contribute to the legal discourse, ensuring that a variety of perspectives are considered. The intellectual rigor and reasoned analysis in these opinions demonstrate that dissents are not merely expressions of disagreement but essential components of a dynamic and evolving legal system. By challenging majority rulings, dissenting opinions encourage legal development, ensuring that the law remains adaptable and responsive to changing societal needs and values. In this way, dissent serves as a pillar of the judicial process, offering avenues for growth and refinement in Indian jurisprudence.

CONCLUSION

“Dissents contribute to the goodness of the process, not only by directing attention to perceived difficulties with the majority's opinion, but also by contributing to the marketplace of competing ideas”

J. William Brennan

Dissenting judgments are a prominent part of judicial discourse. In India, dissents have played a vital role in the development of constitutional law, particularly in safeguarding individual rights and curbing the excesses of state power. Over time, these dissents have proved that even in cases where they are initially rejected, they continue to resonate with future generations of judges and scholars by providing three notable benefits to the judicial process. First, it allows members of the judiciary to express their individual views freely, ensuring diversity of thought. Second, the presence of dissent often positively influences the drafting of majority opinions, encouraging them to be more precise and comprehensive. Third, hearing an opposing view can help clarify

¹⁷ 2024 SCC OnLine SC 3029

the majority position for those trying to understand the case. These aspects of dissent contribute significantly to the judicial process, making judgments more transparent and well-rounded.

In view of the importance of dissenting judgments in the legal arena, the legal fraternity needs to be a step ahead in conducting legal research on dissenting judgments as much as on the majority view. It is crucial that legal research gives more attention to the analysis of dissenting opinions. These opinions not only contribute to the evolution of the law but also enrich our understanding of constitutional principles and help protect the rights and freedoms enshrined in the Constitution. The tradition of dissenting opinions should be more deeply integrated into legal research, as they can be catalysts for future legal developments, as seen in landmark cases in India's judicial history.