NOTES AND COMMENTS

CONCURRING OPINIONS ENRICHING CONSTITUTIONAL DISCOURSE?

Abstract

Being a member of common law tradition most of our legal literature come in the form of judgements and orders of the court. Law in a common law jurisdiction is to a great extent what judges say it is, and how they say it, is one of the primary sources of legal authority in India. There has also been an enduring and growing discourse on judicial behaviour in order to understand the question i.e. how judges behave or decide cases? We need to understand how the judicial minds functions? Although there continues to be disagreement, many judicial scholars have recognized the real-world importance of the content of Supreme Court opinions. The court opinions matter, not just the vote on the merits, and under- standing how the opinion writing process works is central to explaining the development of the law. How is legal precedent formed? How are Supreme Court opinions developed? These are questions that have become central to judicial scholars. Scholars have studied the assignment of the majority opinion, the writing of the majority opinion, the justices' choice of what bargaining tactics to use, and the decision of each justice to join the majority decision. However, the nal goal has not been achieved: "explaining the actual content of Court opinions. This paper is an attempt to deal with this aspect particularly by converging on concurring opinions. What is the potential importance of concurrence? Why are they written? What systematic impact do these opinions have on system of precedent?

I Introduction

LEGAL SCHOLARS particularly in common law jurisdictions study the opinions of the court robustly by dissecting the language, tone and tenor in an effort to understand the law laid down by the court. Legal practitioners examine and study the content of Court opinions in order to provide legal advice to their clients, using cases to predict what courts will do in a specic case that has yet to come before them. Academicians analyse it critically to find out its legitimacy. But what does it mean to say that the decision in a particular case is right or 'wrong'? Or that one view about what a particular statutory provision means is 'better' than another? What is the relationship between statements about what the law is and statements about what it ought to be? What makes a piece of legal analysis 'original' or 'novel'? It is the rationale used in the past that provides the guidance for the future. Thus, the words used, the reasoning employed, the rationale given, the tests devised and the guidelines issued by the court are imperative to comprehend. Where do they come from? How do judges agree on the language used in opinions are some of the questions which persistently bother legal scholars. This paper therefore focuses on the analysis of various facets of concurring opinions in the Indian context. We aim to conduct an academic surgery on the concurring opinions (landmark) delivered by the Supreme Court of India and examines whether such opinions have enriched the constitutional discourse.

II Why concurring opinion matter?

A concurring opinion is one written by a judge or justice, in which he or she agrees with the conclusion or result of the majority opinion in the case, though he states separately his views of the case or his reasons for so concurring.[1] When justices write or join a concurring opinion, they demonstrate that they have preferences over legal rules and they are responding to the substance of the majority opinion. Concurrences provide a way for the justices to express their views about the law, and to engage in a dialogue of law with each other, the legal community, the public, and the legislature. By studying the process of opinion writing and the formation of legal doctrine through focusing on concurrences, this paper provides a comprehensive picture of judicial decision making under following broad clusters: *Firstly*, this paper will catalogue concurring opinions into different categories and examine why a judge of the appellate court writes or joins a particular type of concurrence rather than silently joining the majority opinion. Secondly, it provides a qualitative analysis of the bargaining and accommodation that occurs on the Supreme Court in order to further understand why concurrences are published. Finally, we would examine the impact that concurring opinions have on the development of law.

After hearing the oral arguments all justices meet in private to discuss the outcome of case, individual opinions and voting. In United States and also in India, if the chief justice is in the majority, he assigns the opinion but if he is not in the majority, the senior justice in the majority assigns the opinion. After the opinion is assigned, the majority opinion author writes a rst draft, which is then circulated to the other justices. At this stage of opinion writing process, a judges has various options. *First*, the justice agrees with the majority opinion and does not want any changes. *Second*, the justice can request the opinion writer to modify the opinion, bargaining with the opinion writer over specic language contained in the draft. *Third*, the justice can write or join a regular concurrence agreeing with the result and with the content of the opinion. *Fourth*, a justice can write or join a special concurrence agreeing with the result, but does not agree with the rationale used by the majority opinion writer. Fifth, the justice can write or join a dissent. The justices of the Supreme Court of India have developed several other modes of concurring opinion which is generally not prevalent in other common law countries. These hybrid methods are: supplementing opinion, supplementing concurring opinion, concurring opinion raising doubts and expressing no opinion.

However, this paper centers exclusively on concurring opinions because it is concurring opinions which raise a theoretical puzzle for scholars of judicial process and provide a unique opportunity to differentiate between voting for the outcome versus voting for

---

1 Black's Law Dictionary 1991, 200.

the opinion. Where writer agrees with the party who wins the case, yet is not satised with the legal rule announced in the opinion. Thus, concurring opinions are more difcult to comprehend than dissents, where writer disagrees with both the outcome and the legal reasoning of the majority opinion, and research shows dissents are primarily the result of ideology, specically the ideological distance between the justice and the majority opinion writer.[2]

On the other hand, when a justice writes or joins a concurring opinion, one asks:"Why undermine the policy voice of a majority one supports by ling a concurrence?"[3] Concurring opinion has more authority than dissents. In fact, the rules and policies of the case may be less the result of what the majority opinion holds than the interpretation of the opinion by concurring justices.[4] Moreover, a court opinion is not necessarily "perceived . . . as a discrete resolution of a single matter but as one link in a chain of developing law."[5] Therefore, the concurrences bracketing the majority opinion may shape the evolution of the law as they limit, expand, clarify, or contradict the court opinion.

III Judicial concurrence: A functional analysis

A concurring opinion enjoys a truly distinctive, even paradoxical, institutional status. Though a concurrence accepts majority view in outcome but discards the disposition reached by the majority or adds a new dimension of reasons. Justice Scalia while explaining dissent observed, *"[l]egal opinions are important, after all, for the reasons they give, not the results they announce……[T]o get the reasons wrong is to get it all wrong, and that is worth a dissent, even if the dissent is called a concurrence*."[6] Concurring voice in a bench harvest a legal debate that advances the intellectual development of the precedential law.[7] Individual concurrences may often receive attention in cases of interest to the public, but in general there has been only a limited effort to reflect upon the role of judicial concurrence in legal reasoning. The significance of the dissenting opinion has received various forms of tacit acknowledgment over the years particularly in the United States. However, serious regard had not been given to the contribution of concurring opinions even in the US. Some of the most important functions of the concurring opinions are listed below.

