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A COMPARATIVE ANALYSIS OF JUDICIAL DISSENT AND ITS CONTRIBUTION TO HUMAN RIGHTS LAW IN INDIA AND THE UNITED STATES OF AMERICA

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Abstract. *The independence of the judiciary is one of the most important aspects of a liberal democracy governed by the rule of law. The judiciary adjudicates on legal and constitutional disputes in accordance with the law, which is a difficult task in and of itself. There are various factors that the judiciary takes into account when deciding upon different legal matters. When a court decides on a case unanimously, it is known as a unanimous judgement. However, the bench may also be divided, where judges do not concur with each other, resulting in a minority judgement. Over time, minority judgements often come to be voiced by the majority. Although dissenting judicial opinions have been recognized through legislative enactments and constitutional amendments and often go on to become the law of the land, they remain a neglected area of legal theory and jurisprudence, and thus need to be explored.*
Dissent is a sign of a healthy democracy; it is one of the most important aspects of the right to freedom of speech and expression. Judicial dissent has been a regular feature of constitutional courts in both India and the United States of America. Therefore, in this paper, the author analyzes the notion of judicial dissent and its relevance in human rights law before interrogating the process through which a once-neglected dissenting opinion can become the majority opinion and the law of the land. Finally, this study highlights the importance and contribution of judicial dissent in human rights law in India and the United States of America.
Keywords: *judiciary, judicial review, judicial dissents, rule of law, jurisprudence and human rights*.

Introduction

The Constitution is a sacred document and the supreme law of the State; it empowers the government to run the country in accordance with the principles laid down in it. The judicial department of the government is the custodian of the rights of the citizen. Hence, an independent and impartial judiciary is the first condition of freedom and liberty in any democratic society (Singh & Shukla, 2013). The judiciary examines the validity of laws enacted by the parliament in light of constitutional laws. If any law enacted by the legislature jeopardizes the individual interest or offends the constitutional order, it is struck down by the judiciary. Judicial examination of the validity of laws is not as easy as one may presume – it is instead a very complicated task involving different legal dimensions.
"Law is to a very large extent what the judges say as it is" (Hart, 2012). Generally, judges adjudicate on legal matters with unanimity. However, benches have been divided on numerous occasions, leading to majority and

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minority rulings. Arithmetically, the majority wins these battles, and its views are accepted and implemented as binding law. At the same time, minority judgements provide an alternative route by which to approach different legal issues. Minority judgements help in understanding laws from different perspectives, ultimately contributing to human rights jurisprudence.

This study seeks to comprehend the concept of judicial dissent itself, as well as to investigate how it has evolved over time in India and the USA. The article also interrogates how dissenting rulings have strengthened human rights and broadened their scope in these two countries. For the purposes of this study, only rulings that have had an influence on human rights law and that have evolved over time into majority rulings to become the law of the respective jurisdiction are assessed. Dissenting judgements in India and the USA are also compared.

These nations were chosen for this study as India is the largest democracy in the world while the United States is one of the oldest, and their respective top courts have been actively involved in defining governmental boundaries and defending citizens' civil liberties and political rights. Furthermore, common law concepts have been embraced by both countries.

1. Understanding Judicial Dissent and its Importance

Judicial dissent means a dissenting opinion given by a judge who is part of a bench adjudicating on a legal or constitutional dispute. It is a practice deeply rooted in Anglo-American jurisprudence (Bergman, 1991). For example, questioning the absolute powers of the executive, Lord Atkin in his dissent in *Liversidge v. Anderson* (1941) stated that if a person is arrested by the executive on the grounds of being a threat to internal security, the House of Lords is lawfully empowered to determine the reasonableness of such executive actions. The majority, however, decided that it cannot interfere in matters pertaining to the internal security of the United Kingdom. Nonetheless, the minority opinion of Lord Atkin is now a well-established norm in many different countries and legal systems, especially those rooted in common law. Even the UK Supreme Court has partially relied upon the dissenting opinion of Lord Atkin, when it declared in *H. M. Treasury v. Ahmed (*2010) that the Terrorism Order (2006) is unlawful as it gives unchecked and arbitrary power to the executive.

