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Dissenting Voices: Unraveling Judicial Perspectives on Fundamental Rights – A Critical Analysis of Supreme Court Dissent Opinions

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ABSTRACT

This paper examines the jurisprudential significance of dissenting opinions in the Supreme Court of India's interpretation of fundamental rights. Through critical analysis of landmark dissents, the research reveals how minority judicial voices have shaped the evolution of constitutional rights discourse in India. The study demonstrates that dissenting opinions, though lacking immediate precedential value, often anticipate future doctrinal developments and contribute to the progressive interpretation of fundamental rights. Notable dissents, including Justice Subba Rao's privacy articulation in Kharak Singh, Justice Khanna's defense of liberty during Emergency in ADM Jabalpur, and Justice Chandrachud's critique of the Aadhaar system, have later become foundational to India's constitutional jurisprudence. The research adopts a comparative approach, drawing parallels between American and Indian judicial dissent traditions to contextualize the transformative role of dissent in constitutional democracies. The findings reveal that dissent serves multiple functions: it preserves judicial independence, offers alternative constitutional visions, catalyzes doctrinal evolution, and reinforces constitutional morality. By analyzing the delayed vindication of dissenting opinions, this study establishes that judicial dissent represents not merely disagreement but a vital mechanism for constitutional growth and the protection of individual liberties in India's democratic framework.

Keywords*: Constitutional dissent, Judicial independence, Fundamental rights, Transformative constitutionalism, Interpretative plurality.*

I. INTRODUCTION

The idea of dissent in constitutional adjudication forms a cornerstone of deliberative democracy. Within the Indian Supreme Court, dissenting opinions have carved a subtle yet profound niche in the landscape of constitutional interpretation. They don't merely signify

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disagreement but showcase the resilience of judicial conscience. These judicial voices, often isolated, reflect a deeper interpretative plurality embedded in constitutionalism. Dissenters challenge the homogeneity of majoritarian readings and add nuance to the evolving jurisprudence of fundamental rights.

Dissent in India's judicial discourse began taking shape during the formative years of the republic. The dissenting voice of Justice Fazl Ali in *A.K. Gopalan v. State of Madras*, was the first significant assertion of constitutional liberty clashing with rigid textualism. While the majority narrowly interpreted Article 21, Justice Ali envisioned a more integrated interpretation where Articles 19, 21 and 22 formed a unified rights framework. That vision, although rejected then, laid the foundation for later jurisprudential expansion seen in *Maneka Gandhi v. Union of India,* .[3] Dissent, therefore, functions as the conscience of constitutional morality that is ahead of its time.

The practice of dissent becomes more than academic when viewed through the lens of fundamental rights. These rights represent both individual dignity and collective conscience. Dissenting opinions on these matters do not merely critique majority interpretations but articulate alternate normative universes. They contest the erosion of liberties masked as constitutional expediency. In *ADM Jabalpur v. Shivkant Shukla*, Justice H.R. Khanna's dissent underscored the inviolability of life and liberty even during Emergency. He famously wrote, "detention without legal remedy is the death of all liberties." The majority's silence on habeas corpus now stands in history's shadow, while Khanna's solitary stand is hailed as a triumph of judicial valor.[4]

Fundamental rights litigation in India has frequently intersected with socio-political transformations. In such moments, dissent often becomes the bridge between constitutional text and transformative goals. It serves as a reminder that constitutional interpretation isn't fixed—it's contested, animated by interpretative plurality. In *Kesavananda Bharati v. State of Kerala*, though the majority upheld the basic structure doctrine, dissenting judges questioned the limits of judicial review over constitutional amendments. Even as they disagreed, their opinions helped refine the doctrine itself.[5] Dissent, thus, doesn't always lead to contradiction; it may deepen consensus through challenge.

In India's legal history, dissent has had limited immediate effect but long-term jurisprudential impact. Its delayed vindication demonstrates the temporality of judicial truth. The idea that

[3] A.K. Gopalan v. State of Madras, AIR 1950 SC 27; Maneka Gandhi v. Union of India, (1978) 1 SCC 248.
[4] ADM Jabalpur v. Shivkant Shukla, (1976) 2 SCC 521.
[5] Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.

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courts speak finally is nuanced by the fact that courts also speak differently. A dissenting judgment, while lacking precedential force, often becomes a resource for future interpretation. In *Justice K.S. Puttaswamy v. Union of India*, the dissent of Justice Chandrachud resisted the state's surveillance-driven rationale. His opinion upheld informational privacy as central to autonomy. This was a reiteration of the right to privacy declared unanimously in *Puttaswamy (2017),* and echoed dissent as a corrective jurisprudential voice.[6]

The Indian constitutional model borrows from both Westminster traditions and the American emphasis on judicial independence. However, the Indian Supreme Court, unlike the U.S. Supreme Court, often speaks in per curiam judgments with fewer explicit dissents. The culture of consensus dominates. Yet when dissents emerge, they do so with intense clarity and philosophical integrity. Justices like Subba Rao, Krishna Iyer, H.R. Khanna, and Chandrachud (both father and son) have maintained that dignity, liberty, and equality deserve expansive, context-sensitive reading. They emphasize that the Constitution isn't just a legal document—it's a living text, and dissent breathes life into its interpretation.[7]

Global constitutional democracies have long recognized the value of dissent. In the United States, Justice Holmes and Justice Scalia's dissents have guided later rulings. In South Africa, Justice Sachs' dissents during transitional justice periods held moral and legal weight. Indian constitutionalism, influenced by these traditions, retains space for judicial individuality. Dissent allows the Court to be internally pluralistic while appearing institutionally coherent. This tension is essential. Without it, constitutional law risks becoming rigid or majoritarian.

(A) Research Questions

1. How have dissenting opinions in the Indian Supreme Court contributed to the doctrinal evolution of fundamental rights over time?
2. In what ways do dissenting judgments reflect transformative constitutionalism and judicial moral reasoning in the context of civil liberties?
3. What parallels can be drawn between dissenting practices in the Indian Supreme Court and the U.S. Supreme Court in shaping rights jurisprudence through minority opinions?

(B) Research Objectives

1. To examine the jurisprudential impact of key dissenting opinions in fundamental

[6] Justice K.S. Puttaswamy v. Union of India, (2019) 1 SCC 1; Puttaswamy v. Union of India, (2017) 10 SCC 1.
[7] Granville Austin, Working a Democratic Constitution: The Indian Experience 129–130 (Oxford Univ. Press 2003).

rights cases and trace their influence on subsequent constitutional interpretation in India.