---

2 Paul J Wahlbeck, James F. Spriggs II&Forrest Maltzman, The Politics of Dissents and Concurrences on the U.S. Supreme Court, Vol 27, Issue 4, 1999.

3 Nancy Maveety, "The Era of the Choral Court", 142 (89) *Judicature*, 138 (2005).

4 *Ibid.*

5 Concurring Opinion Writing on the US Supreme Court. State University of New York Press, Albany, at 5 (2010). *available at:* https://www.sunypress.edu/pdf/61928.pdf (last accessed on August 28, 2018).

6 Antonin Scalia, "The Dissenting Opinion", 33 *J. Sup. Ct. Hist.* 1(1994).

7 *Supra* note 3 at p. 139.

Concurring opinion helps to comprehend opinion of the court

Concurring opinion helps to comprehend majority judgment and to raise the legal consciousness of the society. The process of adjudication is benefitted by the concurring opinions, which provide a stimulus to clearer judgment writing generally and also serve to clarify majority views by throwing them into sharper relief. It constitutes a guarantee to civil rights. With a psychological value, a published concurring opinion gives hope to the losing side and also to the judges who share his views and take their arguments into considerations. According to Justice Scalia:[8]

> The dissent or concurrence puts my opinion to the test, providing a direct confrontation of the best arguments on both sides of the disputed points. It is a sure cure for laziness, compelling me to make the most of my case. Ironic as it may seem, I think a higher percentage of the worst opinions of my Court—not in result but in reasoning—are unanimous ones.

Justice Ginsburg agrees with Scalia, arguing that "[t]he prospect of a . . . separate concurring statement pointing out an opinion's inaccuracies and inadequacies strengthens the test; it heightens the opinion writer's incentive to 'get it right.'"[9]

Concurring opinion echoes democratic ideals

The court judgment in common law countries is a result of public debate. Principles of democracy can be used to derive the right of judge who do not agree with the majority either in outcome or reasoning to express his dissenting and concurring opinion. A number of judges have claimed that concurrence or dissent makes American society more democratic.[10] Broadly speaking, the ability to dissent/concur ensures that the judicial arm of the government enjoys certain key capabilities associated with a society governed in accordance with democratic principles and values. It operates and, perhaps more importantly, is seen to operate, in harmony with the tenets of political settlements,[11] as unanimity in the law is possible only in fascist and communist countries."[12] Thomas Jefferson criticized the practice of having one Justice speak for the entire court i.e. unanimous opinions as limiting the accountability of individual justices:

---

8 Antonin Scalia, Dissents, OAH Magazine of History, 13 (1), Judicial History 22 (Fall, 1998), Oxford University Press on behalf of Organization of American Historians, 22. *Available at* https://www.jstor.org/stable/25163249 (last accessed on Sept. 12m 2018).

9 Ruth Bader Ginsburg, "Remarks on Writing Separately" 65 *Washington Law Review* 139. (1990),

10 Jesse W. Carter, "Dissenting Opinions" *4 Hast. L. Jour.*, 118 (1952). *See also,* Stanley Fuld, "The Voices of Dissent" 62 *Col. L. Rev.*, 926 (1962).

11 Andrew Lynch, "Dissent: The Rewards and Risks of Judicial Disagreement in the High Court of Australia" 27 *Mel. Univ. L. Rev.* 725 (2003).

12 Fuld, Stanley H., "The Voices of Dissent" 62 *Columbia Law Review* 927 (1962).

> *"Huddled up in conclave, perhaps by a majority of one, delivered as if unanimous, and with the silent acquiescence of lazy or timid associates, by a crafty chief judge, who sophisticates the law to his mind, by the turn of his own reasoning"*[13]

In fact, Jefferson wrote to Justice William Johnson in 1822, urging him to return to the English practice of individual opinions. "That of seriatim argument shows whether every judge has taken the trouble of understanding the case, of investigating it minutely, and of forming an opinion for himself, instead of pinning it on another's sleeve."[14]

Concurring opinion exhibits freedom of expression of judges

Concurrence enables members of the judiciary to be individually free in expressing their views.[15] Concurrence and dissent provides an outlet for expressing one's individuality, independence, and idiosyncrasy. It offers a departure from accepted, formal or conventional knowledge. Richard Stephens simply argued that dissents and concurrences ".... help to preserve the necessary independence of judges."[16]

> To be able to write an opinion solely for oneself, without the need to accommodate, to any degree whatever, the more-or-less differing views of one's colleagues; to address precisely the points of law that one considers important and no others; to express precisely the degree of quibble, or foreboding, or disbelief, or indignation that one believes the majority's disposition should engender—that is indeed an unparalleled pleasure.[17]

Concurring opinion makes constitution dynamic

Freedom to articulate separate concurring opinion gives opportunity to judges to interpret constitution and laws dynamically, leaving it open for future interpretations. Despite its historic origins and overwhelming modern presence, concurrence has long provoked a sharply divided press. At one polarity is the need for certainty-expectancy in the law. On the other end is the acknowledgement that the law, like societal needs and political realities, is dynamic.[18]

---

13 *Supra* note 8 at 18.

14 Richard H. Seamon, Andrew Siegel, Joseph Thai & Kathryn Watts, The Supreme Court Source Book (Aspen Casebook), (Wolters Kluwer, 123, 2013).

15 Andrew Lynch, "Dissent: The Rewards and Risks of Judicial Disagreement in the High Court of Australia"*,* 27 *Mel. Univ. L. Rev*., 725 (2003).

16 Richard Stephens, "The Functions of Concurring and Dissenting Opinions", 5 *Univ. of Flo. L. Rev*., 410(1952).

17 Antonin Scalia, Dissents, OAH Magazine of History, Vol. 13, No. 1, Judicial History (Fall, 1998), Oxford University Press on behalf of Organization of American Historians, p. 23.

