



I AGREE TO DISAGREE: A CASE OF PROLIFIC DISSENTER

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Abstract- *This paper endeavours to bring out an empirical study on the dissenting opinions of Justice K. Subba Rao. The paper, however, is confined to the Constitution Bench of Supreme Court of India. The paper tries to find quantitative data of his minority opinions in the nature of concurring dissent and solo dissents; dissents in benches of different compositions; and the dissenting ratio in the presence and absence of the Chief Justice of India in the bench among others. The present paper therefore attempts to emphasise on quantitative rather than qualitative aspects so as to locate Justice Rao's dissents. The research finds twenty-three solo dissenting opinions of Justice Rao; nineteen of his dissents are in the bench headed by Chief Justice BP Sinha; and fourteen dissents in the absence of Chief Justice. The paper finds that Justice Rao has profoundly contributed to Constitutional discourse through his dissents.*

Keywords: Constitution Bench; Dissenting Opinion; Subba Rao; Chief Justice; Precedent

The Pathfinder

Chief Justice of India (Retd.) K. Subba Rao stands as a tall figure in the Constitutional landscape of India. He started off as a member of the subordinate judiciary in 1933 by joining as a Munsif, but later resigned to go back to the Madras bar. In 1948, he got back to the Bench when he was appointed as a judge of the High Court of Madras, and then as a judge of the Supreme Court in the year 1958, wherein he remained for a period of ten years, until his voluntary retirement in the year 1967. In 1966, he helmed the office as the Ninth Chief Justice of India but resigned shortly thereafter, in the year 1967, to contest for the Presidential election against Dr. Zakir Hussain, which he eventually lost.

Justice Rao is one of the greatest dissenters that the Indian judiciary has produced. He has authored around fifty-three dissenting opinions across the bench in the Supreme Court. Of those fifty-three dissenting opinions, forty-two are solo dissenting opinions in the Supreme Court.¹ Eminent jurist Fali S. Nariman therefore, rightly calls him *the pathfinder*.² However, once he became the Chief Justice, he has not authored any dissenting opinions. This factor, Gadbois the Jr., attributes, in his speaking footnote, to the power of the Chief Justice to constitute the Bench.³

1. The Preliminary

The present study endeavours to look into one of the most prolific dissenters of the Indian Constitutional landscape. Despite him having authored many dissenting opinions as a Puisne judge of the Supreme Court, not much empirical study has been undertaken thereof. The present research work attempts to address this tiny gap.

¹ George H. Gadbois, *Judges of Supreme Court of India: 1950-1989*, 10th edn (Oxford India Paperbacks: New Delhi, 2021) 78.

² Fali S. Nariman, A star in judicial firmament: Fali Nariman on Justice Subba Rao, *SUPREME COURT OBSERVER* (Apr. 15, 2024, 10. 30 Am), <https://www.scobserver.in/journal/a-star-in-the-judicial-firmament-fali-nariman-on-justice-subba-rao/>.

³ *Supra* Note 1.



The study will help to ascertain the contribution of Justice Rao to the dissenting opinions in the Supreme Court. It will also help to shed light on how his dissenting opinions have helped to shift the Constitutional paradigm to one that is more proactive and protective of individual liberty. The need for the individual assessment of the justices in order to assess their integrity and independence is the need of the time. The present research paper is an endeavour towards that attempt. It will help to shape the future research to take account of the present study and to improvise thereupon in assessing the judges.

Manupatra has been largely relied upon to gather the judgments and to form the analysis thereof. The judgments of the Constitution Bench, therefore, form the bedrock of the present study as a primary source. The researchers also have relied upon other invaluable secondary sources. Mr. Justice (Retd.) Rohinton Fali Nariman's lecture on dissent forms one of the motivating inspirations for the present study.⁴

The present research, however, limits itself to the Constitution Bench opinions only. This has been occasioned due to the huge number of cases that Justice Rao has been a part of in the Supreme Court. Therefore, the present study of the Constitution Bench will enable the present research to throw light on perspectives from the lens of Justice Rao, who was an ardent supporter of the Fundamental Rights. Nonetheless, the scope of the present endeavour has been further limited to unearthing the quantitative aspects, and therefore, it does not provide for the large qualitative prospect that the study provides for.