2. To analyse the philosophical and normative foundations of dissenting judgments as expressions of transformative constitutionalism and judicial conscience in protecting civil liberties.
3. To conduct a comparative study of Indian and American judicial dissent practices to identify similarities and divergences in the role of dissent in shaping progressive rights jurisprudence.

(C) Research Methodology

This research adopts a qualitative, doctrinal, and analytical methodology, grounded in the study of primary and secondary legal sources. It critically examines landmark dissenting opinions of the Supreme Court of India concerning fundamental rights through close textual analysis of judicial decisions, with particular emphasis on reasoning, constitutional interpretation, and subsequent doctrinal influence. Comparative references to U.S. Supreme Court dissents are employed to contextualise dissenting traditions within global constitutional discourse. The study relies on authoritative case law, constitutional provisions, Constituent Assembly Debates, academic commentaries, and scholarly articles. This approach enables a nuanced understanding of how dissent functions as a dynamic interpretive tool within the Indian constitutional framework.

II. THE JURISPRUDENTIAL VALUE OF DISSENT IN INDIAN CONSTITUTIONAL LAW

(A) The Concept of Dissent in Common Law Tradition

Common law has never been merely a system of binding precedents. It evolves through contestation and constant re-interpretation. Dissent has always functioned as a legitimate method of expressing an alternate understanding of law. From the earliest English decisions to modern American and Indian jurisprudence, it has given judges the space to project different perspectives without compromising the institutional authority of the court.

In the British legal tradition, dissent began gaining prominence during the 19th century. However, it remained rare in the House of Lords due to the emphasis on unanimity and institutional coherence. Still, Lord Atkin's dissent in *Liversidge v. Anderson*, is iconic. When the majority upheld executive discretion during wartime, Atkin warned against "the absence of procedural safeguards" and famously stated that "amid the clash of arms, the laws are not silent." His voice, though in minority, laid the ground for later expansion of civil liberties

jurisprudence in the UK and across common law jurisdictions.[8]

The United States Supreme Court offers a richer tradition of institutionalized dissent. The opinions of Justice Holmes, Justice Brandeis, and Justice Harlan reflect how dissents anticipated constitutional change. Justice Holmes in *Abrams v. United States*, upheld freedom of speech as essential to the marketplace of ideas. Though the majority disagreed, Holmes' dissent later shaped First Amendment jurisprudence. Similarly, Justice Harlan's lone dissent in *Plessy v. Ferguson*, 163 U.S. 537 (1896), where he declared "our Constitution is color-blind," became the basis for the landmark decision in *Brown v. Board of Education*.[9]

Dissenting judgments, while lacking precedential authority, often serve as moral, philosophical and interpretive critiques. They keep legal reasoning fluid and foster dialogue among future benches, scholars and legislators. They act as reference points for constitutional transformation. The dissent becomes a future majority when the judicial or societal climate matures.

The legitimacy of dissent in common law also draws from the theory of deliberative democracy. A constitutional court is not an oracle. It is a site of principled disagreement. In *Planned Parenthood v. Casey*, the US Supreme Court observed that stare decisis is not a straitjacket. Dissent ensures that the law remains responsive, adaptable and humane. It prevents the ossification of legal thought.[10]

The Indian judiciary, rooted in the common law, absorbed this practice post-Independence. However, Indian judges initially followed the British model of collective speaking. Dissent emerged as a regular feature only from the 1960s onward. Yet, the Indian Supreme Court has not formalized dissent as in the U.S. Instead, it reflects the individual courage of judges like Subba Rao, Khanna, Krishna Iyer, and Chandrachud. Their dissents on civil liberties, privacy, and constitutional morality expanded the narrative of rights despite immediate judicial rejection.[11]

Dissent in common law also aligns with the principle of judicial accountability. When a judge records dissent, they affirm their allegiance not to unanimity but to constitutional values. It enhances transparency of reasoning. It provides the public with alternatives to the state's version of justice. It also allows the legal community to reflect and re-evaluate settled doctrines. Through this, dissent adds legitimacy even to contested decisions.

[8] Liversidge v. Anderson, [1942] AC 206 (HL).
[9] Abrams v. United States, 250 U.S. 616 (1919); Plessy v. Ferguson, 163 U.S. 537 (1896); Brown v. Board of Education, 347 U.S. 483 (1954).
[10] Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833 (1992).
[11] Granville Austin, Working a Democratic Constitution: The Indian Experience 134–137 (Oxford Univ. Press 2003).

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In India, where political majoritarianism often seeks judicial validation, dissent counters the fusion of legality and populism. It asserts the autonomy of judicial reasoning. It places judicial conscience above institutional convenience. In *Indira Nehru Gandhi v. Raj Narain*, Justice Khanna's dissent preserved the sanctity of democratic elections, challenging the expansive reading of parliamentary power by the majority.[12] That dissent became a vital footnote in Indian democratic resilience.

Even though dissents don't carry binding effect, they influence the development of doctrine through scholarly engagement and reinterpretation. Law reviews, courtrooms, parliamentary debates, and constitutional amendments often revisit dissents for direction. They work as a dialogue between time periods, rather than a static voice of opposition. The jurisprudence of dissent, therefore, sustains the constitutional conversation.

(B) Dissent as a Tool of Progressive Interpretation

Dissent enables the judiciary to stretch constitutional meaning without waiting for majoritarian validation. It empowers a judge to assert forward-looking interpretations that reflect evolving societal values. While the majority often clings to convention, dissent opens space for reinterpretation grounded in moral reasoning and lived realities. In Indian constitutional jurisprudence, dissents have acted as markers of future constitutional transformation, especially in the context of fundamental rights.

Justice Subba Rao's dissent in *Kharak Singh v. State of U.P.*, represents an early use of dissent as progressive interpretation. While the majority denied the right to privacy, Subba Rao J. extended the meaning of personal liberty under Article 21 to include freedom from unauthorized surveillance. He interpreted liberty broadly, not textually. The concept he advanced became law decades later in *Justice K.S. Puttaswamy v. Union of India*, where the Court unanimously held privacy as a fundamental right.[13] His dissent acted as an interpretive seed that matured into binding doctrine.

Dissent is a tool to challenge static constitutional readings. It questions literalism. It contests judicial restraint where rights are being diluted. Justice H.R. Khanna's dissent in *ADM Jabalpur v. Shivkant Shukla*, resisted the suspension of habeas corpus during Emergency. The majority upheld the state's power to detain without judicial review. Khanna J. interpreted the Constitution's silences as affirmations of basic human freedoms. His dissent reframed Article 21 not as a gift of the state but as a natural right, which the Constitution merely recognized. His

[12] Indira Nehru Gandhi v. Raj Narain, 1975 Supp SCC 1.
[13] Kharak Singh v. State of U.P., AIR 1963 SC 1295; Id at 4.