18 Edward C. Voss, "Dissent: Sign of a Healthy Court", *24 Ariz. St. L. Jour*., 643.

Concurring opinion facilitates development of law

The law itself may be developed and advanced overtime through the use of concurrence. In this respect, an ability to write different reasoning enables the law to admit new ideas and adapt old doctrines, exposing them to scrutiny and consideration both inside and outside court.[19] It contributes to the development of law and helps to correct the legislator's mistake or draw attention to the circumstances which can be taken into consideration in future law-making and in the amendment and revision of laws.[20] Justice O'Connor's concurring opinion in *Lynch* v. *Donnelly*[21] a case challenging the legality of Christmas decorations on town property may be cited here for reference. The Supreme Court while declaring that a city's Christmas decorations, (which included reindeer, a Christmas tree, colored lights, a season's greeting banner, and a nativity scene), did not violate the establishment clause, applied a three-prong test called the *Lemon* test.[22] The court came to the conclusion that the primary effect of this display was not to promote religion, rather a secular exercise and therefore there was no unwarranted administrative imbroglio. Justice O'Connor joined the majority, but wrote a separate concurring opinion criticizing the Court's relianceon *Lemon*. She proposed a new test, "endorsement test," to replace the purpose and effect prong of the *Lemon* test by asking" whether the government intends to convey a message of endorsement or disapproval of religion" and whether the practice in question has the "effect of communicating a message of government endorsement or disapproval of religion." Later, the Supreme Court in *County of Allegheny* v. *American Civil Liberties Union*,[23] applied the *endorsement test* recommended by Justice O'Connor in *Lynch case* and held that the display of a crèche inside a county courthouse violated the Establishment Clause because it had "the effect of promoting or endorsing religious beliefs."

Similarly, concurring opinions in India has paved a way for the development of new ideas and reforms. Justice K.K. Mathew's concurring opinion in *Sukhdev Singh* v. *Bhagat Ram*,[24] where he agreed with the majority in conclusion but relied on his own reasoning could be an appropriate illustration. While construing *'other authority'* under article 12 of the Indian Constitution, Justice Mathew took a divergent view from majority

---

19 *Supra* note 15.

20 *Ibid*.

21 465 U.S. 668 (1984).

22 *Lemon* v. *Kurtzman*, 403 U.S. 602 (1971).

23 492 U.S. 573 (1989).

24 AIR 1975 SC 1331.

opinion[25] and relied more on the 'involvement factor' of State in an entity to find out whether the said entity is State for the purpose of article 12. He observed that: "*A finding of state financial support plus an unusual degree of control over the management and policies might lead one to characterize an operation as state action.* "[26] Justice Mathew's concurring opinion was used by Supreme Court in *R.D. Shetty* v. *The International Airport Authority of India*[27] and *Ajay Hasia* case, [28] as a foundation stone for laying down decisive guidelines in order to test whether an authority is part of State under article 12 or not.

IV The critique of concurrence

While there are plentiful advantages associated with the practice of concurrence, it is not free from stains. Aside from the substance of any particular concurring opinion, the practice itself can, in certain circumstances, evoke ambiguous feelings. Disagreement may be difficult to reconcile with law's preference for order, clarity and conformity. Some of the risks involved in the practice of concurrence are as follows:

Concurrence brings uncertainty and instability in law

A concurring opinion transform a majority opinion into a plurality, where a majority of the Court agrees to the result, but less than a majority of the justices agree to the reasons behind the decision. The plurality opinion brings elements of uncertainty and instability in the law, which further creating confusion in lower courts that are bound to follow the precedent established by the Supreme Court. Legal and political scholars contend that plurality opinions interrupt the *signalling function* to lower courts.[29] A study conducted in United States exhibits that lower courts are less likely to comply with Supreme Court plurality opinions than majority opinions.[30] Therefore, understanding how concurrences develop and why they are written is crucial to understanding how the rule of law develops, since rule-of-law values require that individuals be able to identify controlling legal principles.

---

25 The majority judgement was rendered by Justice A N Ray on behalf of himself, Justice Y. V. Chandrachud and Justice A. C. Gupta. Justice A. Alagirisamy gave a dissenting judgement.

26 AIR 1975 SC 1331.

27 AIR 1979 SC 1628.

28 AIR *1981 SC 487*.

29 Berkolow, "Much Ado About Pluralities: Pride and Precedent amidst the Cacophony of Concurrences and Repercolation after Rapano" *15 VA. Journal of Social Policy &The Law*, 299 (2008).

30 Pamela C. Corley, Udi Sommer, Amy Steiger Walt & Artemus Ward, "Extreme Dissensus: Explaining Plurality Decisions on the United States Supreme Court"31 (2) *The Justice System Journal,* 182 (2010). See also Pamela C. Corley, Uncertain Precedent: Circuit Court Responses to Supreme Court Plurality Opinions (2009).

The judgment of Supreme Court in *Shayara Bano* v. *Union of India*[31] though declared the practice of *instant triple talaq*unconstitutional,*but created confusion on the constitutional status of personal law.* Three separate opinions (Chief Justice J. S. Khehar wrote dissent for himself and Justice S Abdul Nazeer; Justice Kurian Joseph wrote his separate concurring opinion and Justice R. F. Nariman wrote for himself and Justice U.U. Lalit) concurred on some issues and varied on many resulting into a puzzling exercise as far as the ratio of the case. Cautious reading of the verdict, convergences and divergences leads towards the conclusion that *instant triple talaq* was set aside not because it was found to be unconstitutional, but it was un-Islamic. The constitutional status of personal law however, continues to remain indeterminate as it was before.

Concurrence undermines authority of court

Concurring opinions sometime weakens the force of a unanimous Court. The Supreme Court of United States documented the importance of a unied response in *Brown v. Board of Education,*[32] a case in which the Supreme Court held that racial segregation in public schools was unconstitutional. The Chief Justice Warren desired a single, un-equivocating opinion avoiding concurring opinions that could leave no doubt that the court had put Jim Crow to the sword".[33] Scholars have argued that a decision accompanied by a concurrence speaks with less authority than a single unanimous opinion[34] and a recent study in United States found that cases with a larger number of concurring opinions are more likely to be overruled by the Supreme Court in the future in comparison with other cases.[35]

V Classification of concurring opinions

In any case concurring opinions maybe more enlightening than majority opinions because they are not the product of compromise. Justice Felix Frankfurter observed that "when you have to have at least ve people to agree on something, they can't have that comprehensive completeness of candour which is open to a single man, giving his own reasons untrammelled by what anybody else may do or not do if he put that out."[36]

---

31 2017 SCC OnLine SC 963, decided on 22.08.2017.

32 347 U.S. 483 (1954).

33 Pamela C. Corley, *Concurring Opinion Writing on the U.S. Supreme Court*, (SUNY series in American Constitutionalism, 2010).