India and the USA have also followed the same path, since both the countries were British colonies and their legal systems are, by and large, based upon common law. Judicial precedent is a notable feature of common law – unlike continental law, which is mainly based on the principle of codification and where previous judgements are not binding on the courts. Albeit slowly, the continental legal system has also begun to follow the practice of judicial dissent, and judges are expressing their individual opinions while differing from the view of the majority (Kelemen, 2013).

Judicial dissent enhances judgments by offering alternative viewpoints and contributing to a more comprehensive legal analysis. It also strengthens the independence of the judiciary, in particularly by providing space for the individual opinions of each judge. Celebrated constitutional lawyer Gautam Bhatia observed that "the dissenting tradition, is perhaps, the most important tradition that we have, indispensable to keeping the Constitution alive, and a thing of flesh, blood, and dreams" (Bhatia, 2017). The majority opinion is the basis of the law in India, and as such has a binding effect, while judicial dissent provides new insights into laws and their development.

Dissent is a symbol of a vibrant democracy (*Romila Thapar v. Union of India*, 2018). If dissent is not allowed, tolerated, or accepted, this may pose a threat to the very existence of democracy, and individual interests will be compromised. It is thus the very heart and very soul of democracy (Sorabjee, 2018). Judicial dissent also represents the prescription to maintain the independence of the judiciary. A dissenting judgement always gives free space to judges to express their independent and individual views.

Acknowledging the role and importance of dissenting opinion, Rajeev Dhavan pointed out that "to heed the conscience of the court, and hence the nation, we must honour dissenting judgements" (Dhavan, 2018). Dissent judgements thus represent the conscience not only of the court, but of the country itself and its entire

democratic apparatus. Judicial dissent has played an important role in protecting fundamental rights and defending civil liberties – especially in India and the USA.

2. Judicial Dissent and Indian Constitutional Jurisprudence

The independence of the judiciary is necessary in order to maintain a free society and a constitutional democracy (Singh, 2000), as is the case in India. Judges in India have been very outspoken in protecting the fundamental rights and civil liberties of citizens, and judicial dissents have been delivered on numerous occasions. Article 145 of the Constitution of India (1950) encourages judges to provide their independent opinions on matters involving constitutional conflicts. Under the aforementioned provision, judges are free to supply their personal opinions, and as such are not bound to accept the views of their colleagues.

In India, the history of judicial dissent reaches back into the pre-independence period. Justice Syed Mahmood, a very outspoken judge and who generally disagreed with his fellow justices, was known for expressing his independent views and delivered many dissenting opinions. In the famous case of *Queen Empress v. Phopi* (1889), he dissented from the majority view to opine that merely serving notice to a prisoner is not sufficient, and that the rule of law requires that the accused must be heard in person or through their defense counsel. Moreover, he postulated that before an appeal concerning the rights of the accused is disposed of, it is mandatory that the accused must be heard without any element of bias, and the inherent right – being inherent – cannot be denied. Though the majority did not acknowledge the views of Mahmood at the time, today they are very much reflected in Indian jurisprudence and the principles of natural justice – particularly *audi alteram partem*.

2.1. The Procedure Established by Law under Article 21 of the Indian Constitution, and the Judicial Dissent of Justice Fazal Ali

A person can be deprived of their life and personal liberty only in accordance with the procedure established by law. Interpreting the phrase "procedure established by law" and differing from the majority view, Justice Fazal Ali in *A. K. Gopalan v. State of Madras* (1950) declared that the word "procedure" under Article 21 of the Indian Constitution connotes a just, fair, and reasonable procedure. He further declared that a procedure established by law must include notice, the opportunity to be heard, an impartial tribunal, and the orderly course of the procedure. His dissenting opinion became the majority view in *Maneka Gandhi v. Union of India* (1978), where the apex court expanded on the interpretation of Article 21 and overruled *A. K. Gopalan v. State of Madras* (1950) by relying entirely upon the dissenting opinion delivered by Fazal Ali in the same judgement. The Parliament of India has also legislatively recognized this dissenting opinion by enacting various laws that follow it.