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reading was later upheld in *Puttaswamy (2017)*, reinforcing that dissent builds normative continuity.[14]

Progressive dissent doesn't just rely on textual analysis. It integrates social context, history, comparative constitutionalism and moral principles. It reclaims the Constitution as a living document. Justice Chandrachud's dissent in *Justice K.S. Puttaswamy v. Union of India (Aadhaar)*, resisted the state's claim over biometric data. He interpreted dignity, autonomy and informational privacy as constitutional values that the Aadhaar regime violated. Though the majority allowed Aadhaar's limited use, the dissent's articulation of consent and surveillance now influences privacy debates in digital governance. The dissent shaped the data protection discourse in India.[15]

In *Indian Young Lawyers Association v. State of Kerala*, Justice Indu Malhotra's dissent opposed the majority decision allowing entry of women into the Sabarimala temple. While the majority saw the practice as unconstitutional, she emphasized the Court's limits in interfering with religious practices under Article 25. Her dissent argued that constitutional morality cannot override religious autonomy in every case. Though criticized, her dissent introduced a counter-voice that highlighted the thin line between reform and judicial overreach. It helped trigger a wider debate on pluralism and constitutional limits.[16]

Progressive dissent reflects judicial creativity. It allows judges to craft meanings that transcend contemporary political and institutional constraints. It functions as a site for experimental jurisprudence. Justice Krishna Iyer often used dissent to introduce socio-economic rights into the mainstream constitutional framework. In *Bangalore Water Supply v. A. Rajappa*, he interpreted 'industry' broadly under the Industrial Disputes Act to include hospitals and educational institutions, thereby enlarging the rights of workers. Though his interpretation was in the majority, his dissent-like tone in earlier cases made space for such expansive reading.[17]

Dissent is also a mirror to the future. It is rarely adopted immediately but often vindicated through shifting judicial perspectives. Dissent becomes part of the intellectual architecture of the Constitution. It keeps rights discourse vibrant and alive. Even when the Court backtracks or limits rights, dissent provides an alternative vision that resists regression. It keeps constitutional hope intact when the judiciary fails to live up to its emancipatory role.

[14] Id at 2.
[15] Id at 4.
[16] Indian Young Lawyers Association v. State of Kerala, (2019) 11 SCC 1.
[17] Bangalore Water Supply v. A. Rajappa, (1978) 2 SCC 213.

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(C) Indian Constitutional Framework and Scope for Judicial Dissent

The Indian Constitution does not expressly mention judicial dissent. Yet its structural design anticipates interpretative divergence. The framers adopted a liberal and flexible document. They embedded wide, abstract phrases. Terms like "reasonable restrictions," "due process," "equality," "liberty," and "public order" invite multiple meanings. This normative ambiguity naturally opens space for dissenting views within the judiciary.

The constituent debates reflect this plurality. Dr. B.R. Ambedkar envisioned the Constitution as a "lawyer's paradise." He accepted that its provisions will demand continuous judicial interpretation. This meant that no judge must feel bound to suppress disagreement in pursuit of artificial unanimity. Judicial dissent, in this spirit, is a legitimate exercise of constitutional interpretation.[18]

Article 145(5) of the Constitution affirms that judgments of the Supreme Court shall be delivered by majority. The provision implicitly recognizes that judges may differ. The absence of a constitutional or statutory bar on dissent allows judges to record separate, concurring or dissenting opinions. This discretionary power fosters intellectual autonomy within the Court. The principle of judicial independence under Articles 50 and 124 also supports this autonomy. A judge cannot be compelled to conform to a majority voice if it compromises constitutional fidelity.[19]

Judicial dissent aligns with the broader separation of powers. It ensures that judges do not act as a monolith. This is crucial in a federal setup with diverse political, linguistic, cultural, and religious identities. When different judges bring in varied social perspectives, dissent acts as a tool of inclusion. It broadens the constitutional narrative. It allows the judiciary to function not merely as a legal institution but as a democratic conscience-keeper.

The scope for dissent in India expanded with the adoption of public interest litigation (PIL) in the post-Emergency era. PIL allowed the judiciary to step into policy spaces. It moved from strict legalism to transformative constitutionalism. In this phase, judges interpreted rights expansively. The absence of strict doctrinal uniformity enabled judges to voice distinct approaches. For instance, in *MC Mehta v. Union of India,* and successive environmental cases, judges articulated different understandings of sustainable development and the precautionary principle. Some judgments were technically concurring but functioned as soft dissents.[20]

[18] Granville Austin, The Indian Constitution: Cornerstone of a Nation 168 (Oxford Univ. Press 1999).
[19] INDIA CONST. art. 145(5), art. 124, art. 50.
[20] MC Mehta v. Union of India, (1987) 1 SCC 395.

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The Indian Constitution also empowers the judiciary to evolve its own internal procedures. The Supreme Court Rules, 2013 do not restrict separate opinions. They encourage reasoned elaboration. Multiple benches over time have demonstrated this. Constitution Benches in landmark cases such as *Kesavananda Bharati v. State of Kerala*, and *S.R. Bommai v. Union of India*, showcase this functional space for dissent. Judges wrote separate but overlapping judgments. The diversity of views was preserved, not penalised.[21]

The role of dissent also links to the doctrine of precedent. While majority decisions bind under Article 141, dissenting opinions are not meaningless. They guide future benches. They provoke doctrinal rethinking. They offer materials for academic and public engagement. They influence policy debates and legislative interpretation. The jurisprudential theory of *ratio decidendi* acknowledges that dissent, though not binding, holds persuasive value. It builds counter-narratives within the legal tradition. For example, Justice Khanna's dissent in *ADM Jabalpur v. Shivkant Shukla*, was later upheld by the nine-judge bench in *Justice K.S. Puttaswamy v. Union of India*, as the correct position of law.[22]

III. A DOCTRINAL OVERVIEW OF FUNDAMENTAL RIGHTS IN INDIA

(A) Evolution and Constitutional Philosophy

Fundamental rights in India did not emerge in a vacuum. They were sculpted through colonial resistance, philosophical borrowing and constituent imagination. The Indian freedom struggle gave moral force to these rights. Leaders demanded not only political freedom but civil liberties. The Nehru Report 1928 and the Karachi Resolution 1931 explicitly demanded a constitutional guarantee of rights. These documents sowed the early seeds. They reflected India's claim for rights not as privileges but as entitlements against imperial power.[23]

The Constituent Assembly debates echo this legacy. Dr. B.R. Ambedkar, Jawaharlal Nehru, K.M. Munshi and others shaped a charter of rights that would protect individual freedom while promoting social transformation. They studied American, Irish, Weimar and Soviet constitutions. But the Indian model emerged as a unique blend. It balanced civil-political rights with a vision for socio-economic justice. This balance was codified by placing Fundamental Rights in Part III and Directive Principles in Part IV of the Constitution.[24]

The philosophy underlying fundamental rights is both liberal and communitarian. It protects the individual from state excess. At the same time, it seeks to harmonise the individual with society.