34 Pamela C. Corley and Artemus Ward, "Opinion Writing" in Robert M. Howard, Kirk A. Randazzo(*eds.*) *Routledge Handbook of Judicial Behaviour*, 172 (Routledge ,2017) .

35 Spriggs, James & G. Hansford, Thomas, "Explaining the Overruling of U.S. Supreme Court Precedent" 63 *The Journal of Politics* 1091 – 1111 (2001).

36 Pamela C. Corley, Uncertain Precedent: Circuit Court Responses to Supreme Court Plurality Opinions (2009).

The study of concurring opinions would not only help scholars in discerning meaningful distinctions between justices of similar ideological beliefs but also provide insight into how that justice may be expected to vote in the future. Hence, considering the signicant legal and institutional concerns allied with concurring opinions, it is important for legal and political scholars to comprehend why a justice writes or joins a concurring opinion rather than silently joining the majority opinion.

Two American scholars, Witkin and Ray have developed a typology of concurring opinions which classifies judicial concurrences in six broad categories namely, *expansive; doctrinal; limiting; reluctant; emphatic; and unnecessary* concurring opinions.

Expansive concurrence: As the name suggests, this kind of concurrence expand or supplement the holding or reasoning of the majority opinion. In *Young* v. *U.S*.[37] the Court held that an attorney for a party that is the beneciary of a court order might not be appointed as a prosecutor in a contempt action that alleges the order was violated. Justice Blackmun wrote a concurring opinion by stating that "I join Justice Brennan's opinion. I would go farther, however, and hold that the practice—federal or state—of appointing an interested party's counsel to prosecute for criminal contempt is a violation of due process."[38]

In India, Justice Krishna Iyer in famous *Maneka Gandhi* v. *Union of India*[39] supplemented the majority opinion[40] delivered by Justice Bhagwati by stating that, in my separate opinion, I propose only to paint the back drop with a broad brush, project the high points with bold lines and touch up the portrait drawn so well by brother Bhagwati J, if I may colourfully, yet respectfully, endorse his judgment.

The trend of writing supplementing opinion has been an integral part of Indian Supreme Court's decision making process and judgement writing. Justice Hidaytullah in *Life Insurance Corporation of India* v. *CIT Delhi & Rajasthan*[41] used this phrase first time to express his opinion which was followed in following cases: *State of J& K* v. *Triloki*

---

37 *Young* v. *U.S*. 481 U.S. 787 (1987).

38 *Id.* at 814-15.

39 AIR 1978 SC 597.

40 The majority while interpreting the inter-relationship of fundamental rights observed that all Fundamental Rights bear a relationship with one another and any law depriving a person of any of the liberties or freedoms must not only satisfy the requirements of Article 21 (procedure established by law) but also Article 19 (reasonableness) and Article 14 (equality before the law). By reading the principle of "reasonableness" or non-arbitrariness as an essential attribute of equality impacting on the freedoms under Article 21, the Court introduced the "due process clause" to the Indian constitutional system.

41 AIR 1964 SC 1403. Justice M Hidaytullah authored supplementary opinion.

Nath Khosa,[42] *Umed* v. *Raj Singh*,[43] *Shambhu Nath Goyal* v. *Bank of Baroda*,[44] *Neerja Chaudhary* v. *State of M. P.*,[45] *Dr. Pradeep Jain* v. *Union of India*,[46] *Girdhari Lal and Sons* v. *Balbir Nath Mathur*,[47] *M. C. Mehta* v. *Union of India*,[48] *Thota Sesharathamma* v. *ThotaManikyamma*,[49] *State of Karnataka* v. *AppaBaluIngale*,[50] *Shipra* v. *Shanti Lal Khoiwal*,[51] *Dy. Commercial Tax Officer* v. *Corromandal Pharmaceuticals*,[52] *M.V.Al Quamar v. Tsavliris Salvage* (*International*) *Ltd*,[53] *Jagdish Lal* v. *Parma Nand*,[54] *Anil Rai* v. *State of Bihar*,[55] *New India Assurance Comp. Ltd.* v. *Asha Rani*,[56] *Lillykutty* v. *Scrutiny Committee, SC & ST*,[57] *National Insurance Company Ltd.* v. *Mastan*,[58] *Vijaykumar Baldev Mishra* v. *State of Maharashtra*,[59] *S. C. Chandra* v. *State of Jharkhand*,[60] *Rajendra Singh* v. *State of U.P.*,[61] *National Thermal Power Corp. Ltd.* v. *Siemens Atkeingesellschaft*,[62] *ICICI Bank Ltd.* v. *Prakash Kaur* [63]

Another innovative method of writing opinion entitled *"supplementing concurring opinion"*, is found in the Supreme Court decision making. Justice S. B. Majumdar and Justice U. C. Banerjee in *State of Karnataka* v. *State of Andhra Pradesh* authored supplementing concurring opinion[64] with the object of not providing completely different reasons but to give different reasons in order to supplement the majority opinion.

---

42 (1974)1 SCC 19. Justice Krishna Iyer wrote supplementing opinion for himself and Justice P N Bhagwati.

43 (1975)1 SCC 76. Justice P N Bhagwati authored supplementing opinion.

44 (1983)4 SCC 491. Justice D.A. Desai authored supplementing opinion.

45 (1984)3 SCC 243. Justice A. N. Sen authored supplementing opinion.

46 (1984)3 SCC 654. Justice A.N. Sen authored supplementing opinion.

47 (1986)2 SCC 237. Justice V. Khalid authored supplementing opinion.

48 (1987)4 SCC 463. Justice K.N. Singh authored supplementing opinion.

49 (1991)4 SCC 312. Justice K. Ramaswamy authored supplementing opinion.

50 (1995) Supp.-IV SCC 469. Justice K. Ramaswamy authored supplementing opinion.

51 (1996)5 SCC 181. Justice S. P. Bharucha& Justice Paripooran authored supplementing opinion.

52 (1997)10 SCC 649. Justice B P Jeevan Reddy authored supplementing opinion.

53 (2000)8 SCC 278. Justice S B Majumdar authored supplementing opinion.

54 (2000)5 SCC 44. Justice D P Wadhwa authored supplementing opinion.

55 (2001)7 SCC 318. Justice K T Thomas authored supplementing opinion.

56 (2003)2 SCC 223. Justice S. B. Sinha authored supplementing opinion.

57 (2005)8 SCC 283. Justice S. B. Sinha authored supplementing opinion.

