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Minority Opinion of the Court and its Significant Contribution to the Subsequent Legal Developments

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Abstract

It is a well-accepted fact that the majority opinion represents the prevailing opinion of a court. However, judges are free to have an opinion that differs from the rationale presented in the majority opinion, and, as a result, the decision made in a case is known as a dissenting opinion. Judges are allowed to voice their opinions freely when deciding the cases. Therefore, it ensures greater democracy in the decision-making process and promotes democratic debate and the freedom to disagree when delivering judgments. When analyzing the minority views delivered by judges these opinions also have a significant impact on the establishment of important legal concepts. However, there is a scholarly debate, about the contribution and to what extent the minority rulings serve as the foundation for subsequent legal developments. Therefore, the objective of this paper is to discuss how minority opinions serve as the basis for future legal improvements or changes and how the well-reasoned minority opinions contributed to enhancing public confidence in the legal system and stimulating legal debate and discussions within the legal community. And analyze to what extent they have influenced to safeguarding the fundamental rights and civil liberties guaranteed under the constitutions. To achieve the research objectives articulated above, the paper adopts a doctrinal research method and involves the study of both primary and secondary sources. The first part of this paper discusses the importance of minority opinion in democratic debate in the judicial system. And in the second part, it investigates how the minority judgements significantly influenced subsequent legal developments.

Keywords: *Judicial decision making, legal development, minority opinion, legal debate, significant contribution.*

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Introduction

"What I learned over my quarter-century on the court is that unanimity or consensus can be achieved only if every judge at the conference table believes it is a desirable objective. No chief judge, however brilliant or beloved, can impose it. It was my good fortune, during most of my years on the court, that working hard to achieve consensus, when possible, without compromising principle, was a shared value. When it was not possible, no one hesitated to write separately and vigorously."

Chief Judge Judith Kaye[1]

Prof. Salmond pointed out that judicial decisions have the force of law.[2] Therefore, great importance is attached to the doctrine of precedents in the common law legal systems. Courts are required by the notion of judicial precedent to utilize previously rendered, hierarchically binding rulings as settling points for resolving disputes that arise in the present.[3] Hence, it is a well-accepted notion, that the majority judgement contains the ratio decidendi, and it represents the prevailing opinion of a court. When considering Article 132(4) of the Constitution of Sri Lanka 1978, it states that the judge of the Supreme Court shall, when it is not a unanimous decision, be the decision of the majority. Similarly, Article 146(4) states that the judge of the Court of Appeal shall, when it is not a unanimous decision, be the decision of the majority. Accordingly, as stated above, majority rulings reflect the prevalent viewpoint of the court. Even though any number of judges could disagree or concur with the majority in a separate opinion, the justification provided in such an opinion does not establish a precedent that other courts will have to follow. 'It is the majority judgement rather than a concurring or dissenting view that decides how the matter

[1] Judith S. Kaye, Judith S. Kaye: In Her Own Words 25 (H M. Greenberg, LM. Kaye, M Marcus & A M. Rosenblatt eds., 2019)
[2] Salmond, *Jurisprudence* (3d ed., 1924). 201
[3] G Staszewski,. *A Deliberative Democratic Theory of Precedent*. (U. Colo. L. Rev., 94 2023) 1.

will be resolved in court and establishes the law of the country.'[4]

Does it mean that the minority opinion of the judgement does not have any weight, or the minority view does not occupy any place in the process of legal development? Such questions arise when it gives importance to only a majority view in the academic arguments. However, when considering the minority views expressed by judges in different cases it is obvious that the minority opinions also significantly contribute to the legal development. Further, it is a vital component of judicial decision-making, and it provides alternative perspectives and safeguards against potential biases or errors in the majority decision. It allows for a more comprehensive analysis and evaluation of legal issues, ensuring that all arguments are considered, and increasing the transparency and accountability of the judicial process. Hence, minority opinions must be taken into consideration, even though majority ideas frequently prevail in decision-making procedures.