[21] Id at 3.
[22] Id at 2.
[23] B. Shiva Rao, The Framing of India's Constitution: Select Documents vol. II, 12 (Universal Law Pub. 2004).
[24] Granville Austin, The Indian Constitution: Cornerstone of a Nation 50–52 (Oxford Univ. Press 1999).

The Preamble, with words like justice, liberty, equality and dignity, acts as the ideological spine. These values guide the interpretation of rights. Courts have repeatedly held the Preamble as the key to understanding the true spirit of the Constitution. In *Kesavananda Bharati v. State of Kerala*, the Court upheld the basic structure doctrine and affirmed that fundamental rights form part of that core. The majority emphasised that even Parliament could not destroy these essential guarantees.[25]

Rights have not remained static. Courts have gradually expanded their meanings. Article 21 is a key example. Initially interpreted narrowly in *A.K. Gopalan v. State of Madras*, it only protected against arbitrary executive action. The Court read each right in isolation. Justice Fazl Ali dissented and urged a more integrated approach. His view was vindicated in *Maneka Gandhi v. Union of India*, where the Court recognised that Articles 14, 19 and 21 must be read together. This shift transformed Article 21 into a reservoir of unenumerated rights like the right to privacy, shelter, education, and livelihood.[26]

The Indian model rejects absolute rights. Most rights come with reasonable restrictions. Article 19(2) to (6) allow the state to impose limits in public interest. However, courts have insisted on proportionality. In *Modern Dental College v. State of Madhya Pradesh*, the Court laid down the test of proportionality. This doctrine ensures that restrictions must be necessary and not arbitrary. It balances state objectives with individual autonomy.[27]

The judiciary has linked rights with duties. In *I.R. Coelho v. State of Tamil Nadu*, the Court held that laws placed under the Ninth Schedule after April 24, 1973 must be tested for basic structure violations. This ruling prevents legislative abuse of power. It treats fundamental rights as inviolable tools to secure constitutional supremacy. The ruling bridges rights with rule of law. It establishes judicial review as the heart of constitutional governance.[28]

India's constitutional philosophy sees rights not merely as shields but as instruments of empowerment. Courts have read into Article 14 the idea of substantive equality. They recognise historic disadvantage. In *Navtej Singh Johar v. Union of India*, the Court decriminalised Section 377 IPC. It held that majoritarian morality cannot suppress dignity. The decision embraced a transformative vision. It built upon earlier rights jurisprudence and extended it to marginalised identities.[29]

[25] Id at 3.
[26] Id at 1.
[27] Modern Dental College v. State of Madhya Pradesh, (2016) 7 SCC 353.
[28] I.R. Coelho v. State of Tamil Nadu, (2007) 2 SCC 1.
[29] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.

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(B) Interplay between Part III and Part IV

Part III and Part IV of the Constitution reflect two foundational pillars. The first secures individual rights. The second outlines the vision for social justice. Both are essential. They were designed to work in harmony. Yet their relationship has often been contested. Judicial dissent has played a crucial role in reimagining this relationship. It has challenged hierarchies between the two and proposed integrative readings of the Constitution.

The framers never intended a rigid wall between rights and directive principles. During the Constituent Assembly debates, several members argued that Part IV must guide the interpretation of Part III. The directive principles were seen as moral obligations to shape laws and policies. They were not judicially enforceable. But they were not ornamental either. They were meant to give substance to the Constitution's transformative goal.[30]

In *State of Madras v. Champakam Dorairajan*, the Supreme Court held that fundamental rights override directive principles. The Court struck down a communal reservation policy on the ground that it violated Article 15(1). This created a hierarchy. Directive principles were subordinated to rights. But this approach did not last long. Judges and scholars began questioning the separation. Justice Subba Rao in later cases hinted that directive principles must inform the content of fundamental rights.[31]

In *Kesavananda Bharati v. State of Kerala*, the Court tried to balance the two parts. It upheld the basic structure doctrine. While recognising that fundamental rights cannot be destroyed, the Court also stated that directive principles are not less important. Justice Mathew dissented from the narrow view and emphasised that socio-economic goals are essential for the survival of rights. He warned against interpreting liberty in isolation from poverty and inequality.[32]

The real shift came in *Minerva Mills Ltd. v. Union of India*, The Court declared that harmony between Part III and Part IV is part of the basic structure. The directive principles cannot override fundamental rights, nor can rights exist in vacuum. Justice Chandrachud stated that both are complementary. They are like two wheels of a chariot. The dissenting opinions in earlier cases influenced this view. Judges began using directive principles to interpret the scope of rights, even if not to enforce them directly.[33]

Dissenting opinions consistently argued that fundamental rights must be purposively

[30] B. Shiva Rao, The Framing of India's Constitution: Select Documents vol. II, 132–135 (Universal Law Pub. 2004).
[31] State of Madras v. Champakam Dorairajan, AIR 1951 SC 226.
[32] Id at 3.
[33] Minerva Mills Ltd. v. Union of India, (1980) 3 SCC 625.

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interpreted. Justice Krishna Iyer in *Mohini Jain v. State of Karnataka*, (1992) 3 SCC 666 linked the right to education under Article 21A to the directive under Article 45. He argued that education is essential for realising other rights. Though his opinion was not a dissent in form, it built on past dissents which insisted that directive principles are not passive.[34]

In *Olga Tellis v. Bombay Municipal Corporation*, the Court accepted that right to livelihood is part of Article 21. This was not found in the constitutional text. It was derived from directive principles like Article 39(a) and (e). Justice Chandrachud admitted that the enforcement of such a right was possible only by interpreting fundamental rights with directive guidance. This approach gave life to the socio-economic content of liberty. Dissenting voices had already laid the foundation for such expansion.[35]

(C) Judicial Interpretation and Expansive Construction

The Indian Constitution was drafted in open-ended language to allow creative constitutionalism. Judges were not meant to act as literalists. They were expected to interpret provisions with foresight. Expansive construction became essential to meet the demands of a dynamic society. Dissenting opinions often triggered this expansion when majority judgments hesitated. Through dissents, judges challenged narrow readings and proposed broader, inclusive understandings of rights.