The research seeks to address the following questions: firstly, as to quantitative data on the dissenting opinions in the Constitution Bench in solo or as a concurring dissent. Secondly, on the dissent incidence in Benches of different composition. And lastly, the dissent during the times of Chief Justiceship of Justice Rao.

2. Dissenting norms

Dissenting is an agreement to disagree. It throws light upon the possibility of alternative perspectives. It plays a predominant role in the process of establishing the rules of law. The laws in existence may be established norms today, but the posterity may differ. It is this difference of opinion which is fructified by the help of dissenting opinions. Thus, the dissenting opinions are the foresight that acts as prophecy for the future.

While the certainty and unanimity of the laws are the foundation of a set system, yet in the absence of dissent, the existence of humanity would have been periled. Particularly so because the set system would have been subservient to established norms, and without the scope of change, to the needs of the changing times.

The mandate of agreeing to disagree is the first rule of any democracy. Only then can the flaws of one's reasoning be found. This opportunity of the dissenting ought not to be lost in the search for certainty and unanimity. For, in the absence of agreeing to disagree, we may lose sight of the search for correct norms. No man has a monopoly over the truth, wisdom, or virtue; the ideas advanced today ought not to bind the posterity.

It is with this understanding of accommodation of differences of opinion that the Indian Constitution permits the judges to freely reason out his dissent if he does not agree with the interpretation of law as laid down by the majority.⁵ Not every nation follows the norm of having

⁴ 'Justice Nariman's address on dissenting judgments in 50's and 60's', BOMBAY BAR ASSOCIATION (Apr. 1, 2025, 8.30 PM), <https://youtu.be/V2BEgpDCxKA?si=AsLjo1Igfhp74gI>.

⁵ India Const. art. 145(5).



dissent. Few countries did not accommodate the dissenting opinions and thus the dissent was not allowed to be published. Such was the case of Germany in the initial years.⁶

The other related matter in observance of dissent is the rule of precedent. One needs to know how the dissent works vis-à-vis the precedent. For, the possibility of dissent is largely watered down in the courts due to the presence of the precedent rule. There is a hierarchy of courts in every set system. In India, the Supreme Court being the court of record, the subordinate judiciary is bound by the precedents as set by it. Any opinion delivered by any of the subordinate courts must align with the precedent set by the Supreme Court.

The rule of precedent applies to the Supreme Court also. However, the Supreme Court is not bound by its own precedents to an extent; if the later bench, constituted to hear a related matter, is bigger than the predecessor bench, the later bench then is not bound by precedent. But if the later bench is constituted of smaller or of a coordinate bench, then the precedent is effective and ought to be adhered to. Supposing the majority in such a coordinate or smaller bench wants to differ from the precedent, then they should refer the matter to the Chief Justice for reference to a bench larger than the one that has established the precedent.

However, while the smaller or coordinate bench is not allowed to overrule the decisions of a larger bench, the dissent is permitted. Thus, while the majority of a smaller or coordinate bench has to agree with the precedent established by the larger or coordinate bench, the minority may dissent even against the established precedent. The cue to such interpretation has also been taken from the dissent given by Justice Bhagwati in the Bachan Singh case, wherein he opined that “*adherence to precedent is not a rigid and inflexible rule of law but it is a rule of practice adopted by the courts for the purpose of ensuring uniformity and stability in the law.*”⁷ And thus he subscribed to the statement given by Cardozo, that the precedent ought not to become a self-engulfing apparatus.

3. The Distinction

Ordinarily, it is quite difficult to establish prima facie dissenting opinions by just a cursory look or even after having gone through a number of pages. This is occasioned due to no declaration to that effect having been provided by the author Justices. Many a time, precedent after precedent, full quotes after quotes are amassed in a single judgment. Therefore, the judgments that were to settle the question of laws become perplexingly confusing, sometimes difficult to cull out the ratio. Further, many of the judges do not mention having read the opinions of the other Justices. Such cursory observations could have eased the task of the reader as the reader can make an informed opinion as to where the justices diverge into two different roads.