However,there is an argument that judicial opinions are considered as authoritative declarations of the law, minority opinion in a decision, adversely affect the legal predictability. This is especially true considering that a majority of the judges with agree, for the decision to be valid. Therefore, it is accepted that, "to the extent that the law is most effective as an institution when it provides predictability and clarity, dissents seem to even further undermine the value of written judicial decisions"[5] On the other hand, when judges' opinions are made publicly available for the public to view and consider in the form of dissenting or even concurring opinions, these opinions serve to highlight the judges' alternative legal positions Hence, academics often critique court conflicts by presenting arguments regarding the predictability of the law. One

[4] D DiBenedetto, *Splits in Decision-Making: Comparing the Leadership Styles Of Chief Judge Kaye And Chief Judge Lippman*. (Albany Law Review, 2023)86(4).
[5] S England and T.S. Clark*, Minority Will? A Model of Influential Dissenting Opinions*. (2023)

could counter these criticisms by arguing that the minority rulings also significantly advance the law, as it offers an opportunity to explore diverse perspectives on judicial thinking and illustrate the various legal reasoning and the application of legal principles from different viewpoints."They encourage critical thinking and foster a deeper understanding of complex legal issues. A more significant point is that disagreement pave the way to the future legal and social changes.[6] Further, it safeguards the right to have different viewpoints on contested legal issues and contributes to the public debate on these issues. In some cases, the views expressed in a dissenting opinion provided the basis for constitutional amendments overriding the majority opinion of the judgements. Hence, it is crucial to comprehend how disagreement affects the creation of new laws in the future. It believes that sound reasoning, whether it comes from a majority or minority, is a sign of robust court.[7] Further, minority judgements are described as 'democratic conversations' where a judge engages in a form of 'institutional disobedience' by not agreeing with the majority.[8] As Professor Joseph Weiler pointed out, "one of the virtues of separate and dissenting opinions is that they force the majority opinion to be reasoned in an altogether more profound and communicative fashion. Therefore, dissent often produces the paradoxical effect of legitimating the majority because it becomes evident that alternative views were considered even if ultimately rejected."[9] Although it has many plus points, as stated above it has been criticized by many scholars as it could weaken the authority of courts, create legal uncertainty, and weaken the doctrine of stare decisis. Considering the significance of minority viewpoints

[6] A Lynch, Dissent*: The rewards and risks of judicial disagreement in the High Court of Australia'* (Melbourne University Law Review 2003)724

[7] A Spies ,The importance of minority judgments in judicial decision-making: an analysis of Minister of Justice and Constitutional Development v Prince, South African Journal on Human Rights, DOI: 10.1080/02587203.2019.1703558<:https://doi.org/10.1080/02587203.2019.1703558(2020)>accesed 1November2023

[8] PM Collins J, *Interest Groups and Judicial Decision Making* (2008) 144, 146.

[9] J. H. H Weiler.: The judicial après Nice, in G. De Burca and J. H. H. Weiler (eds.) The European Court of Justice, OUP 2001

in scholarly discourse, the next part of this research will investigate the significance of selected minority judgements, how they have influenced subsequent legal developments, and how they serve as a safeguard for fundamental rights and civil liberties of the people.

Methodology

This is doctrinal research. Both primary and secondary data will be used to analyze the issue. It involves a detailed analysis of case law authorities and Constitutional provisions as a primary source. The study also uses books, research articles and journals as a secondary source to formulate findings, make conclusions, and validate assertions. This study is based on extensive analysis of case law authorities and published literature relevant to the research.

How Did the Minority Judgements Significantly Influence Subsequent Legal Developments?

This section of the research examines the minority views of expressed by the Sri Lankan and Indian courts, which contribute to shape the later legal trends and protect civil liberties and fundamental rights of the people. To initiate the conversation, the study looks at the court's decision in *Velmurugu v. Attorney General*.[10] This is a case where the Supreme Court of Sri Lanka had to deal with the violation of Article 11 of the Constitution. In this case, the petitioner was arrested by army forces and placed in an officer-driven jeep. He claimed that he endured torture and brutal treatment while riding in the jeep. While delivering the majority opinion of the court, Wanasundara J stated that the state should be held strictly liable for any acts of its high state officials. In contrast, Sharvananda J. expressing the minority viewpoint, proposed a test that expanded the scope of the constitutional remedy provided by Articles 17 and 126, taking a broad view of executive or administrative activity that would include state accountability. Further, Sharvananda J. reiterated that "the idea underlying Article 126 is that no one, by