2.2. Human Rights in India and Justice H. R. Khanna's Dissent in *ADM Jabalpur v. Shivkant Shukla*

The most celebrated dissent in Indian legal history came from Justice H. R. Khanna in *ADM Jabalpur v. Shivkant Shukla* (1976), popularly known as the *Habeas Corpus Case*. Disagreeing with the majority opinion, Khanna declared that Article 21 of the Indian Constitution, being the most fundamental right, cannot be suspended even in times of emergency. The majority was of the view that citizens cannot approach the Constitutional Court during a time of emergency – even if their right to life or personal liberty has been violated. Justice Khanna thus protected life and liberty by opining that:

> The Constitution and the laws of India do not permit life and liberty to be at the mercy of the absolute power of the Executive … What is at stake is the rule of law. The question is whether the law speaking through the authority of the court shall be absolutely silenced and rendered mute … detention without trial is an anathema to all those who love personal liberty. (*ADM Jabalpur v. Shivkant Shukla*, 1976)

This minority opinion was constitutionally recognized to a great extent when the Parliament of India enacted the 44th Constitutional Amendment in 1978. Recently, in *K. S. Puttaswamy v. Union of India* (2017), the apex court accepted Justice Khanna's dissent and overruled the majority view in *ADM Jabalpur v. Shivkant Shukla*

(1976). His dissent and its contribution to human rights law has consistently been appreciated around the world by the entire legal fraternity– including lawyers, jurists, and legal scholars.

2.3. Capital Punishment and the Judicial Dissent of Justice Bhagwati in *Bachan Singh v. State of Punjab*

In *Bachan Singh v. State of Punjab* (1980), Justice P. N. Bhagwati disagreed with the majority view and declared section 302 of the Indian Penal Code (1860), as unconstitutional as long as it provides for the imposition of the death penalty as an alternative form of punishment to life imprisonment. He further opined that "this form of inhuman practice in its actual operation is discriminatory, for it strikes mostly against the poor and deprived strata of the society and the upper class usually escape, from its clutches." His dissent is increasingly relevant today, in an era during which demands for the abolition of the death penalty are being raised around the world, particularly in European countries. The 262nd report of the Law Commission of India (2021) has also recommended the abolition of the death penalty for all offences except those related to terrorism.

2.4. The Adhaar Judgement, Privacy Laws, and Judicial Dissent

Every person has their own personal space that must not be encroached upon by the State or any other individual without justification. With the advancement of technology in almost all domains of life, privacy has become a major concern for every individual – particularly at a time when data protection laws are not sufficient (Farooqui et al., 2022). Recently, in *K. S. Puttaswamy v. Union of India* (2017), the Indian Supreme court declared the right to privacy as intrinsic to Article 21 of the Indian Constitution (1950). The court relied upon the dissenting opinion of Justice Subba Rao in *Kharak Singh v. State of Uttar Pradesh* (1963), in which the majority judgement neglected the importance of privacy in an individual's life.

In the case of *Justice K. S. Puttaswamy v. Union of India* (2012), the constitutional bench declared the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act (2016) as constitutionally valid. At the same time, section 57 of the same act, which provides for the mandatory use of an individual's Adhaar number for various purposes, was struck down. Justice D. Y. Chandrachud disagreed with the majority view, observing rather remarkably that the Adhaar Program suffers from constitutional infirmities and that the Aadhaar Act is unconstitutional *in toto,* encroaching upon individual privacy, dignity, and autonomy. He further observed that the procedure of passing the Aadhaar Act as a money bill was unlawful, and represents a fraud upon the Indian Constitution (*Justice K. S. Puttaswamy v. Union of India*, 2012). Soli Sorabjee, former attorney general of India, supported Justice Chandrachud on his dissent, rightly asserting that the "dissenting judge's concerns about intrusion of right to privacy are legitimate" (Sorabjee, 2018). Chandrachud's dissent seems to be increasingly relevant today, when data protection laws are struggling to deal with privacy matters around the world.