58 (2006)2 SCC 641. Justice P. K. Balasubramaniyam authored supplementing opinion.

59 (2007) 12 SCC 687. Justice Markandey Katju authored supplementing opinion.

60 (2007)8 SCC 279. Justice Markandey Katju authored supplementing opinion.

61 (2007)7 SCC 378. Justice P. K. Balasubramaniyam authored supplementing opinion.

62 (2007)4 SCC 451. Justice P. K. Balasubramaniyam authored supplementing opinion.

63 (2007)2 SCC 711. Justice Dr. A. R. Lakshamanan authored supplementing opinion.

64 (2000)9 SCC 572.

Doctrinal concurrence: The doctrinal concurrence proposes a different theory to support the majority's outcome. This is also called the "right result, wrong reason" concurrence. This concurrence generally rejects the entire foundation of the court's opinion, concurring in the judgment but for an entirely different reason. Thus, these concurrences disagree with the majority opinion, even though the opinion writer agrees with the nal outcome of the case (who wins and who loses). Justice Brennan concurrence in *Connecticut* v. *Barrett*[65] (1987) may be a suitable example where he writes that: "I concur in the judgment that the Constitution does not require the suppression of Barrett's statements to the police, but for reasons different from those set forth in the opinion of the court."[66]

Justice P. N. Bhagwati writing a concurring opinion for himself, Justice Chandrachud and Justice Krishna Iyer in *E.P. Royappa* v. *State of Tamil Nadu*[67] propounded a new approach to the concept of equality under Article 14 i.e. where an *act* is *arbitrary*, it is *implicit* in it that it is unequal both *according* to *political logic* and *constitutional law* and is, therefore, violative of Article 14. He observed:

> "Equality is a dynamic concept with many aspects and dimensions and it cannot be "cribbed, cabined and confined" within traditional and doctrinaire limits. From a positivistic point of view, equality is antithetic to arbitrariness. In fact, one belongs to the rule of law in a republic while the other to the whim and caprice of an absolute monarchy.

Limiting concurrence: The third category is the limiting concurrence, a concurring opinion that attempts to limit or qualify the holding. The opinion writer argues that certain parts of the majority's discussion were unnecessary or thinks the court has gone too far in its reasoning or conclusions. The author of limiting concurring opinion acts to rein in the doctrinal force of the majority. The concurrence may limit the majority opinion to the particular circumstances of the case under review or may "take the majority to task for addressing an issue not properly before it. In *Colorado* v. *Connelly* (1987), Justice Blackmun wrote a limiting concurrence. He observed:

> I join Parts I, II, III-B, and IV of the Court's opinion and its judgment. I refrain, however, from joining Part III-A of the opinion. Whatever may be the merits of the issue discussed there . . . that issue was neither raised nor briefed by the parties, and, in my view, it is not necessary to the decision.

Justice O'Connor *concurring opinion in Clarke* v. *Securities Industry Ass'n (1987)* could be another example of limiting concurrence, where he wrote:

---

65 *Connecticut* v. *Barrett* 479 U.S. 523 (1987).

66 *Id.* at 530.

67 AIR 1974 SC 555.

> Analysis of the purposes of the branching limitations on national banks demonstrates that respondent is well within the "zone of interest" as that test has been applied in our prior decisions. Because I believe that these cases call for no more than a straightforward application of those prior precedents, I do not join Part II of the Court's opinion, which, in my view engages in a wholly unnecessary exegesis on the "zone of interest" test. (409–10)

The tendency for limiting concurrences is to narrow down the scope of majority ruling and also by signalling to the lower court that support for the majority decision is not high.

Justice R.S. Pathak's concurring opinion in *Akhil Bharatiya Soshit Karamchari Sangh (Railways)* v. *Union of India*[68] is an Indian example of limiting concurrence. Justice Pathak though agreed with the majority[69] on the point that a quota of the posts may be reserved in favour of backward citizens, but qualified the majority by holding that in the interest of efficiency of administration at least half the total number of posts must be kept open toattract the best of the nation's talent. Justice Pathak observed:

> An excess ofthe reservedquota wouldconvert the State service into a collective membership predominantly of backward classes. The maintenance of efficiencyofadministration is bound to be adversely affected if generalcandidates of highmerit are correspondingly excluded fromrecruitment. Viewed in that light the maximum of 50% forreserved quota appears fairand reasonable, just andequitable violation of which would contravene Article 335.

Reluctant concurrence: The next category of concurring opinion is reluctant concurrence, where author clarifies that he does not want to join the majority's decision, but feels compelled to, perhaps because of precedent or because of a desire to produce

---

68 AIR 1981 SC 298.

69 The majority opinion delivered by Justice Krishna Iyer and Justice O. Chinnappa Reddy held that, there is no vice in giving one grade higher than is otherwise assignable to an employee, based on the record of his service rendering the promotional prospects unreasonable because this concession is confined to only 25% of the total number of vacancies in a particular grade or post filled in a year and there is no rampant vice of every harijan jumping over the heads of others. More importantly, this is only an administrative device of showing a concession or furtherance of prospects of selection. Similarly "carry forward" raised from two years to three years cannot be struck down. There is no prospect, even if the vacancies are carried forward, of sufficient number of Scheduled Castes and Scheduled Tribes candidates turning out to fill them. Moreover, there is a provision that if a sufficient number of candidates from these communities are not found, applicants from the unreserved communities would be given appointment provisionally. After three years these vacancies cease to be reserved.

a majority opinion on an important issue. An example of this category is found in concurring opinion of Justice Scalia in *Pope* v. *Illinois* (1987).[70] Justice Scalia observed:

> I join the Court's opinion with regard to an "objective" or "reasonable person" test of "serious literary, artistic, political, or scientic value," because I think that the most faithful assessment of what Miller intended, and because we have not been asked to reconsider Miller in the present case. I must note, however, that in my view it is quite impossible to come to an objective assessment of (at least) literary or artistic value, there being many accomplished people who have found literature in Dada, and art in the replication of a soup can.

Justice Scalia concluded his concurrence by stating that: *"[a]ll of today's opinions, I suggest, display the need for re-examination of Miller."*

Another example is Justice Brennan's concurrence in *Mathews* v. *United States* (1988).