[10] [1981]1 SLR 406

virtue of his public office or function, should deprive a citizen of his fundamental rights without being amenable to Article 126, even though the official did, constituted an abuse of power, or exceeded the limits of his authority. The sweep of state action, however, will not cover acts of officers in the ambit of their personal pursuits, such as rape by a police officer of a woman in his custody; such an act has no relation to the exercise of state power vested in him." [11]This interpretation is accepted in later cases, and the state was held liable for the acts of cruelty and torture committed by police officers while the petitioner was in police custody.[12] Hence, it is reasonable to argue that the minority opinion in the above case has given a broad view about the executive and administrative action stated in the constitutional remedy afforded by Articles 17 and 126. Again, in *Perera v. Jayawickrama*[13] the Supreme Court had to deal with Article 12 of the Constitution. The majority decided that the state is free to distinguish between individuals and objects in accordance with the equality principle. The court argued that discrimination is a necessary part of classification and that, if it is done so fairly, the constitutional right to equality is upheld. However, Wimalaratne, J., who delivered a dissenting opinion, argued that establishing discrimination does not require showing the correct procedure was applied in the case of others or that no others were victims of the wrong procedure. When considering this opinion of the court, in *Jayasinghe v. Attorney General*[14] Case, Mark Fernando J. stated that, facts of each case must be considered when determining whether Article 12(1) has been violated, and the entire bench decision in the *Perera v. Jayawickrama* case is doubtful in terms of establishing an inflexible principle of universal application. Further, in the case of *Wickremasinghe v. Ceylon*

[11] ibid
[12] Amal Silva v Kodituwaku (1987)2 SLR 119
[13] 1985 1 SLR 285
[14] [1994] 2 SLR 74

Petroleum Corporation[15] Sarath N. Silva, CJ, stated that the case of *Perera v. Jayawickrema* demonstrates how ineffective the guarantee in Article 12(1) is because it is unduly severe when it comes to demanding evidence that others in the petitioner's circumstances received different treatment. "Such an application of the guarantee under Article 12(1) ignores the essence of the basic standard, which is to ensure reasonableness as opposed to arbitrariness in the manner required by the basic standard."[16] *Wijerathna v. Sri Lanka Ports Authority*[17] The Supreme Court went on to explain that it has subsequently evolved from the *Perera v. Jayawickrema* ruling to a more liberal interpretation of equality. Recently, the Supreme Court reiterated that a petitioner being discriminated against by another person who was similarly circumstanced as "the petitioner is not the sole criterion for successfully pleading a violation of the right to equality, as arbitrary, mala fide, and unreasonable executive action is also seen as being inconsistent with the very concept of equality, thereby infringing upon the right to equality before the law as guaranteed under Article 12(1) of the Constitution."[18] Therefore, it shows that the minority opinion expressed in *Perera v. Jayawickrama* laid the foundational stone for a broad view about safeguarding fundamental rights and civil liberties.

Further, it is significant to quote the dissenting opinion expressed regarding the obligation of the executive under the constitution in *Vasudeva Nanayakkara v. P.B. Jayasundara and others*[19]. While expressing a dissenting opinion, Shiranee Tilakawardane J. made a remarkable observation, saying that the President of Sri Lanka is obligated under the Constitution to carry out his responsibilities exclusively in accordance with the law. It was further emphasized that "in our Democratic Socialist Republic, which is governed by

[15] [2001] 2 SLR 409
[16] ibid
[17] [SC (FR) 256/17, SC Minutes of 11.12.2020]
[18] SC(F/R)52/2015 -Decided on 27.09.2023.
[19] SC (FR) Application No. 209/2007

the Constitution, guaranteeing democracy for its citizens, not even the Executive President is given unrestrained authority. The spirit of the Constitution demands good and responsible governance, and this applies to all actions of government, especially those concerning public funds".[20] Even though, this view was presented as dissenting, the fundamental idea provided a framework for reconsidering the constitutional obligations of the organs of the government considering the rule of law and the ideals of the constitution.