However, Justice Rao provides a distinction. In almost every case that he dissents, he declares almost instantly, either in the very first line or in the first paragraph, that he is unable to agree with the majority. Very often his dissent starts with his acknowledgment of having perused the opinion of the Brother Judge/s. Thereafter, if dissenting, he declares- ‘*I regret my inability to agree*’. This remark makes judgments so easier to distinguish the divide between the majority and minority. For instance, for the clear distinction of cases relating to instant disclaimer of him dissenting, one may refer to *Khajoor Singh*⁸, *M.S.M. Sharma*⁹, *T. Devadasan*¹⁰, *Fedco Pvt. Ltd*¹¹, *Lachhman Das*¹² and *Shubnath Deogram*¹³ amongst others.

⁶ Katalin Kelmen, ‘Dissenting Opinions in Constitutional Courts’ (2013) Vol. 14, No. 08, GERMAN LAW REVIEW, 1347.

⁷ MANU/SC/0055/1982, at 59.

⁸ MANU/SC/0039/1960, at para 19.

⁹ MANU/SC/0021/1958, at 23.

¹⁰ MANU/SC/0270/1963, at 11.

¹¹ MANU/SC/0014/1959, at 7.

¹² MANU/SC/0032/1962, at 16.

¹³ MANU/SC/0108/1959, at 6.

4. The solo gavel

To give a dissenting opinion is a hard task. Firstly, because the dissenter has to apply his mental capacity, and secondly, the dissenting opinion is seen as one that affects the collegiality of the bench. And therefore, normally the dissent is dissuaded. Where the Chief Justice being the master of roster constitutes the benches, it is also imputed with malice. This imputation gains further traction as the bench with the Chief Justice often lacks dissenting opinions. Further, the sharing of draft opinion is another cause for non-publication of dissenting opinion, as the majority opinion is circulated close to the due date of publication of the judgment. Thus, there is no time for a dissenting write-up. A case for circumspection in that light is found in the opinions delivered in *Kesavananda Bharati*¹⁴ by Justice Chandrachud and by Justice Bhagwati in *Minerva Mills*.¹⁵ However, against all such tide, Justice Rao shines out. He is a leading dissenter in the Supreme Court of India. While many shy away from delivering a dissenting opinion, Justice Rao is often found dissenting, and in many cases, alone.

Justice Rao marks an epitome of a lone pathfinder. He so often delivers a dissenting opinion and is often the only one dissenting. Most of his judgments relate to taxation, criminal, and constitutional law. The researchers find that Justice Rao has given solo dissenting opinions twenty-eight times while sitting in the Constitution Bench. It is a prominent show of judicial integrity and freedom. The cases wherein he has delivered dissenting opinions are provided herein under Figures I to III. The three figures attempt to show his solo dissents in a bench of different compositions of seven, six, and five judges' benches.

Figure I finds the dissenting opinion in the Constitution Bench constituted of seven judges. Herein, the researchers find three dissenting opinions of Justice Rao. In *Khajoor Singh*, Justice Rao dissented from the majority opinion that the High Court of Jammu and Kashmir lacked jurisdiction to pass a writ against the Union. While in *Makhan Singh*, the majority ruled that the right to move the Supreme Court for the enforcement of the Fundamental Rights was barred during the emergency. The majority opinion in *Makhan Singh*, therefore, was similarly positioned to the infamous case of *ADM Jabalpur* passed in later years.

Fig. I Justice Rao Solo Dissenting in 7 Judges Constitution Bench

Name	Citation
Khajoor Singh v. UOI	MANU/SC/0039/1960
Chhotabhai Jethabhai Patel v. UP	MANU/SC/0342/1962
Makhan Singh v. State of Punjab	MANU/SC/0039/1963

Figure II finds the dissenting opinions in the six judges bench. Herein, one comes across only two solo dissenting opinions of Justice Rao while sitting in a six-judges Constitution Bench. In the case of *State of West Bengal*, the court was of the opinion that the centre had the legislative competence to pass Coal Bearing Areas (Acquisition and Development) Act, 1957 and thus thereby acquiring the land rights vested over the State. While in *Gujarat University, Ahmadabad*, the Supreme Court upheld the observation of the High Court that the university did not have the power to impose Gujarati or Hindi as an exclusive medium of instruction and examination.

¹⁴ MANU/SC/0445/1973, at para 2009.

