

### 3. Judicial Dissent – Polity

Supreme Court judge B.V. Nagarathna emphasised that judicial independence includes the freedom of individual judges to express dissenting opinions, even when those views differ from their colleagues. Judicial dissent is an integral feature of constitutional democracies where courts deliberate collectively yet preserve the intellectual independence of individual judges.

A dissenting opinion represents a judge's disagreement with the reasoning or conclusion of the majority judgment and provides an alternative interpretation of law and constitutional principles. Over time, such dissenting views often influence the evolution of legal doctrine and strengthen democratic jurisprudence.

#### 1. Meaning and Nature of Judicial Dissent

1. **Definition** – Judicial dissent refers to a situation where one or more judges disagree with the majority decision in a case and record their separate reasoning.
2. **Form of Dissenting Opinion** – The dissenting judge explains why the majority interpretation of the law or facts is flawed and presents an alternative legal interpretation.
3. **Non-binding Nature** – Unlike majority opinions, dissenting opinions do not have binding legal authority in the immediate case but remain part of the judicial record.
4. **Role in Appellate Courts** – Dissents are most common in constitutional courts and appellate courts where benches consist of multiple judges.

#### 2. Significance of Judicial Dissent in a Democracy

##### Strengthening Judicial Independence

1. Dissent reinforces the institutional independence of the judiciary by ensuring that judges are free to express their own legal reasoning.
2. It prevents the judicial process from becoming rigid or uniform and protects intellectual diversity within the bench.
3. Independent opinions enhance public confidence that judicial decisions emerge from genuine deliberation rather than institutional conformity.

##### Promotion of Constitutional Debate

1. Dissenting opinions enrich constitutional jurisprudence by offering alternative interpretations of constitutional provisions.
2. They stimulate legal scholarship and encourage deeper analysis of constitutional values such as liberty, equality, and due process.
3. Many constitutional principles evolve through debates initiated in dissenting judgments.

##### Influence on Future Legal Developments

1. Dissents often serve as “future majority opinions.”
2. Courts in later cases may rely on dissenting reasoning when social conditions, legal interpretations, or constitutional perspectives evolve.
3. Legal scholars, advocates, and constitutional experts frequently cite dissenting opinions to advance new interpretations.

##### Protection of Minority Rights

1. In democratic systems, majority decisions may sometimes overlook or undermine the interests of minority groups.
2. Dissenting opinions highlight such concerns and reinforce the judiciary's role as a protector of fundamental rights and civil liberties.
3. They act as a safeguard against potential misuse of state power.

#### 3. Landmark Judicial Dissents in India

1. **ADM Jabalpur Case (1976)** – In *ADM Jabalpur v. Shivkant Shukla*, during the Emergency (1975–77), the Supreme Court held by majority that citizens could not seek judicial enforcement of fundamental rights during the suspension of Article 21.

2. **Justice H. R. Khanna delivered a historic dissent**, arguing that the right to life and personal liberty is inherent and cannot be completely suspended even during an Emergency. His dissent later gained recognition as a moral and constitutional milestone, and the majority view was eventually criticised and overturned in later jurisprudence.

### 3. Kharak Singh Case (1962)

1. The case involved police surveillance practices imposed on individuals suspected of criminal activities.
2. The Supreme Court majority upheld certain surveillance measures.
3. Justice K. Subba Rao dissented, arguing that such surveillance violated the right to privacy and personal liberty.
4. Decades later, the Supreme Court recognised privacy as a fundamental right in the Puttaswamy judgment (2017), echoing Subba Rao's reasoning.
5. NJAC Case (2015)
6. In Supreme Court Advocates-on-Record Association v. Union of India, the Supreme Court struck down the National Judicial Appointments Commission (NJAC) as unconstitutional.
7. The majority held that the NJAC threatened the independence of the judiciary.
8. Justice Jasti Chelameswar delivered the sole dissent, arguing that the collegium system lacked transparency and accountability.
9. His dissent triggered continued debates on judicial appointments reform in India.

### 4. Constitutional Provisions Supporting Judicial Independence

**Article 19(1)(a)**–Guarantees freedom of speech and expression, which forms the broader democratic environment allowing reasoned and open judicial opinions.

**Article 50**–Directs the State to maintain separation between the judiciary and the executive. This separation ensures that judges can express independent views without external pressure.

**Articles 124 and 217**–Provide security of tenure for judges of the Supreme Court and High Courts. Judges can only be removed through a rigorous impeachment process, ensuring protection from arbitrary removal.

### 5. Challenges Associated with Judicial Dissent

#### Institutional and Professional Pressures

1. Judges who frequently dissent may face institutional discomfort or informal professional consequences.
2. Collegial decision-making sometimes encourages consensus, which may discourage dissent.

**Misinterpretation of Judicial Motives**– In politically sensitive cases, dissenting opinions may be interpreted as reflecting ideological or personal preferences, which can affect public perception of judicial neutrality.

#### Heavy Judicial Workload

1. India's judiciary faces a massive backlog of pending cases across all levels of courts.
2. Writing detailed dissenting judgments requires additional time and analytical effort, which can limit the frequency of dissent.

#### Media and Political Scrutiny

High-profile dissents may attract media attention and political debate, potentially placing judges under public pressure.

#### Importance for Constitutional Democracy

1. Judicial dissent contributes to the dynamic evolution of constitutional law.
2. It encourages transparency and accountability in judicial reasoning.
3. Dissents often act as intellectual safeguards against majoritarian dominance within courts.

4. They reinforce the judiciary's role as the guardian of fundamental rights.

### Conclusion

Judicial dissent remains a vital element of constitutional adjudication in democratic systems. By encouraging independent reasoning and protecting minority perspectives, dissenting opinions enrich constitutional jurisprudence and strengthen the rule of law. Fostering an institutional culture that respects reasoned disagreement while addressing structural challenges such as case backlogs will further enhance the credibility and effectiveness of India's judiciary.

Source - <https://www.thehindu.com/news/national/judicial-independence-extends-to-freedom-of-a-judge-to-dissent-or-diverge-from-colleagues-says-j-nagarath>