When analyzing the value of minority judgments in constitutional interpretations it shows that a minority opinion may be able to show the viability of an alternative approach in constitutional interpretations. By using different constitutional interpretation such as textual, contextual, historical, and purposive interpretations they challenge dominant interpretive methods in constitutional interpretations show a balanced fashion according to the circumstances of each case an able to develop the wider constitutional jurisprudence. 'Minority judgments in this regard mean judgments that differ from the majority judgments in terms of legal reasoning, techniques of interpretation and reasons for the decision.'[21]

Apart from the fundamental rights jurisprudence, it is worthy to examine the dissenting opinion delivered in the expulsion cases where the Supreme Court happened to deal with the interpretation of Article 99 (13) of the Constitution. In *Gamini Dissanayake v. M. C. M. Kaleel and others*[22], eight members of the United National Party who were also Members of Parliament filed eight petitions in terms of Article 99 (13)(a) of the Constitution challenging their expulsion from the Party. Fernando J, in the minority judgement, stated, that "our jurisdiction under Article 99 (13)(a) is not a form of judicial review or even of appeal, but rather an original jurisdiction

[20] ibid
[21] W Brugger, Legal *interpretation, schools of jurisprudence and anthropology: Some remarks from a German point of view (*1994 American Journal of Comparative Law) 396
[22] 1993 (2) Sri. L. R. 135.

analogous to an action for a declaration, though it is clearly not a re-hearing. Are we concerned only with the decision-making process, or must we also look at the decision itself? Article 99 (13)(a) requires us to decide whether the expulsion was valid or invalid; some consideration of the merits is obviously required."[23] This was a sound judicial argument, and the same idea was considered by later courts. For an example in *Tilak Karunaratne v Mrs. Sirimavo Bandaranaike and others* the petitioner filed that petition in terms of Article 99 (13) (a) of the Constitution, challenging his expulsion from the party. In this case, the majority judgement has identified the jurisdiction of this Court must exercise under Article 99 (13)(a) of the Constitution by stating, "the nature of the jurisdiction conferred on the Supreme Court in terms of the proviso to Article 99 (13)(a) is indeed unique in character and holds the views expressed by Fernando J. in the minority judgement in *Gamini Dissanayake's* case with regard to the nature of jurisdiction of the Court under Article 99 (13)(a) of the Constitution. Accordingly, Dheeraratne J., expressing the majority view in *Tilak Karunaratne's* case, stated that "our jurisdiction appears to be wider; it is an original jurisdiction on which no limitations have been placed by Article 99 (13)(a). As stated by Fernando J. in *Dissanayake and others v. Kaleel and others*, our own jurisdiction under Article 99 (13)(a) is not a form of judicial review."[24] Again in *Sarath Amunugama and others vs. Karu Jayasuriya Chairman UNP and others*[25] the court had to deal with the issue regarding the nature of the jurisdiction of this Court under Article 99 (13)(a) of the Constitution, Amerasinghe J, in his judgement cited Fernando J's sentiments with regard to the said jurisdiction of this Court expressed in *Gamini Dissanayake's* case. Therefore, it is contended that these noteworthy minority views demonstrated the fact that they had paved the way for future legal development.

[23] ibid
[24] ibid
[25] 2000 (1) Sri. L. R, 172.

It is instructive to look at other jurisdictions where minority opinion has made a substantial contribution to the formation of law, in addition to the cases drawn from the Sri Lankan judiciary. Hence, this section will address some of the most significant minority rulings rendered by the courts in South Africa, India, the United States, and Canada. When one looks at the history of the Indian Supreme Court in the 1950s, one can see that it began as a technocratic court and over time gained more authority by interpreting the constitution. "The roots of judicial activism are to be seen in a court's early assertion regarding the nature of judicial review"[26].

The minority opinion expressed in *Gopalan v. State of Kerala*[27] is a classic example for that. In this case the Supreme Court interpreted the 'law' as state made law and rejected the argument that the term 'law 'in Article 21 includes the *jus natural* or the principles of natural justice. However, the dissenting judgement of Fazal Ali J. notified the value of the principle of natural justice, which would be applied by the judiciary to interpret the 'procedure established by law 'under Article 21 of the Indian Constitution. He gave a wide and comprehensive meaning to the word 'personal liberty' and stated that any law which deprives a person of his liberty must satisfy the requirements of Articles 19 and 21.