For example, after taking note of the dissenting opinion of Justice Chandrachud, the Jamaican Supreme Court struck down a national biometric identification program in the country, demonstrating the far-reaching implications of this dissenting opinion. The National Identification and Registration Act (2017) mandated the collection of biometric information from all Jamaican residents and its storage in a centralized database, putting their privacy at stake (Sheriff, 2019). Jamaican Justice C. J. Sykes cited Justice Chandrachud's observation that "a fair data protection regime requires establishment of an independent authority to deal with the contraventions of the data protection framework as well as to proactively supervise its compliance," noting the following: "The point I take from this passage is the need for a strong independent and autonomous body which has the power to examine the operations of the Authority and report to an institution that is independent of the Authority."

2.5. Judicial Dissents and Personal Laws in India

India is essentially a religious country, where people of different faiths live together by maintaining religious harmony. Freedom of religion is considered the third most important civil liberty after the right to life and personal liberty and freedom of speech and expression (Mustafa & Sohi, 2017). The Constitution of India (1950) protects freedom of religion subject to public order, morality, and health. Recently, in *Shayara Bano*

v. Union of India (2017), the Indian Supreme Court declared the practice of instant divorce (*talaq-e-biddat*) as unconstitutional and un-Islamic.

Justice J. S. Kehar and Justice A. Nazeer disagreed with the majority view, declaring that privacy laws must be maintained as this practice is accepted by the followers of the religion, and any kind of interference in the matters of religious affairs is clearly beyond judicial scrutiny. Protecting personal laws, both dissenters further observed the following:

> We have arrived at the conclusion, that "talaq-e-biddat", is a matter of "personal law" of Sunni Muslims, belonging to the Hanafi School. It constitutes a matter of their faith … We have examined whether the practice satisfies the constraints provided for under article 25 of the Constitution, and have arrived at the conclusion, that it does not breach any of them. We have also come to the conclusion, that the practice being a component of "personal law", has the protection of article 25 of the Constitution. (*Shayara Bano v. Union of India*, 2017)

Considering the importance of religious affairs in an individual's life and the constitutional scheme of fundamental rights, including personal rights, the dissenting opinion seems to be more appropriate than the majority view.

Another landmark dissent in relation to personal laws came from Justice Indu Malhotra in *India Young Lawyers Association v. State of Kerala* (2019), otherwise known as the *Sabrimala case*, in which the majority judgement allowed women entry into the Sabrimala Temple. The constitutional bench, chaired by Justice Dipak Misra, observed that that the provision of the Kerala Hindu Places of Public Worship Rules (1965) which authorizes the restriction on the entry of women into the temple amounts to gender discrimination, and violates the rights of Hindu women to practice their religion. Justice Indu Malhotra, the lone dissenter, disagreed with the majority view, opining that the religious practice of restricting the entry of women of menstruating age represents a belief in a deity. This thus amounts to an essential religious practice to be protected under Article 25 of the Indian Constitution (1950).

2.6. Justice D. Y. Chandrachud's Dissent in the *Bhima Koregaon Case* and the Right of the Accused to Fair Investigation

A petition was filed in the Supreme Court in *Romila Thapar v. Union of India* (2018), otherwise known as the *Bhima Koregaon case*, seeking the appointment of a Special Investigation Team (SIT) to independently investigate the arrest of some activists in relation to a violent incident during the 2018 commemoration of the battle of Bhima Koregaon. The majority opinion of the Supreme Court rejected the petition. However, Justice Chandrachud dissented from the majority view and supported the appointment of an SIT in order for them to conduct an independent and impartial investigation. He observed that "voices in opposition cannot be muzzled by persecuting those who take up unpopular causes." He further declared that "fair investigation is seminal facet of right to life and liberty under article 21 of the Indian Constitution and the Court must stand by the principles which it has formulated" (*Romila Thapar v. Union of India*, 2018).