¹⁵ MANU/SC/0075/1980

Fig. II Justice Rao Solo Dissenting in 6 Judges Constitution Bench

Name	Citation
Gujarat University Ahmadabad v. KR Mudholkar	MANU/SC/0078/1962
State of West Bengal v. UOI	MANU/SC/0086/1962

Meanwhile, in Figure III, the researchers come across twenty-three solo dissenting opinions of Justice Rao in the five-judge Constitution Bench. In *Radheshyam Khare*, he dissented from the majority holding that the duty to act judicially may not be expressly provided, yet it could be inferred from the provisions of the statute, particularly looking at the objective and the nature of the duty imposed upon the authority. In *Vasantlal Maganbhai Sanjawala*¹⁶, he has delivered a solo opinion and ruled that the Bombay Tenancy and Agricultural Lands Act, 1948, which permitted the government to fix lower rates for tenants, was arbitrary and conferred no guidance for the exercise of such power. The majority opinion of the court was later overruled by *Pragg Ice and Oil Mills v. UOI*¹⁷ and thus Justice Rao's dissent saw the light of day.

Similarly, in *Indra Sawhney v. UOI*¹⁸ the court overruled the majority opinion of *T. Devadasan* and thus the solo dissent of Justice Rao saw the light of day. Therein, Justice Rao had been of the opinion that the *carry-forward rule* was not in violation of the principles enshrined in Articles 14, 15, and 16 of the Indian Constitution. He opined that in *MR Balaji v. State of Mysore*¹⁹ the court had not ruled that in every given case reservations cannot exceed fifty percent of the total seats, but had merely held the observation that there had been fraud played upon the Constitution by the State and that the wrong criteria was adopted for ascertaining the backward class.

In *MSM Sharma*, he while dissenting, opined that the privilege of the legislature did not prohibit the publication of the true report of the speeches made in the legislative house, and that such privilege was subject to the Fundamental Right. His dissent saw partial upholding in the future case of *In Re Article 143 of the Constitution of India*,²⁰ wherein the court declared that it could not be construed that the legislative privilege could be upheld when it was against the right provided by Article 21 of the Indian Constitution.

Fig. III

Justice Rao Solo Dissenting in 5 Judges Constitution Bench

Name	Citation
Radheshyam Khare v. State of MP	MANU/SC/0005/1958
Thomas Dana v. State of Punjab	MANU/SC/0140/1958
MSM Sharma v. Krishna Sinha	MANU/SC/0021/1958
Shubnath Deogram v. Ram Narain Prasad	MANU/SC/0108/1959

¹⁶ MANU/SC/0288/1960¹⁷ MANU/SC/0493/1978¹⁸ MANU/SC/0104/1993¹⁹ MANU/SC/0080/1962²⁰ AIR 1959 SC 395



Name	Citation
Messrs. Fedco P Ltd. V. SN Bilgrami	MANU/SC/0014/1959
AST Arunachalam Pillai v. M/S Southern Roadways P Ltd	MANU/SC/0249/1960
State of UP v. Deoman Upadhyaya	MANU/SC/0060/1960
Vasantlal Maganbhai Sanjawala v. State of Bombay	MANU/SC/0288/1960
The New Maneck Chowk Spinning Co. Ltd. V. The Textile Labour Association Ahmedabad	MANU/SC/0212/1960
Chandrakant Krishnarao Pradhan v. Collector of Customs	MANU/SC/0161/1961
State of UP v. Abdul Samad	MANU/SC/0102/1962
Indramani Pyarelal Gupta v. WR Nathu	MANU/SC/0066/1962
Lachhman Das v. State of Punjab	MANU/SC/0032/1962
Dava v. Joint Chief Controller of Imports and exports	MANU/SC/0067/1962
Laxman Balwant Bhopatkar v. The Charity Commissioner	MANU/SC/0384/1962
Somvanti v. State of Punjab	MANU/SC/0034/1962
Kalipada Chowdhury v. UOI	MANU/SC/0263/1962
Lachman Uttamchand Kirpalani v. Meena	MANU/SC/0128/1963
T. Devadasan v. UOI	MANU/SC/0270/1963
State of Punjab v. Jagdeep Singh	MANU/SC/0273/1963
Syed Yakoob v. KS Radhakrishnan	MANU/SC/0184/1963
Gulabchand Chotalal Parikh v. State of Bombay	MANU/SC/0300/1964
Sachidananda Benerji v. Sitaram Agarwala	MANU/SC/0354/1965