An illustration of this category in the Indian context can be found in the concurring opinion of Justice J. S. Mudholkarin *Sajjan Singh* v. *State of Rajasthan*. He observed:

> In view of these considerations and those mentioned by my learned brother Hidaytullah J. I feel reluctant to express a definite opinion on the question whether the word 'law' in Art. 13 (2) of the Constitution excludes an Act of Parliament amending the Constitution and also whether it is competent to Parliament to make any amendment at all to Part III of the Constitution.

Emphatic concurrence: The emphatic concurring opinion highlights some aspect of the majority's ruling and writer mainly elucidate his/her understanding of the court's opinion. In *INS* v. *Cardoza-Fonseca*,[71] the Supreme Court of United States held[72] that a person is entitled to the discretionary relief of asylum if he shows he cannot return home because of "persecution or a well-founded fear of persecution" and a person is entitled to the mandatory relief of withholding deportation if he demonstrates a "clear

---

70 Petitioners in this case were convicted under Illinois law of obscenity for selling some magazines to police. Their appeal was founded on the jury's observation that it must determine that the material were without 'value' to convict and therefore to make that determination, it must be judged, how the ordinary citizens of Illinois will view this magazine. The Court decided that the appropriate test is not whether an ordinary member of any given community would nd value in the allegedly obscene material, but whether a reasonable person would nd such value in the material.

71 480 U.S. 421 (1987).

72 INS began proceedings to deport Cardoza-Fonseca, and she applied for two forms of relief in the deportation hearings—asylum and withholding of deportation. An immigration judge denied her requests, nding that Cardoza-Fonseca had not established a "clear probability of persecution," which the judge believed was the standard for both claims.

probability of persecution" if he returns home. Justice Blackmun wrote concurring opinion where he emphasized his understanding that the majority opinion directed the INS to appropriate sources to help it dene the meaning of the "well-founded" fear standard and that the meaning would be rened in later litigation. Justice Powell's concurrence in *F.C.C.* v. *Florida Power Corp*[73] could be cited as another illustration of emphatic concurrence where Justice Powell concurred in following words: "writing only to state generally my understanding as to the scope of judicial review of rates determined by an administrative agency."

The Indian Supreme Court in *National Capital Territory of Delhi* v. *Union of India*[74] decorously acknowledged representative democracy as a fundamental feature of the Indian Constitution, and correctly interpreted article 239AA in a manner that, within the textual boundaries of the provision, strengthens representative democracy. The thorough study of the constitutional history of Delhi, the application of constitutional principles in order to construe article 239AA demonstrates a serious work done by the Bench. However, there is some doubt on the subject of the proviso to article 239AA (4). Justice D Y Chandrachud in his concurring opinion clarified the Majority on this issue. Justice Ashok Bhushan's opinion is also an example of emphatic concurring opinion because he only highlighted on the reasoning offered by Justice D. Y. Chandrachud. He observed: *"I have gone through the well-researched and well considered opinion of Brother Justice D. Y. Chandrachud. The view expressed by Justice Chandrachud are substantially the same as have been expressed by me in this judgment."*

Unnecessary concurrence: The last category of concurring opinion according to Witkin and Ray is 'unnecessary concurrence', which is a concurrence without opinion. According to Witkin, this type of concurrence "produces all the evils of a concurring opinion with none of its values; i.e., it casts doubt on the principles declared in the main opinion without indicating why they are wrong or questionable." This type of concurrence could mean that the concurring justice does not agree with the principles in the majority opinion, or that he agrees with them but not with the reasoning or authorities set forth to support them, or that he agrees with only some of the principles, or that he neither agrees nor disagrees, or that he objects to something in the opinion (perhaps a quote, humor or satire, or even punishment of a litigant) and withholds his signature because the majority opinion writer would not take it out. However, because the justice has not revealed why he or she is concurring, one is left to speculate regarding the possible reason.

---

73 480 U.S. 245 (1987).

74 Civil Appeal No. 2357 OF 2017, decided on July 4, 2018.

In *State of Uttar Pradesh* v. *Vijay Anand,*[75] Justice J R Mudholkar expressed this kind of concurring opinion. He observed:

> I agree with my learned brother that the appeal should be dismissed for the reasons stated in his judgment. I, however, express no opinion on the question regarding the maintainability of the appeal under the Letters Patent against the decision of a single Judge in a case of this kind.

Justice K. Subba Rao in *Bombay Steam Navigation Co.* v. *Commissioner of Income-Tax*[76] observed: "I agree with the conclusion, but I would prefer not to express my view on the construction of cl. (iii) of Subs. (2) of section 10 of the Indian Income-tax Act, 1922."

This practice of concurring without expressing any opinion is not based on any sound principle or convention. If a judge remains silent, he is, to our mind, shirking his duty not only to himself, but to the attorneys and the general public. He is shirking his duty to himself in that he will not stand and fight for what he believes in; he is shirking his duty to the attorney for the losing side in that he is not aiding him in his endeavour to do his best for his client; he is shirking his duty to the general public which, in most instances, is responsible for his appointment to the bench and his continued position there out of whose tax money he is paid salary. We feel that the public has right to know what his views and beliefs are in the various fields of the law, and that it is his duty to see that those views and beliefs are a matter of public record through published opinions.[77]

Any constitution or any legal system requires its judges to decide a case with utmost sincerity and commitment and therefore anticipates that they will give elaborate reasons for their decisions. Constitution gives judges of Supreme Court freedom to decide a case the way they think correct and may write concurring opinion or dissenting opinion. But the culture that judge will not write at all and will not express any opinion on the issues involved in the case has no constitutional basis. Judges like other individual cannot claim that freedom of speech and expression also includes freedom not to speak.[78] Justices are under obligation to give reasons and therefore this practice in our opinion undermines the principle of judicial accountability.

---

75 AIR 1963 SC 946.

76 AIR 1965 SC 1201.

77 Jesse W. Carter, *Dissenting Opinions. The Jesse Carter Collection. Digital Commons: The Legal Scholarship Repository*, Golden Gate University School of Law, *available at*: http://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article. (last accessed on August 23, 2018).

78 Supreme Court in famous *Bijoy Emmanuel* v. *State of Kerala* has held that freedom of speech and expression under art. 19(1) (a) also includes freedom not to speak. However, at times when there is a duty to speak, (see S. 17 of the Indian Contract Act, 1872) then this freedom cannot be claimed.