Article 21 is the most vivid example. Initially, the Court read it in a constrained manner in *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27. The majority held that personal liberty was distinct from other rights and could be restricted by any procedure established by law. Justice Fazl Ali dissented. He argued that "procedure established by law" must be fair and just, and cannot exist in isolation from Articles 19 and 22. His view introduced the idea of substantive due process. Though rejected at the time, his interpretive method influenced later benches and was fully adopted in *Maneka Gandhi v. Union of India*, .[36]

In *Maneka Gandhi*, the Court dismantled the compartmentalised view of rights. It held that any law depriving a person of liberty must be just, fair, and reasonable. This expansive construction shifted Article 21 from a procedural safeguard to a source of unenumerated rights. It opened constitutional doors to rights like privacy, legal aid, shelter, clean environment, and health. Many of these expansions were built on dissenting foundations laid years earlier.[37]

Justice Krishna Iyer repeatedly advocated expansive readings grounded in realism. He insisted

[34] Mohini Jain v. State of Karnataka, (1992) 3 SCC 666.
[35] Olga Tellis v. Bombay Municipal Corporation, (1985) 3 SCC 545.
[36] Id at 1.
[37] Maneka Gandhi v. Union of India, (1978) 1 SCC 248.

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that interpretation must reflect the lived experiences of the poor and marginalized. In *E.P. Royappa v. State of Tamil Nadu*, the Court moved beyond formal equality. It held that equality is antithetical to arbitrariness. Justice Bhagwati, though part of the majority, adopted a reasoning that built on dissents in earlier cases where rigid classification tests were questioned. This interpretation redefined Article 14 and made it a tool to challenge arbitrary state action.[38]

Dissenting judges used expansive construction not merely for interpretive novelty but to align with constitutional morality. Justice H.R. Khanna in *ADM Jabalpur v. Shivkant Shukla*, adopted a broad interpretation of liberty. He insisted that Article 21 cannot be suspended even during Emergency. His rejection of formal legalism and insistence on inherent human dignity reconfigured how liberty was later understood. His dissent proved pivotal when the Court overruled *ADM Jabalpur* in *Justice K.S. Puttaswamy v. Union of India, .*[39]

The privacy judgment in *Puttaswamy* itself is a product of expansive construction. The Court held that privacy is intrinsic to life and liberty. Justice Chandrachud, writing the lead opinion, relied on constitutional values, international law, and social change. He rejected the narrow textual interpretation adopted by earlier benches. His opinion embraced an interpretive style rooted in dignity, autonomy, and transformative constitutionalism. That vision echoed earlier dissenting voices which resisted rigid readings of state power.[40]

Expansive construction also altered the reading of Article 19. Courts now recognise that free speech includes not only verbal expression but also symbolic speech, internet access, and press freedom. In *Shreya Singhal v. Union of India*, the Court struck down Section 66A of the IT Act. It held that vague and overbroad laws violate the right to speech. The ruling echoed dissenting tones from earlier cases where freedom was narrowly interpreted. Dissent laid the ground for this shift by constantly pushing the bounds of constitutional imagination.[41]

Dissenting opinions also questioned patriarchal and moralistic readings of rights. In *Joseph Shine v. Union of India*, the Court decriminalised adultery. Justice Chandrachud's concurring opinion used expansive construction to hold that Section 497 IPC violated dignity and equality. He argued that individual autonomy in marriage is central to liberty. His reasoning redefined personal relationships within the constitutional framework. It also resonated with feminist dissents in earlier cases that challenged gender stereotypes embedded in laws.[42]

[38] E.P. Royappa v. State of Tamil Nadu, (1974) 4 SCC 3.
[39] Id at 2.
[40] Id at 4.
[41] Shreya Singhal v. Union of India, (2015) 5 SCC 1.
[42] Joseph Shine v. Union of India, (2019) 3 SCC 39.

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IV. LANDMARK SUPREME COURT DISSENTING OPINIONS ON FUNDAMENTAL RIGHTS

(A) Justice Subba Rao in Kharak Singh v. State of U.P.

Justice K. Subba Rao's dissent in *Kharak Singh v. State of U.P.*, remains one of the earliest constitutional dissents that boldly extended the idea of privacy and personal liberty in Indian jurisprudence. The case concerned the constitutionality of police regulations authorising nightly domiciliary visits and surveillance on individuals with criminal backgrounds. The majority upheld most parts of the regulation and held that the right to privacy was not a guaranteed fundamental right under the Constitution. Justice Subba Rao disagreed. His opinion laid down the philosophical and legal basis of a right which the Constitution did not explicitly mention but clearly embodied.

He rejected the literalist approach of the majority. He argued that the term "personal liberty" in Article 21 must be understood in a broad and inclusive sense. For him, personal liberty meant more than mere freedom from bodily restraint. It extended to the sanctity of the home, the freedom to sleep peacefully, and the dignity of the individual. Any intrusion into private space, he held, constitutes an infringement of liberty. His reasoning came decades before the Supreme Court formally recognised the right to privacy as a fundamental right in *Justice K.S. Puttaswamy v. Union of India*, .[43]

Subba Rao J. based his dissent on the evolving concept of liberty in democratic societies. He invoked the liberal tradition where liberty includes not just physical movement but the freedom to think, decide, live and associate. He cited *Munn v. Illinois*, to support his view that the concept of liberty includes a wide range of rights essential for the enjoyment of life. Though the majority bench rejected such an expansive approach, the dissent hinted at an interpretive future far ahead of its time.[44]

His emphasis on dignity was central. He interpreted privacy as a condition for the enjoyment of all other freedoms. A person constantly watched cannot truly exercise freedom of thought or conscience. Constant surveillance breeds fear. It turns citizens into subjects. His view linked personal liberty with human dignity, a theme that became central to later constitutional reasoning on the right to privacy, autonomy and freedom of expression.[45]

Justice Subba Rao also criticised the state's justification for surveillance. He argued that

[43] Id at 11.
[44] Munn v. Illinois, 94 U.S. 113 (1876).
[45] Id at 4.