5. Dissenting in Chief Justices led Bench

This section tries to analyse the dissent of Justice Rao in the presence of different Chief Justices. It is found that the Chief Justice BP Sinha court has seen the maximum number of dissents being made by Justice Rao. The study finds that Justice Rao has delivered nineteen dissenting opinions in the Constitution Benches he has been part of while Chief Justice BP Sinha was in the Bench. Meanwhile, he has only four dissents from the rest of the Chief Justices combined. Figure IV represents the dissents that have been made in the court of the other Chief Justices, while they were also in the Bench. Every case given in Figure IV features a solo dissent of Justice Rao. Furthermore, all of those cases were from a five-judges Constitution Bench.

Chief Justice BP Sinha led the court for a period of four years and one hundred and twenty-two days. And this period saw many dissents from Justice Rao. But the next three years saw no dissents from Justice Rao in the Constitution Bench matters. During these three years, the office of Chief Justice was helmed by Justice PB Gajendragadkar, AK Sarkar, and by Justice Rao himself. Justice Gajendragadkar, the seventh Chief Justice, remained in the office for a period of around two years. Whereas, Justice Sarkar, the eighth Chief Justice, remained as a Chief for a short period of around three months. Justice Sarkar himself also was one of the leading dissenters of the Supreme Court. He has authored around two hundred and twenty judgments while sitting in six hundred and fifty-three benches.²¹

As far as it relates to dissenting opinions of Justice Rao in the bench headed by Chief Justices other than Justice Sinha, the short abstracts of the cases are as follows: In *Thomas Dana*, the question revolved around whether prosecution under the Sea Customs Act and the Foreign Exchange Regulation Act has occasioned the violation of the rule of double jeopardy? The majority observed that the prosecution before the customs authority was not of judicial character but of administrative nature, and therefore the protection against double jeopardy did not arise in the present case.

Meanwhile, in *MSM Sharma*, the majority opined that the privileges of the members of the State Legislative Assembly were not subject to the freedom granted under Article 19 of the Indian Constitution. And therefore, the majority declared that the Legislative Assembly could rightly prohibit the editor of the Searchlight newspaper from the publication of the expunged portions of speech made in the Assembly.

Fig. IV Justice Rao Dissenting in Non-BP Sinha led CJI Court

Name	Citation	Chief Justice of India in the Bench
Radheshyam Khare v. State of MP	MANU/SC/0005/1958	SR Das
Thomas Dana v. State of Punjab	MANU/SC/0140/1958	SR Das
MSM Sharma v. Krishna Sinha	MANU/SC/0021/1958	SR Das
T. Devadasan v. UOI	MANU/SC/0270/1963	SK Das Acting CJI

6. Dissenting alongside the Chief Justice

The research finds only one case in which Justice Subba Rao dissented, accompanied by the Chief Justice. This was in the case of *Kishan Chand Arora v. Comm. Of Police*²². Therein, the dissenting opinion for the Chief Justice, BP Sinha, was written by Justice Rao. The majority in this case ruled that the Calcutta Police Act, 1866, gives sufficient guidance to the commissioner to issue a licence for the eating houses, and therefore it was a reasonable restriction upon the petitioners' right to do business.

7. Concurring Dissent in Chief Justice-led Bench

²¹ 'AK Sarkar', SUPREME COURT OBSERVER (Apr. 11, 2025) <https://www.scobserver.in/judges/justice-amal-kumar-sarkar/>.

²² MANU/SC/0043/1960



Justice Rao has not given too many concurring dissenting opinions in the Chief Justice-led Constitution Bench. This is visibly clear from the only four cases the researchers came across, apart from *Kishan Chand Arora*. The names of the four cases are provided herein-under as Figure No. V. Of the four cases, three were in a composition of 5-judge Constitution Bench, while one of them, viz., *Kharak Singh*, was from a 6-judge Constitution Bench. All the dissents in all five cases, including *Kishan Chand Arora*, have been made in the Chief Justice BP Sinha-led Constitution Bench.

Unlike the other dissenters who write a long essay, even if they agree with the companion dissenter, Justice Rao presents a different picture. He doesn't write long judgments if he finds himself agreeing with the other dissenting author. For instance, in *Kangsari Halder*, he just wrote '*I agree with Sarkar J.*'²³ The case therein related to the Constitution of West Bengal Tribunals of Criminal Jurisdiction Act of 1952. The majority upheld the constitutionality of the retrospective effect given to special trial procedure, while the minority dissented from it. In *Vidyacharan Shukla*, he agreed with the majority partly. Justice Raghuvir Dayal also partly dissented.