VI The impact of concurring opinion in India

Indian Constitution, following the common law tradition allowed the judges of the apex court to write their individual opinions.[79] In exercise of this freedom, judges of Indian Supreme Court in addition to known methods of writing opinions such as concurring, partly concurring, dissenting and partly dissenting have invented various hybrid methods of writing opinions. Most of these hybrid version comes within the broad category of concurring opinion *viz.* supplementing opinion, supplementing concurring opinion, concurring opinion raising doubts on majority and expressing no opinion. All varieties of concurring opinions except 'concurring opinion raising doubts on majority' are part of classification made by Witkin and Ray. Concurring opinion raising doubts on majority opinion has been innovated by Indian Supreme Court Judges. In the *T Cajee* v. *U. Jormanik Siem*[80] Justice Subba Rao though concurred with majority[81] but raised serious doubts on the question:

> Whether, when the Constitution confers on an authority power to make laws in respect of a specific subject matter, the said authority can deal with the same subject matter without making such a law in its administrative capacity.

---

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

80 *T Cajee* v. *U. Jormanik Siem* AIR 1961 SC 276, (*U. Jormanik siem* (respondent) was Siem of Mylliemsiemship in United Khasi and jaintia Hills District in the Tribal Areas of Assam, having been elected as such by the Myntri electors according to custom in 1951. A District Council was constituted in June, 1952 under the sixth schedule of the Constitution and the siemship was brought under it. The rules in the sixth schedule empowered the district council to make laws with respect to various matters regarding the administration of the district including the appointment or succession of chiefs and headmen. No law was made regulating the appointment and succession of chiefs and headmen. The chief executive member of the executive committee of the District Council served on the respondent a notice to show cause why he should not be removed from his office and suspended him. *U. Jormanik siem* challenged the validity of this action on following grounds: (i) that he could not be removed by administrative orders but only by making a law, (ii) that the executive committee could not take any action in this case, and (iii) that the order of suspension was *ultra vires*.)

81 Justice K. N. Wanchoo on behalf of majority held that "the District Council had the power to appoint or remove administrative personnel under the general power of administration vested in it by the Sixth Schedule. The District Council was both an administration well as a legislative body. After a law was made with respect to the appointment or removal of administrative personnel the authority would be bound to follow it; but until then it could exercise its administrative powers. Since the United Khasi-jaintia Hills Autonomous District (Appointment and Succession of Chiefs and Headmen) Act, 1959, had now come into force further action should be taken in accordance with that Act. The Executive Committee under rule 30 (a) of the Assam Autonomous Districts (Constitution of District Councils) Rules, 1951, could act on behalf of the District Council in cases of emergency and it was not for the courts to go into the question whether there was an emergency or not. In these circumstances the action taken by the Executive Committee could not be challenged." See AIR 1961 SC 276.

The success of this innovation of Supreme Court of India eventually culminated into one of the biggest legal development in India.[82] *Sajjan Singh* v. *State of Rajasthan*[83] is an illustrious case where Justice Hidaytullah and Justice Mudholkar concurred with the majority in final outcome but they raised serious doubts on the majority which approved undeterred power of the Parliament to amend the Constitution *vis-à-vis* Fundamental Rights. In the words of Justice Hidaytullah:

> The Constitution gives so many assurances in Part III that it would be difficult to think that they were the play things of a special majority. To hold this would mean prima facie that the most solemn parts of our Constitution stand on the same footing as any other provision and even on a less firm ground than one on which the article mentioned in the proviso stand.

Justice Mudholkar on the other hand expressed doubts in followings words:

> It is true that the Constitution does not directly prohibit the amendment of Part III. But it would indeed be strange that rights which are considered to be fundamental and which include one which is guaranteed by the Constitution (vide Art. 32) should be more easily capable of being abridged or restricted than any of the matters referred to in the proviso to Art. 368 some of which are perhaps less vital than fundamental rights.

He further said at the end of his judgment that:

> Before I part with this case I wish to make it clear that what I have said in this judgment is not an expression of my final opinion but only an expression of certain doubts which have assailed me regarding a question of paramount importance to the citizens of our country : to know whether the basic features of the Constitution under which we live and to which we owe allegiance are to endure for all time - or at least for the foreseeable future - or whether they are no more enduring than the implemental and subordinate provisions of the Constitution.

It was the impact of these two opinions that the same matter[84] was again referred to the larger bench of *Golak Nath* v. *State of Punjab.*[85] The apprehension of Justice

---

82 It was the impact of the *doubts raised by these two learned judges in this case*, the whole matter was referred to larger bench of eleven judges *i.e. Golak Nath* v. *State of Punjab*, which held that Parliament cannot amend fundamental rights at all. Finally, the issue was settled by thirteen judge bench in famous *Kesavanand Bharati case*, which gave doctrine of basic structure.

83 AIR 1965 SC 845.

84 The constitutional Validity of the 17th Constitutional Amendment was challenged in the *Sajjan Singh* v. *State of Rajasthan*, AIR 1965 SC 845. The same issue was again considered by a eleven judge bench in famous *I. C. Golak Nath* v. *State of Punjab*, AIR 1967 SC 1643.

85 *I.C. Golak Nath* v. *State of Punjab,* AIR 1967 SC 1643.

Hidaytullah and Justice Mudholkar was that if we accept the majority opinion in *toto* then fundamental rights will be just a play-thing in the hands of majority. Relying on the reasons provided by these two judges, the eleven–judge bench overturned the earlier precedents and brought the amending power of the Parliament under the category of ordinary legislative power. This decision of the Supreme Court compelled the Parliament to amend the Constitution.[86] The constitutional validity of 24thconstitutional amendment Act was once again challenged and ultimately the issue was settled by the thirteen-judge bench in *Kesavananda Bharati* v. *State of Kerala*.[87] The law in this regard as settled by thirteen-judge bench is that, the Parliament in exercise of its constituent power under article 368 of the Constitution, can change, amend, modify constitution including the chapter of fundamental rights, however they cannot change or destroy the basic structure of the Constitution. The doctrine of basic structure which truncated the power of the government was first suggested by Justice Mudholkar in *Sajjan Singh case* when he raised his serious doubts. It can be stated beyond any doubt that the seeds of basic structure principle in India was sownby concurring opinion in *Sajjan Singh Case*.

Justice Mathew's concurring opinion in *Sukhdev Singh* v. *Bhagat Ram*88contributed meaningfully to the development of law with regard to other authority under Article 12 of Indian Constitution. The judgements of the Supreme Court in *R.D. Shetty* v. *The International Airport Authority of India*[89] and *Ajay Hasia* case,[90] are testimony to impact of Justice Mathew's concurring opinion which used itas a foundation stone for laying down decisive guidelines in order to test whether an authority is part of state under article 12 or not.