The majority in this case relied on the textualist or plain method of interpretation. They interpret the constitution in terms of what the law is and not in terms of what law ought to be. It reelects the Positivist approach of jurisprudence. However, the dissenting judgment of Fazl Ali J reflects the border constitutional interpretation and reflects the Natural law ideologies of jurisprudence. This minority view was upheld by the judiciary after twenty-eight years

[26] SP Sathe, *Judicial Activism in India, Transgressing Borders and Enforcing Limits* (2nd ed Oxford University Press 2002)4
[27] AIR 1950 SC 27

in *Maneka Gandhi v. Union of India*[28] by delivering a significant interpretation about Article 21 of the Indian Constitution. In this case, the Supreme Court held that Article 21 refers to "due process of law," which is supposed to have processes free from arbitrary and unreasonable decisions. Even in cases where legislation is silent on the matter, it cannot be declared unfair or unjust since there is an obvious violation of the natural justice principles, i.e*., audi alteram partem.* This was considered as the victory of Natural Law ideologies in the constitutional jurisprudence in India. The court lays down great importance to the procedural safeguard by establishing the fact that the procedure must satisfy the requirements of natural justice. As a result, minority opinion of Fazal Ali J. served as a basis for Indian judicial activism. Therefore, it is clear that the jurisprudential theories behind this minority opinion uphold important ideologies like natural law theories and contribute to the later legal evolution.

Again, in *ADM Jabalpur v. Shivkant Shukla*[29], the majority of the Supreme Court ruled that Article 21 of the Indian Constitution permits the suspension of an individual's right to life and personal liberty in times of emergency. The court ruled that the administration was granted broad authority under the Constitution in times of emergency and that the courts could not impede the executive branch from using this authority.

However, H.R. Khanna J. offered a dissenting opinion, contending that even in an emergency, a person's right to life and personal liberty could not be suspended. Justice Khanna ruled that the courts had an obligation to defend individuals' basic rights and that the Constitution was not suspended under a state of emergency. He pointed out that, "without such sanctity of life and liberty, the distinction between a lawless society and one governed by laws would cease to have any meaning."[30] This led

[28] AIR 1978 SC 597
[29] AIR 1976 SC 1207
[30] ibid

to the 44th constitutional amendment to the Indian Constitution, which empowers a citizen with the right to access a court during an emergency. In *K.S. Puttaswamy v. Union of India*[31] overruled the decision of *ADM Jabalpur,* reiterated Justice Khanna's position, and held that without the power of the law, no civilized state can consider an infringement upon human liberty and life. Neither life nor liberty are gifts from the state, nor are they established by the Constitution. The right to life predates the Constitution by a long shot. The Constitution does not become the exclusive source of rights when it is acknowledged.[32]

Apart from that it is worthwhile to analyze the minority judgments of Justice Kriegler in *President of the Republic of South Africa and Another v Hugo*[33]. A father with a son under 12 years, challenged constitutionality of the Presidential Act No 17. It provided that 'In terms of section 82 (1)(k) of the Constitution of the Republic of South Africa, for a special remission of sentences which was granted to certain categories of all prisoners who were mothers in prison on the 10th of May 1994, with minor children under the age of 12 years.' When interpreting the equality clause in the interim Constitution majority of the judges relied on the narrow and formal fashion of interpretation. Justice Kriegler in his dissenting opinion, emphasized the importance of a wide context in the interpretation of the relevant sections of the Act and contended that, it should be read both textually and contextually. Rather than adopting the limited perspective of the majority ruling, he considered social, economic, and historical aspects while coming to his decision. This demonstrates how the development of alternate approaches to constitutional interpretation may benefit from a minority ruling. Similarly in *Prince v President of the Law Society of the Cape of Good Hope and Others*[34] the appellant wishes to become a lawyer and he fulfilled all academic prerequisite for admission required by the Attorneys Act. The appellant disclosed that he had two prior convictions

[31] AIR 2017 SC 4161
[32] ibid
[33] (CCT11/96) [1997] ZACC 4; 1997 (6) BCLR 708; 1997 (4) SA 1 (18 April 1997)
[34] (CCT36/00) [2002] ZACC 1; 2002 (2) SA 794; 2002 (3) BCLR 231 (25 January 2002)

for possession of cannabis sativa in an application and expressed his intention to continue using cannabis. He claimed that his Rastafari faith served as inspiration for his cannabis use. When delivering the minority judgment of Justice Sachs, delivering a dissenting opinion, emphasized the importance of contextual, historical, and social interpretations that consider the realities that people live with.

