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NAME OF SCHOLAR: MOHD ZAMA

NAME OF SUPERVISOR: PROF. (DR.) GHULAM YAZDANI

NAME OF DEPARTMENT: LAW

TOPIC OF RESEARCH: A COMPARATIVE STUDY OF JUDICIAL DISSENT AND ITS
ROLE IN EXPANDING THE HORIZONS OF FUNDAMENTAL RIGHTS IN INDIA AND
USA

FINDINGS

Judicial dissent has often been neglected and treated as a secondary part of constitutional adjudication, legal theory and jurisprudence. However, it has really contributed to the growth of fundamental rights in both India and the United States of America. Dissenting judgements do not have immediate binding force. However, they have served as a powerful voice for the future. In the United States, judicial dissent has long been considered an integral part of constitutional law to some extent. In India, judicial dissents have hardly found their place in Indian Constitutional Law.

There have been many classic examples of dissenting opinions where they have left remarkable impact on Constitutional Jurisprudence and human rights in USA. In fact, many dissenting judgements have become the majority opinion and have also been recognised by the US Congress as a part of Constitution Amendment.

In India, the culture of dissent was initially less prominent. However, it gradually gained importance with the passage of time. Some powerful dissents have stood as a historic example and proved that judicial dissent, though neglected in legal theory and jurisprudence, have acted as a seed for the future expansion of horizons of fundamental rights.

The research study further reveals that dissenting judgments have significantly expanded the interpretation of some of fundamental rights such as the right to life, right to privacy, freedom of religion, and the right of the accused to a fair trial. In the United States, dissent has frequently influenced the evolution of civil liberties. In India, dissent has similarly expanded

the scope of article 21 of the Indian Constitution. The comparative study concluded that while both countries have benefited from dissenting judgements, the United States has a more robust tradition where dissent is openly valued as part of constitutional and judicial dialogue. American constitutional law often treated judicial dissent as an essential democratic practice. In India, judicial dissent historically carried greater institutional and personal risks. Nevertheless, over time, Indian human rights jurisprudence has increasingly acknowledged the importance of dissent as a safeguard against majoritarian views.

Another important finding of the present research study concerns the personal and institutional challenges faced by dissenting judges. In the United States, dissenting judges have sometimes faced political criticism resulting in their resignation. There have also been instances in India where dissenting judges have faced problems. Hence, despite these challenges, dissenting judgements have played a transformative role in expanding human rights jurisprudence. The study concludes that dissenting views may appear ineffective at the time they were passed; however, their long-term impact is significant. Therefore, judicial dissent should not be viewed as judicial disobedience inside the court but as a constructive and essential part of constitutional democracy. Since they have expanded and deepened the protection of fundamental rights.