While in *Kharak Singh*, the court dealt with surveillance measures under UP Police Regulations. The majority declared domiciliary visits to be void, but upheld the rest of the measures, but the minority declared the whole Act to be invalid. Justice Rao, through his brilliant analytical prowess, held that if a person's Fundamental Right under Article 21 is being violated, the State could rely upon the law to sustain the action taken therewith, but apart from that, the State will also have to satisfy the test laid down in Article 19(2) of the Indian Constitution. The majority opinion was overruled recently in a nine-judge bench of *Justice K.S. Puttaswamy v. UOI*²⁴ decided in the year 2017, and thus held that the right to privacy is constitutionally protected under Article 19 and 21.

Fig. V Justice Rao with Concurring Dissenting Opinion in Chief Justice-led Constitution Bench

Name	Citation	Dissenting with
Kangsari Halder v. State of West Bengal	MANU/SC/0047/1959	AK Sarkar
State of Punjab v. Sodhi Sukhdev	MANU/SC/0006/1960	JL Kapur
Kharak Singh v. State of Punjab	MANU/SC/0085/1962	JC Shah
Vidyacharan Shukla v. Khubchand Baghel	MANU/SC/0120/1963	Raghubir Dayal, JR Mudholkar

8. Dissenting in Absence of the Chief Justice

Meanwhile, Justice Rao has delivered fourteen dissenting opinions while the Chief Justice was not on the bench. Figure VI presents dissents on the bench in the absence of the Chief Justice of India. In the majority of such cases, Justice Rao has written for himself. There are only a few cases wherein either the dissenting opinions have been written by a brother judge or he has given a concurring dissenting opinion.

In *Lord Krishna Sugar Mills*²⁵ he has partly dissented alongside Justice AK Sarkar. In *Ujjam Bai*²⁶ while sitting on an eight-judges bench, Justice Rao wrote his own separate dissenting opinion with R. Ayyangar writing for himself. In *Jayantilal Amritlal Shodhan*²⁷ Justice Wanchoo wrote the

²³ MANU/SC/0047/1959, at para 42.

²⁴ MANU/SC/1044/2017

²⁵ MANU/SC/0022/1959

²⁶ MANU/SC/0101/1961

²⁷ MANU/SC/0046/1963

dissenting opinion for himself and for Justice Rao. Similarly, in *Corporation of Calcutta*²⁸ Justice R. Ayyangar wrote the dissenting opinion for both of them. In the rest of the cases enlisted herein-under Figure VI, he has delivered a solo dissent. Apart from *Ujjam Bai*, *Chhotabhai*²⁹ and *Makhan Singh*³⁰, wherein the former was an eight-judges bench and later two were a seven-judges bench, the rest of the cases shown were of a five-judges Constitution Bench.

Fig. VI Justice Rao dissenting in Constitution Bench in the absence of CJI

Name	Citation
Lord Krishna Sugar Mills v. UOI	MANU/SC/0022/1959
Shubnath Deogram v. Ram Narain Prasad	MANU/SC/0108/1959
State of UP v. Deoman Upadhyaya	MANU/SC/0060/1960
The New Maneck Chowk Spinning Co. Ltd. v. The Textile Labour Association Ahmedabad	MANU/SC/0212/1960
Chandrakant Krishnarao Pradhan v. Collector of Customs	MANU/SC/0161/1961
Chhotabhai Jethabhai Patel v. UP	MANU/SC/0342/1962
Makhan Singh v. State of Punjab	MANU/SC/0039/1963
State of Punjab v. Jagdeep Singh	MANU/SC/0273/1963
Syed Yakoob v. KS Radhakrishnan	MANU/SC/0184/1963
Jayantilal Amritlal Shodhan v. FN Rana	MANU/SC/0046/1963
Corporation of Calcutta v. Liberty Cinema	MANU/SC/0026/1964
Gulabchand Chotalal Parikh v. State of Bombay	MANU/SC/0300/1964
Sachidananda Benerji v. Sitaram Agarwala	MANU/SC/0354/1965
Ujjam Bai v. State of Uttar Pradesh	MANU/SC/0101/1961

9. The Statistics

The study finds that Justice Rao, during his tenure of nine years as a judge of the Supreme Court, has been a party to three hundred and thirty-five Constitution Bench decisions in the Supreme Court. The breakdown of all his judgments across the bench, i.e., both Constitution Bench and non-Constitution Bench decisions, has been provided as Figure VII herein-under. The same has been retrieved from Manupatra Analytics.