Justice John Marshall Harlan in USA played remarkable role when delivering the dissenting opinion in 1896 in the case of *Plessy v. Ferguson*.[35] In this case Plessy was arrested for sitting in an all-white railcar in Louisiana. He argued that his rights had been violated under the Fourth, 13th, and 14th amendments, providing him with equal treatment as a citizen. However, the majority of the Court, stating that separate but equal facilities did not violate Plessy's rights to equal treatment. However, his famous dissenting Justice John Marshall Harlan stated that "*Our Constitution is color-blind and neither knows nor tolerates classes among citizens. In respect of civil rights, all citizens are equal before the law. The humblest is the peer of the most powerful. The law regards man as man and takes no account of his surroundings or of his color when his civil rights as guaranteed by the supreme law of the land are involved... If evils will result from the commingling of the two races upon public highways established for the benefit of all, they will be infinitely less than those that will surely come from state legislation regulating the enjoyment of civil rights upon the basis of race.*"[36] His broad views on civil rights confirmed in the case of Brown *v. Board of Education*[37]. Antonin Gregory Scalia was an American jurist who relied on the importance of the text and historical tradition of interpretation of the Constitution. His famous dissenting opinions have significantly contributed to the future legal development in the USA. Justice Scalia's dissenting opinion *in Lawrence v Texas*[38] was,

[35] 163 U.S. 537 (1896
[36] ibid
[37] 347 U.S. 483 (1954).
[38] 539 U.S. 558 (2003)

greatly convincing to the decision of *Obergefell v. Hodges*[39] which legalized gay marriage nationally. Further *in Boumediene v Bush*[40] justice Scalia delivered a dissenting opinion and for the first time the Supreme Court was conferring constitutional rights to non-Americans. It was evident that the dissenting opinion of Justice Scalia have led to strengthen the majority opinion of the Supreme Court. *United States v. Virginia*[41] is a classic example for that. In this case the court had to seek the constitutionality of the sex-based admission policy adopted by the Verginia Military Institute. Ruth Bader Ginsburg delivering the majority opinion of the court holding that a state university's exclusion of women violated the Constitution's guarantee of equal protection. Clause of the fourteenth Amendment. However, Justice Scalia dissenting and argued about the applicable standard of review for sex-based classifications. Later, Justice Ginsburg admitted that his dissent has greatly influence strengthen the majority view of the court.[42]

When considering the role of dissenting opinions in Canadian judiciary it also evident that dissents contribute to the development of the law through their great innovative ideas. Chief Justice Laskin, one of Canadian jurists, delivering his dissenting opinion in *Murdoch v. Murdoch*[43], took an effort to modify an ancient concept of English property law, the "constructive trust," to affect a more just result in family law. His opinion was that the constructive trust recognized a spouse's claim to a portion of the family's assets following a divorce if they had contributed to it through unpaid labour. Later it became the plurality opinion in *Rathwell v. Rathwell*.[44] It was then adopted by the majority in *Pettkus v. Becker*[45]. It becomes evident that Laskin C.J.'s dissenting judgement in Murdoch appealed to a new and emerging

[39] 576 U.S 644 (2015
[40] 553 U.S. 723 (2008)
[41] 518 U.S. 515 (1996)
[42] Carmon, Irin (February 13, 2016). "What made the friendship between Scalia and Ginsburg work". *The Washington Post*.
[43] (1973) [1975] 1 S.C.R. 423.
[44] [1978] 2 S.C.R. 436
[45] [1980] 2 S.C.R. 834.

social and political consciousness of the need to recognize women's rights to equality.

When considering the dissenting opinions delivered by judges in various jurisdictions it shows that a minority opinion proved to be of value in developing our jurisprudence of constitutional interpretation. "Unanimity is not essential for judicial legitimacy or legal stability. In fact, the presence of judicious dissents can portray the true complexity of legal reasoning more accurately, while offering new possibilities for the law's evolution to judges, lawyers, and the public."[46]

Conclusion

The above discussion reveals that although these views expressed as minority opinions, the core idea opened a path to rethink about the constitutional obligation of the state organs under the constitutional values which upheld the fundamental ideals of the rule of law. The study of cases demonstrates how the minority often offers critiques of the majority decision, identifies gaps and limitations to the ruling, and suggests or encourages future legal development. Further, the research reveals that the incentive result came from influential dissenting opinions, which greatly influenced the law and became important for the consideration of future law reforms. Hence, minority opinion served as the basis for a future legal argument and significantly contributed to the subsequent legal development.

[46] P.W Hogg and R Amarnath, *why judges should dissent* (2017) University of Toronto Law Journal), 67(2), pp.126-141.