3. Judicial Dissent in the USA

The US Supreme Court explicitly explained the role and importance of the judiciary in defining what the law is in *Marbury v. Madison* (1803): "It is emphatically the province and duty of the Judicial Department to say what the law is." Article III, section I of the US Constitution deals with the organization, power, and functions of the judiciary. Generally, it is argued that the judicial department in the USA is supreme, and judges in the country have been very vocal in protecting and promoting civil liberties and the political rights of citizens.

3.1. No Scope for Dissenting Opinion During Justice John Marshall's Tenure as Chief Justice of the USA

Justice John Marshall served as chief justice of the USA for around three and a half decades (1801–1835), and no US Supreme Court judge provided a single dissenting opinion during his tenure. His lordship believed in the unanimity of the court, and the other judges were convinced by his views.

In the USA, judicial dissent is relatively a recent phenomenon. In his very first ruling as chief justice, Marshall used the term "in the opinion of the court," hence limiting the scope of dissenting opinions (*Talbot v. Seeman*, 1801). The practice of dissenting opinions thus began much later.

3.2. Justice Benjamin Curtis' Dissent in *Dred Scott v. Sandford* and the Rights of Black People in the USA

In *Dred Scott v. Sandford* (1857), Justice Benjamin Curtis disagreed with the majority view and recognized the rights of black people in the USA. While dissenting against the majority, he stated that:

> I dissent, therefore, from that part of the opinion of the majority of the court, in which it is held that a person of African descent cannot be a citizen of the United States; and I regret I must go further, and dissent both from what I deem their assumption of authority to examine the constitutionality of the act of Congress commonly called the Missouri compromise act, and the grounds and conclusions announced in their opinion. … I feel obliged to say that, in my opinion, such an exertion of judicial power transcends the limits of the authority of the court.

The majority judgement in this case denied American citizenship to people of African descent, and declared that those people had no *locus standi* before the court, whether enslaved or free. The majority view in this case has been strongly criticized, and former Chief Justice Charles Evans has described this ruling as "the court's greatest self-inflicted wound." After growing exasperated with the fraught environment in the Supreme Court engendered by this case, Justice Benjamin Curtis resigned from his post as associate judge. However, the Fourteenth Amendment to the US Constitution, which provided for the Equal Protection Clause, recognized Justice Curtis' dissenting judgement by offering US citizenship to all persons irrespective of race and place of birth. His outspoken views on citizenship law remain insightful for the global community even today.

3.3. Justice John Marshall Harlan's Dissent in *Plessy v. Ferguson* and Racial Segregation Laws in the USA

Justice John Marshall Harlan was the lone dissenter in *Plessy v. Ferguson* (1896), in which he disapproved of the majority view by declaring racial segregation laws (Louisiana Separate Car Act, 1890) as unconstitutional. In this case, the majority judgement upheld the validity of racial segregation and directed the railway department to provide equal but separate accommodation for white and black people. The majority further observed that "equal but separate" doctrine did not violate the Fourteenth Amendment of the US Constitution.

While disagreeing with the majority view, Harlan, also known as "The Great Dissenter," stated that "our constitution is colour-blind, and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before law." Justice Harlan eventually declared racial segregation laws as constitutionally invalid. Realizing the importance of his dissent, Harlan further wrote that "the judgement this day rendered, will, in time, prove to be quite as pernicious as the decision made by this tribunal in the *Dred Scott Case.*"

Acknowledging the importance of Justice Harlan's dissenting opinion, the US Supreme Court finally declared racial segregation laws as constitutionally invalid and violative of the "equal protection clause" of the Fourteenth Amendment of the US Constitution through the majority judgement in *Brown v. Board of Education* (1954).