²⁸ MANU/SC/0026/1964

²⁹ MANU/SC/0342/1962

³⁰ MANU/SC/0039/1963



Apart from the number of benches he has been a part of, interestingly, he has cited Chief Justice BP Sinha, the highest number, sixty times. This is followed by citing himself on fifty-four occasions, and then Justice MC Mahajan is placed third with forty-seven times. Whereas, on the other hand, he has been cited by Justice SB Sinha in one hundred twenty-four occasions, by BS Chauhan one hundred and fourteen times, and by Justice R Ranganathan one hundred and seven times.³¹ One often finds that the citations of the former or the presiding Chief Justice are made often.

Fig. VII Justice Rao in Constitution Bench and Non-Constitution Bench³²

Year	Part of bench	Judgment authored
1958	44	2
1959	70	6
1960	90	7
1961	98	35
1962	108	11
1963	93	5
1964	125	24
1965	165	35
1966	94	82
1967	36	34

CONCLUSION

The research finds that Justice Rao has greatly contributed to the early phase of constitutional interpretation. Many of the majority judgments have been authored by Justice Rao for the Supreme Court. And when he is not writing a majority opinion, one can find him often with the dissenting opinion. Further, Justice Rao has not shied away from announcing to the readers that he is delivering a dissenting opinion. Thus, the judge has built a towering character of subjecting himself to criticism or being singled out. Either way, he has played a pivotal role in the way the constitutional norms have to be established. He has been proactive in the later years, delivering judgments in most of the benches he was part of.

One finds that twenty-eight numbers of solo dissents have been given by Justice Rao in the Constitution Bench. Overall, his solo dissenting across the benches was forty-four. Then again, much of his judgments came from the Constitution Bench headed by Chief Justice BP Sinha, and only a few numbers from benches headed by other Chief Justices. However, one also would have to acknowledge the time span of more than four years with Justice Sinha as the Chief Justice. Further, most of the Chief Justices tend not to dissent during Chief Justiceship, but Justice BP Sinha joined the dissenting

³¹ Analytics, MANUPATRA (Apr. 08, 2025) <https://www.manupatrafast.com/Analytics/JudgeAdvanceChart.aspx?name=K. Subba Rao>.

³² Ibid.



opinion of Justice Rao. This shows that Justice BP Sinha was also accommodative of dissenting opinions in his Bench.

During his time as the Chief Justice for a period of roughly ten months, the Supreme Court delivered around sixty-two Constitution Bench decisions, of which almost all decisions were unanimous; a further insignia of the power of roster control by the Chief Justice. This establishes that he was a great dissenter as a puisne judge, and a great persuader as a Chief Justice.

Many of the dissenting opinions of Justice Rao show his concern for the denudation of the liberties granted by the Constitution. The present study has mostly been in nature of empirical nature, and therefore, the future studies may be made of a qualitative nature to show how the judgments of Justice Rao have contributed to the growth of the law.

The language that Justice Rao adopted was a simple one with an analytical eye towards the question of law rather than being an emotive one. Further, the approach adopted by Justice Rao simplifies the search for the ratio of the decision. It is simple yet effective. The judgments are for the present and the posterity, and its essence lies in its simplicity. To what a judge agrees and disagrees is not to be hidden in the cloud of judgment opined. One believes that the other justices would also follow the steps of Justice Rao and make it easier for the readers to cull out the ratio of the case without having to search for the needle in the haystack.

Having come to the Supreme Court at the early phase of Indian independence, he stood bold and courageous, upholding the oath of being an independent and impartial justice. His judgments showed the acumen and masterly analysis of the arguments that were placed in the court. His vision, clarity, and steadfast commitment to the principles of the Constitution are remarkably strong. Justice Rao represents the shining star in the field of Indian Constitutional law.

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