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procedural reasonableness cannot compensate for the substantive violation of rights. Even if the state follows a rule, it must pass the test of fairness. For him, the Constitution must be read purposively. Not rigidly. He rejected the idea that the absence of an express provision on privacy meant the state could invade personal spaces without restraint. This doctrinal foundation later guided the Court's interpretative turn in the post-*Maneka Gandhi* era.[46]

His dissent also subtly linked Part III and Part IV of the Constitution. Though not directly invoking directive principles, his reasoning reflected a transformative understanding of liberty that bridges formal rights with human well-being. He viewed the Constitution not as a mechanical rulebook but as a living document. His dissent became a precursor to the doctrine of constitutional morality, which gained prominence in later cases such as *Navtej Singh Johar v. Union of India,* .[47]

(B) Justice Chandrachud in Justice K.S. Puttaswamy v. Union of India (Aadhar case)

Justice D.Y. Chandrachud's dissent in the Aadhaar case (*Justice K.S. Puttaswamy v. Union of India*, is a landmark in the evolution of fundamental rights jurisprudence. The majority upheld the constitutional validity of Aadhaar, while Justice Chandrachud dissented with a powerful articulation of the right to privacy, dignity, and the role of the state in a digital democracy. His dissent rejected state surveillance masked as welfare delivery. It placed individual autonomy at the heart of constitutional morality.

He held that the Aadhaar project, by collecting and centralising biometric data, posed a serious threat to informational self-determination. His opinion declared the Aadhaar Act to be unconstitutional for being passed as a Money Bill, which bypassed the Rajya Sabha. He argued that bypassing parliamentary procedure undermined bicameralism, a basic feature of the Constitution. This procedural defect alone, he said, was enough to strike down the statute.[48]

Justice Chandrachud focused on the dangers of a surveillance state. He said that in the absence of robust data protection laws, Aadhaar created an architecture of surveillance. The state was granted unchecked power to track, profile and control citizens. This was a direct affront to the right to privacy affirmed in *Justice K.S. Puttaswamy v. Union of India*, . He held that privacy includes the right to control personal information and prevent its misuse. The Aadhaar system, by mandating biometric authentication for services, reduced citizens to data points. This, he said, violated human dignity.[49]

[46] Maneka Gandhi v. Union of India, (1978) 1 SCC 248.
[47] Navtej Singh Johar v. Union of India, (2018) 10 SCC 1.
[48] Id at 4.
[49] Justice K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

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He relied on the doctrine of proportionality. He held that even if Aadhaar served a legitimate aim like welfare delivery, it failed to meet the least intrusive means test. Aadhaar excluded the most vulnerable. Authentication failures denied people rations, pensions, education. This transformed a welfare measure into a tool of exclusion. For Justice Chandrachud, any measure that deprives individuals of their entitlements on technical grounds is unconstitutional. He emphasised that constitutional rights cannot be sacrificed for administrative convenience.[50]

His dissent also invoked constitutional morality. He said constitutional governance must respect individual autonomy, institutional integrity and participatory democracy. Forcing Aadhaar authentication in every sphere of life converted a citizen into a subject. He warned that Aadhaar disrupted the balance between the individual and the state. His dissent envisioned a Constitution that protects the weak against digital domination. He drew a distinction between technological convenience and constitutional legitimacy. The state cannot compel submission to a digital identity as a condition for accessing fundamental rights.[51]

Justice Chandrachud cited comparative constitutional jurisprudence. He referred to *Riley v. California* and *Carpenter v. United States*, to underline that privacy in the digital age demands greater safeguards. He showed how courts across democracies are adapting privacy doctrines to meet the challenges of data collection and algorithmic governance. His dissent suggested that constitutional interpretation must respond to new technologies, and not be trapped in the logic of the past.[52]

He challenged the majority's reading of the Aadhaar Act's design. He said that the Act lacked accountability. The UIDAI had unbridled discretion. There was no independent oversight. No data protection framework. No right to opt out. No sunset clause. He held that any system which affects such a large population must be governed by strict standards of transparency and procedural fairness. The Aadhaar Act failed on every count. His approach echoed the principles of due process under Article 21 and equality under Article 14.[53]

(C) Justice Indu Malhotra in Indian Young Lawyers Association v. State of Kerala

Justice Indu Malhotra's dissent in *Indian Young Lawyers Association v. State of Kerala*, stands out as one of the most nuanced and principled judicial dissents in recent Indian constitutional history. While the majority held that the Sabarimala temple's practice of excluding women between ages 10 and 50 violated Articles 14, 15, 17 and 25, Justice Malhotra dissented and

[50] Id.
[51] Ibid.
[52] Riley v. California, 573 U.S. 373 (2014); Carpenter v. United States, 138 S. Ct. 2206 (2018).
[53] Id at 4.

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upheld the legality of the religious custom. Her opinion focused on the autonomy of religious denominations, the limits of judicial review, and the importance of respecting faith-based practices that fall within the constitutional framework.

She held that the right to worship must be balanced with the rights of religious communities to manage their own affairs under Article 26(b). She viewed the Sabarimala custom as an essential religious practice of the Ayyappa devotees, who form a distinct religious denomination. She reasoned that this group's belief in the celibate nature of Lord Ayyappa and their corresponding ritualistic exclusion of women was a matter of faith, not equality, and therefore not justiciable by constitutional courts.[54]

Justice Malhotra warned against courts entering theological or doctrinal domains. She emphasised that constitutional morality cannot be used to override every religious practice. She stated that "issues of deep religious sentiments should not ordinarily be interfered with by courts." Her dissent marked a significant moment in asserting judicial restraint in matters of religion, especially when competing fundamental rights are at play. She advocated for a pluralistic reading of Article 25 that respects the diversity of religious customs in India.[55]

Her interpretation stressed the importance of *essential religious practices* test but cautioned that it must not be applied in a way that courts start evaluating faith on rational grounds. She criticised the majority for holding that exclusion of women is not essential to the practice of the religion, arguing that the test of essentiality is to be judged from the perspective of the practitioners of that faith, not through the lens of constitutional rationality. Her dissent articulated the view that beliefs cannot be subjected to constitutional scrutiny simply because they appear discriminatory to outsiders.[56]

She rejected the use of Article 14 to invalidate the practice. According to her, Article 14 applies to state action. She said the Sabarimala custom was not a state-imposed disability but a manifestation of an internal religious belief. The state had not enacted any law barring women from entering the temple. Thus, she held that no constitutional violation could be alleged without state interference. This reading was a stark contrast to the majority's broader construction of state responsibility under constitutional rights jurisprudence.[57]

She also distinguished the case from *Shayara Bano v. Union of India*, where triple talaq was struck down. She explained that triple talaq was not part of religious ritual but a social practice

[54] Id at 14.
[55] Ibid.
[56] Ibid.
[57] INDIA CONST. art. 14.