3.4. Justice Harlan Stone's Dissent in *Minersville School District v. Gobitis* and Freedom of Religion in the USA

The case of *Minersville School District v. Gobitis* (1940) surrounded the right to freedom of religion protected under the US Constitution. The US Supreme Court ruled that public schools are constitutionally empowered to compel students to salute the national flag of the USA and recite the pledge of allegiance, despite the fact that the practice of saluting the flag contradicts the religious faith of Jehovah's Witnesses. Justice Felix Frankfurter wrote the majority judgement, holding that "national cohesion is inferior to none in hierarchy of legal values." He further observed that the recitation of the pledge has advanced the cause of nationalism among US citizens.

Justice Harlan Stone was the lone dissenter in this case, and supported his view by observing that "the guarantees of civil liberty are but guarantees of freedom of the human mind and spirit and of reasonable freedom and opportunity to express them … The very essence of the liberty which they guarantee is the freedom of the individual from compulsion as to what he shall think and what he shall say …" The majority view supplied by this judgement was rejected by the same court within the span of two years in *West Virginia State Board of Education v. Barnette* (1943), where the majority declared that the free speech clause provided under the first amendment of the US Constitution protects students from being forced to take a pledge of allegiance or salute the flag in public schools across the country.

Justice Robert H. Jackson handed down the majority judgment and defended civil liberties by noting that "if there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein." Interestingly, this judgement was delivered on June 14, which is observed as flag day in the USA. Thus Justice Harlan Stone's dissenting opinion was finally accepted by majority judgement.

4. Comparative Analysis

Judicial dissent is one of the fundamental aspects of the legal systems of both India and the USA, having contributed immensely to human rights jurisprudence. In the USA, there no doubt that the judiciary is supreme. During the tenure of Chief Justice John Marshall, no dissenting judgements were recorded. Justice Benjamin Curtis arguably initiated the practice of dissenting judgements in *Dred Scott v. Sandford* (1857), where his lordship disagreed with the majority view and recognized the rights of black people in the US. Table 1 highlights how key dissenting judgements in the USA have contributed to the development of law and human rights.

Table 1. Notable dissenting judgement in the USA

Case	**Dissenting Judge**	**Impact of Dissenting Judgement**	**Relevance of Dissenting Judgement in Human Rights Jurisprudence**
Dred Scott v. Sandford (1857)	Justice Benjamin Curtis (right to citizenship and right to equality)	Dissenting Judgement was recognized through the Fourteenth Amendment.	Right to nationality and citizenship is considered to be a very important right given to every individual. Various international human rights instruments including the Universal Declaration of Human Rights have recognized this right.
Plessy v. Ferguson (1896)	Justice John Marshall Harlan (right to equality)	Dissenting Judgement was recognized through the Fourteenth Amendment. Majority Judgement in *Brown v. Board of Education* (1954) also recognized Justice John Marshall Harlan's Dissenting Judgement.	Right to equality without discrimination has become a fundamental element of international human rights law and has been accepted by various countries including India and the USA.
Minersville School District v. Gobitis (1940)	Justice Harlan Stone (freedom of religion)	Justice Harlan Stone's Dissenting Judgement on freedom of religion was accepted by majority judgement in *West Virginia State Board of Education v. Barnette* (1943).	Freedom of religion has also occupied an important place in the present era of Human Rights Jurisprudence.

All three cases in Table 1 represent minority judgements that have either been accepted as majority opinions of the court or that have been afforded constitutional recognition through amendments, contributing to the development of law in the USA. These three minority judgements have also all been recognised at the global level through various international human rights instruments, including the International Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966), and the Universal Declaration of Human Rights (1948). In fact, these judgements have also worked as guiding principles for the judiciary across various countries, including India. Table 2 highlights key dissenting judgements and their impact on human rights in India.