Separate concurrence of Justice Krishna Iyer in *Shamsher Singh* v. *State of Punjab*[91] agreed with the majority[92] in the outcome, but added an important dictum *vis-à-vis* position of the President.

---

86 The Constitution (Twenty Fourth Amendment) Act, 1971.

87 AIR 1973 SC 1461.

88 AIR 1975 SC 1331.

89 AIR 1979 SC 1628.

90 A*IR 1981 SC 487*.

91 (1974) 2 SCC 831.

92 Majority led by Chief Justice A. N. Ray held that: "With respect to the executive power of the President, Sardari Lal is not the correct statement of law and is against the established and uniform view of this Court as embodied in several decisions." This Court has consistently taken the view that powers of the President and powers of the Governor are similar to the power of the Crown under the British parliamentary system and the President is the formal or constitutional head of the executive. The real executive powers are vested in the ministers of the cabinet."

The President in India is not at all a glorified cipher. He represents the majesty of the State, is at the apex, though only symbolically, and has rapport with the people and parties, being above politics. His vigilant presence makes for good government if only he uses, what Bagehot described as, "the right to be consulted, to warn and encourage". Indeed, Article 78 wisely used, keeps the President in close touch with the Prime Minister on matters of national importance and policy significance, and there is no doubt that the imprint of his personality may chasten and correct the political Government, although the actual exercise of the functions entrusted to him by law is in effect and in law carried on by his duly appointed mentors, i.e., the Prime Minister and his colleagues. In short, the President, like the King, has not merely been constitutionally romanticized but actually vested with a pervasive and persuasive role. Political theorists are quite conversant with the dynamic role of the Crown which keeps away from politics and power and yet influences both. While he plays such a role, he is not a rival centre of power in any sense and must abide by the act on the advice tendered by his Ministers except in a narrow territory which is sometimes slippery.[93]

The concurring opinions of Justice D.Y. Chandrachud and Justice Sanjay Kishan Kaul in *Justice (Retd.) K Puttaswamy* v. *Union of India*[94] recognising the right to privacy as a fundamental right actually sowed the seed for defining its broad contours. In holding that one's sexual orientation and right to choose a partner form inalienable parts of the right to privacy, and strongly disapproving of the callous and cruel language of *Suresh Kumar Koushal vs. Naz Foundation*,[95] the Supreme Court effectively set the stage for *Navtej Singh Johar*[96] judgment which finally read down section 377 of the Indian Penal Code.

VII Conclusion

There cannot be any dissent on the fact that concurring opinions are vital in decision making process especially in constitutional courts because plurality of opinions is always good when compared to one. The erudite concurrence of Justice Krishna Iyer, Justice Mathew, Justice Hidaytullah, Justice Mudholkar and Justice D. Y. Chandrachudhave immensely contributed to the development of law and are cited more often than the majority views. But every judge cannot be compared with these judges and hence questions are raised as to why do judges write separate opinions when they agree with each other? The primary justification may lie in the fact that Constitution permits every judge to write their own opinion[97] (concurring or dissenting), but what is distressing is that when judges agree, they do not critically engage with the views of

93 *Supra note* 106 at 873.

94 Writ Petition (Civil) No. 494 OF 2012, decided on August 24, 2017.

95 (2014) 1 SCC 1.

96 Writ Petition (Criminal) No. 76 OF 2016, decided on September 06, 2018.

97 Constitution of India 1950, art. 145.

their colleagues. In majority of cases it becomes hard to decrypt the precise law from the discordance of different opinions all seem to be saying the same thing. The recent privacy judgement[98] which unanimously (9:0) declared privacy a fundamental right, pitched six separate but concurring opinions, each offered a different test to define the contours of the right to privacy, resulting in a long judgement with a state of confusion. Similarly, in *NCT Delhi Case,*[99] three separate concurring opinions with substantial agreement[100] on all important issues were written which eventually increased number of pages (*535 pages*) the effort involved in reading, and the likelihood of future confusion. Four separate but concurring opinions in *Supreme Court Advocate on Record Association* v. *Union of India*[101] (total 1030 pages verdict which include 129 pages dissenting opinion of Justice Jasti Chelameswar) substantially agreeing on the question that National Judicial Appointment Commission violates basic structure of the Constitution used 900 pages to say so. And similarly, four separate concurring opinions in *Common Cause* v. *Union of India*[102] used 538 pages to provide repetitively legal sanction to passive euthanasia and execution of a living will of persons suffering from chronic terminal diseases.

Separate opinion of judge of the Supreme Court is undeniably an indirect communication with a judge of a lower court about the vitality of the majority opinion. It is nevertheless debatable that if such opinions affect the decision making in the courts below in negative or positive manner. Whether this is done intentionally or unintentionally is not clear nonetheless, evidence show that concurrences do inuence the future interpretation of the precedent. The paper discussed six different categories of concurrences including the doctrinal concurrences which undesirably impact the compliance and expansive concurrences which definitely impact the compliance of a majority opinion. The judges of the Supreme Court by writing and joining concurrences may strengthen or weaken the impact of majority opinion. Hence writing a particular type of concurrence also perhaps demonstrate that negotiation between justice writing concurring opinion and justice writing the majority opinion has failed. Finally, we

---

98 *Justice (Retd.) K Puttaswamy* v. *Union of India*, 2017 see Online 996.

99 Civil Appeal No. 2357 of 2017.

100 Justice Ashok Bhusan observed that: I have perused the elaborate opinion of My Lord, the Chief Justice with which I substantially agree, but looking to the importance of the issues, I have penned my own views giving reasons for my conclusion. I have also gone through the well-researched and well considered opinion of Brother Justice D.Y. Chandrachud. The view expressed by Justice Chandrachud are substantially the same as have been expressed by me in this judgment.

101 (2016) 5 SCC 1.

102 W.P. (Civil) 215 of 2005, decided on March 9, 2018.

think that a precedent accompanied by an expansive concurrence increases the likelihood of the Supreme Court treating the precedent in a positive way. Whereas a precedent accompanied by a doctrinal concurrence decreases the likelihood of the Supreme Court treating it in an equally positive and impartial manner.

Yogesh Pratap Singh *

* Associate Professor of Law, National Law University Odisha.