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with grave consequences on the rights of women. In contrast, Sabarimala involved ritual purity and deity-centric customs, and therefore required a different judicial approach. Her dissent highlighted the problem of treating all religious practices through the same constitutional prism.[58]

Justice Malhotra further clarified that Article 17 on untouchability could not be invoked to strike down religious exclusions not based on caste or social discrimination. The majority equated the exclusion of women with untouchability. She rejected this equivalence, arguing that Article 17 was intended to abolish caste-based discrimination, not to judicially rewrite ritual traditions. She cautioned that expanding the meaning of untouchability to include every form of exclusion would dilute the constitutional focus of the provision.[59]

(D) Other Notable Dissenting Voices

Justice Fazl Ali in *A.K. Gopalan v. State of Madras*, dissented from the majority's formalist interpretation of fundamental rights. He held that Articles 19 and 21 are not mutually exclusive. He proposed that liberty should be read as a unified constitutional value. He was among the first to argue that "procedure established by law" under Article 21 must be fair and just, not merely any enacted procedure. His dissent, ignored at the time, laid the jurisprudential base for *Maneka Gandhi v. Union of India*, which overruled the Gopalan majority.[60]

Justice V.R. Krishna Iyer in *A. Rajappa v. Bangalore Water Supply*, brought a transformative understanding to labour rights. Though the decision was majority, his opinion read like a radical dissent. He rejected colonial interpretations of 'industry'. He held that social justice cannot be sacrificed for economic convenience. His method blended doctrinal analysis with social realism. He invoked constitutional vision over statutory literalism. His style became a template for expansive rights reading across multiple domains.[61]

Justice Chinnappa Reddy in *A.B.S.K. Sangh (Rly.) v. Union of India*, disagreed with the majority view that strike is not a fundamental right. He argued that though not explicitly guaranteed, the right to strike is an extension of freedom of speech and association under Article 19. He insisted that industrial democracy must be read into constitutional liberties. His dissent added to the slow emergence of a rights-based approach to labour jurisprudence, even though later benches retained the majority's stance.[62]

[58] Shayara Bano v. Union of India, (2017) 9 SCC 1.
[59] INDIA CONST. art. 17.
[60] Id at 1.
[61] Id at 15.
[62] A.B.S.K. Sangh (Rly.) v. Union of India, (1981) 1 SCC 246.

Justice Ruma Pal in *T.M.A. Pai Foundation v. State of Karnataka*, gave a concurring yet distinct opinion that preserved the autonomy of private educational institutions. While the majority allowed significant regulation, Justice Pal resisted excessive interference by the state. She highlighted that autonomy in education is not only part of economic rights but also flows from Article 19(1)(g). Her opinion bridged the divide between individual rights and state control, which was later refined in *P.A. Inamdar v. State of Maharashtra*, .[63]

Justice Nariman in *Supreme Court Advocates-on-Record Assn. v. Union of India*, delivered a powerful opinion invalidating the National Judicial Appointments Commission. Though part of the majority, his views on independence of judiciary, basic structure and separation of powers were framed with a distinctive jurisprudential clarity. He critiqued executive overreach and defended the primacy of the judiciary in appointments. His reasoning invoked *Kesavananda Bharati v. State of Kerala*, but interpreted it through a contemporary lens. His position laid the groundwork for deeper debates on constitutional accountability.[64]

Justice Rohinton Nariman in *Shayara Bano v. Union of India*, wrote a separate opinion striking down triple talaq. While concurring with the majority outcome, he gave a distinct legal reasoning based on constitutional morality and gender equality. He located religious practices within the limits of constitutional supremacy. His articulation of transformative constitutionalism expanded the scope of Articles 14 and 15 into the personal laws domain. His view reinforced that equality cannot be deferred by cultural relativism.[65]

Justice D.Y. Chandrachud in *Romila Thapar v. Union of India*, dissented from the majority which refused a court-monitored SIT probe into the arrest of five human rights activists. He held that dissent is the safety valve of democracy and that the process must be transparent when fundamental liberties are involved. He warned against state criminalising dissent under the garb of public order. His dissent was not just legal. It was a reminder of judicial responsibility in a climate of shrinking democratic space.[66]

V. COMPARATIVE REFLECTIONS – DISSENT IN THE U.S. SUPREME COURT AND INDIAN PARALLELS

Dissent has always been a legitimate and celebrated feature in the judicial culture of the United States. American constitutional jurisprudence recognises dissent as essential to the evolution of

[63] T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481; P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537.
[64] Supreme Court Advocates-on-Record Assn. v. Union of India, (2016) 5 SCC 1; Id at 3.
[65] Shayara Bano v. Union of India, (2017) 9 SCC 1.
[66] Romila Thapar v. Union of India, (2018) 10 SCC 753.

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rights and democratic constitutionalism. Some of the most influential doctrines in U.S. law originated not in majority rulings but in dissents. These dissents later turned into majority law. The Indian Supreme Court, while structurally modelled on the U.S. judiciary, has followed a slightly more cautious and consensus-driven approach. But parallels between dissenting voices in both systems reveal how judges act as constitutional visionaries.

Justice Harlan's dissent in *Plessy v. Ferguson*, stood against the tide of racial segregation. He declared that "our Constitution is color-blind." That view was rejected at the time, but it laid the intellectual groundwork for *Brown v. Board of Education*, which overturned segregation. Justice Harlan's dissent shifted the moral compass of constitutional equality in America. Similarly, Justice Khanna's dissent in *ADM Jabalpur v. Shivkant Shukla*, (1976) 2 SCC 521 defied executive overreach. He asserted that life and liberty cannot be suspended even during Emergency. His dissent became a beacon for Indian rights jurisprudence after it was affirmed in *Justice K.S. Puttaswamy v. Union of India*, .[67]

Justice Holmes in *Abrams v. United States*, wrote a dissent that defended free speech even in war times. He invoked the "marketplace of ideas" doctrine. That dissent slowly gained currency and became the foundation for robust First Amendment protections. In India, similar moral force was visible in Justice Subba Rao's dissent in *Kharak Singh v. State of U.P.*,where he introduced the concept of privacy under Article 21. His minority view was dismissed then but later celebrated in *Puttaswamy (2017)*.[68]

The U.S. judiciary has institutionalised dissent. Judges openly express disagreement without any stigma. Dissent is respected as part of judicial duty. In India, dissent was historically less frequent. During the first few decades of the Supreme Court, the judiciary leaned towards collective opinions. But over time, dissent has matured into a tool for individual reasoning and doctrinal expansion. Judges like Krishna Iyer, Subba Rao, H.R. Khanna and Chandrachud (both father and son) built a culture of thoughtful dissent.