Table 2. Notable dissenting judgements in India

Case	**Dissenting Judges and Their Opinion**	**Impact of Dissenting Judgement**	**Relevance of Dissenting Judgement in Human Rights Jurisprudence**
Queen Empress v. Phopi (1891)	Justice Syed Mehmood (principles of natural justice)	The principles of natural justice have been accepted by majority judgements on various occasions.	Principles of natural justice are at the core of any criminal or administrative proceedings.
A. K. Gopalan v. The State of Madras (1950)	Justice Fazal Ali (right to fair trial)	This right was accepted by majority judgement in *Maneka Gandhi v. Union of India* (1978).	Right to a fair trial has been codified in by the Parliament of India, especially in criminal law.
ADM Jabalpur v. Shivkant Shukla (1976)	Justice H. R. Khanna (no suspension of right to life during an emergency)	Parliament of India declared that the right to life cannot be suspended during an emergency via the 44th Amendment.	Limited government is the defining feature of a democracy governed by rule of law.
Bachan Singh v. State of Punjab (1890)	Justice P. N. Bhagwati (abolition of the death penalty)	In its 262nd report, the Law Commission of India recommended abolition of the death penalty.	Slowly, the world is moving towards the abolition of the death penalty.
Justice K S Puttaswamy v. Union of India (2012)	Justice D. Y. Chandrachud (right to privacy)	The Parliament of India enacted the Digital Personal Data Protection Act in 2023. The Jamaican Supreme Court has struck down a national biometric identification program.	The right to privacy has become more relevant in the present technologically driven society.
Shayara Bano v. Union of India (2017)	Justice J. S. Kehar and Justice A. Nazeer (religious and personal rights)	This judgement was passed recently.	People are religiously sensitive and the government must not interfere in these matters.
Romila Thapar v. Union of India (2018)	Justice D. Y. Chandrachud (right to a fair trial)	This very recent judgement acknowledges the right of the accused to a fair trial.	Right to a fair trial, including fair investigation, is very important for an effective criminal justice system.

Table 2 clearly shows that dissenting opinions are part of the history of the Indian Supreme Court. These judgements addressed various aspects of human rights, including the right to fair trail, the right to privacy, the right not to be subject to the death penalty, and religious and personal rights. Many judges have disagreed with majority judgements and provided their own interpretations regarding laws. A remarkable feature of these dissenting judgements is that, in the majority of cases, they have been accepted by majority judgement over the years. On numerous occasions, dissenting judgements have also been given legislative recognition. Sometimes, foreign courts have even taken note of dissenting judgments when issuing their own judgements

– as the ruling of the Jamaican Supreme Court striking down the national biometric identification program demonstrates. In India, judges in the apex court have been offering dissenting opinions since the pre-constitutional era, unlike in the USA where the top court only began to witness dissenting judgements when the country became a republic.

Conclusion

Judicial precedent is generally considered to be a source of law in common law countries, including India and the USA. Judicial dissent is a regular feature of the constitutional courts of India and the USA, yet it remains a neglected area of legal theory – particularly in India. In India, these judgements have been passed on human rights including the right to fair trail, the right to privacy, the right not to be subject to the death penalty, and religious and personal rights.

Undoubtedly, judicial dissent provides different perspectives on laws as it encourages judges to express their independent and personal views by applying their judicial minds. In India, dissenting judgements are often not paid attention to, and are sometimes taken for granted. However, it has been noted that these judgements, especially those which are related to human rights, have contributed immensely to the development of human rights in India.

As far as the USA is concerned, the impact of dissenting judgements is far more profound than in Indian courts. Being one of the world's oldest democracies, dissenting opinions, especially those related to human rights, have been passed again and again, and thus have been converted into majority judgements with the passage of time.

Therefore, in view of the above discussion, it can be concluded that once-neglected minority opinions have morphed into majority views before becoming the law of the land in both India and the USA. Moreover, minority views have also been legislatively incorporated on numerous occasions. Initially, dissenting opinions were absent in the American legal system, but this practice later evolved significantly to contribute towards the development of law, particularly human rights law.

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