Justice Scalia in the U.S. and Justice Chandrachud in India represent two robust models of conservative and liberal dissent. Scalia's dissents in cases like *Obergefell v. Hodges*, questioned judicial activism and focused on originalism. He believed that courts should not legislate morality. On the other hand, Justice Chandrachud in *Justice K.S. Puttaswamy (Aadhaar)*, used his dissent to defend digital privacy and informational self-determination. He framed rights in

[67] Id at 2.
[68] Abrams v. United States, 250 U.S. 616 (1919); Id at 11.

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terms of dignity, autonomy and constitutional morality.[69]

Dissent in the U.S. often becomes part of constitutional folklore. Justice Jackson's dissent in *Korematsu v. United States*, condemned racial discrimination in wartime internment. It took seventy-four years for the Court to formally denounce that ruling in *Trump v. Hawaii*. But the moral authority of Jackson's dissent never faded. In Indian context, Justice Indu Malhotra's dissent in *Indian Young Lawyers Association v. State of Kerala,* defended the sanctity of religious belief. Her position was not accepted then but continues to influence discourse on religious autonomy and pluralism.[70]

In the U.S., dissents have been influential even in procedural rulings. Justice Brennan's dissent in *McCleskey v. Kemp,* raised concerns over racial bias in capital sentencing. Though not law, his dissent shaped public policy and academic research. Similarly, in India, Justice Ruma Pal's concurring opinion in *T.M.A. Pai Foundation v. State of Karnataka,* resisted excessive state interference in private education. Her view informed later constitutional reasoning on Article 19(1)(g) and institutional autonomy.[71]

Both jurisdictions show that dissent is more than disagreement. It is democratic pedagogy. It is part of constitutional dialogue between courts, society and future generations. It strengthens judicial independence. It adds to constitutional resilience. It keeps law connected with conscience.

VI. CONCLUSION AND RECOMMENDATIONS

Dissent preserves the soul of constitutional democracy. It strengthens judicial independence. It acts as a silent resistance to majoritarianism. It guards against the tyranny of convenience. When the majority speaks for the moment, dissent speaks for time. It protects the spirit of liberty when the letter of the law begins to fail. In India, dissenting opinions have not only challenged dominant legal narratives but have provided constitutional foresight. They have nurtured the jurisprudence of fundamental rights in silence, and sometimes in solitude.

Justice Khanna's dissent in *ADM Jabalpur v. Shivkant Shukla*, was not just an act of legal resistance. It was moral defiance in an era of judicial surrender. He stood alone. But his words survived. When the Supreme Court in *Justice K.S. Puttaswamy v. Union of India*, revived his reasoning, it proved that dissents do not die. They wait. His dissent gave India a constitutional

[69] Id at 4; Obergefell v. Hodges, 576 U.S. 644 (2015).
[70] Korematsu v. United States, 323 U.S. 214 (1944); Trump v. Hawaii, 138 S. Ct. 2392 (2018); Id at 14.
[71] McCleskey v. Kemp, 481 U.S. 279 (1987); T.M.A. Pai Foundation v. State of Karnataka, (2002) 8 SCC 481.

conscience when the majority failed to offer one.[72]

Justice Subba Rao in *Kharak Singh v. State of U.P.*, expanded the idea of liberty long before the Court was ready. His dissent protected privacy even before the word found space in rights discourse. His jurisprudence only matured in later decades. Justice Chandrachud's dissent in the *Aadhaar* case brought back that legacy of expansive rights. His voice resisted the dilution of privacy, autonomy, and state accountability. Even when the law upheld Aadhaar, his words challenged the comfort of constitutionality.[73]

Dissent does not alter precedent but it alters thought. It ensures that the judiciary doesn't speak in one voice when the Constitution doesn't. It reminds future benches that the law is not about finality. It's about fidelity. It keeps rights fluid. Open to change. Responsive to people's lived experiences.

Dissent also helps restore institutional integrity. In *Indian Young Lawyers Association v. State of Kerala*, Justice Indu Malhotra reminded that secular courts must respect the spiritual logic of faith communities. Her dissent argued for pluralism over homogenisation. For restraint over reformism. Her view added depth to a complex question of equality versus autonomy. Though unpopular, it gave voice to an alternate constitutional path.[74]

Dissenting opinions need greater visibility. They must be taught not just as failed judgments but as constitutional drafts. Law schools must embed them in curriculum not as footnotes but as primary readings. The judiciary should institutionalise space for publishing dissents with equal prominence. Legal commentaries and treatises should stop treating dissent as less than law. They are law in waiting.

There is also need for structural reform in how dissent is perceived. Judicial culture in India often values consensus more than candour. Dissenting judges can feel isolated. But disagreement should not be seen as disloyalty. Bar associations, academic institutions, and media must create space to appreciate dissent for its intellectual honesty. Courts must encourage junior judges to voice dissents without fear of being overruled or ignored.

Dissent must also find institutional echo in judgments that follow. Courts should regularly revisit past dissents when constitutional contexts evolve. *Kesavananda Bharati v. State of Kerala*, was once criticised for judicial activism. But it now defines constitutional limits. The voices in minority shaped the basic structure doctrine as it stands today. Revisiting dissents

[72] Id at 2.
[73] Id at 11; Id at 4.
[74] Id at 14.

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must become a judicial practice.

Legal reporting must equally highlight dissents. Often, they are overlooked in media summaries. But public understanding of rights depends on the visibility of alternate voices. Dissenting opinions help people understand that the judiciary is not monolithic. That truth is contested. That justice allows disagreement.

Constitutional courts must remain sites of dialogue. Not closure. Dissent ensures that dialogue continues. Even when it is uncomfortable. Even when it fails to persuade immediately. It reminds the court that interpretation is not final. That every judgment must remain open to challenge. That law is not immune from error.

(A) Recommendations:

- First, judicial education must include training in the ethics and value of dissent. Judges must learn to accept and write dissents with intellectual courage.
- Second, judicial appointments should not penalize judges who frequently dissent. Dissent must be seen as a marker of independence, not rebellion.
- Third, Supreme Court rules must be updated to mandate parallel publication and digital indexing of dissents in case law databases.
- Fourth, Parliament and policy-makers must draw from dissents in legislative drafting, especially when a dissent reveals constitutional fragility in existing law.
- Fifth, dissent must be used by civil society and legal aid bodies as tools for advocacy. They carry persuasive force, even when not binding.

Dissent is not failure. It is faith. In the Constitution. In justice. In the people.

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