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RELEVANCY OF JUDGE-MADE LAWS IN LEGAL RESEARCH

By: **Miss. Gopa Chandra Mandal**

1. Introduction

"We reach the land of mystery when constitution and statute are silent, and the judge must look to the common law for the rule that fits the case. He is the 'living oracle of the law' in Blackstone's vivid phrase."

– Benjamin N. Cardozo[1]

On any busy day there comes a case before the Judge for his decision, a case always unique in some degree, greater or less. How shall a Judge decide the case, between litigants ardently competing for a favourable decision? Does he have a choice? It is not foreordained, determined for him with precision by "the law"? First, he consults the "rules and principles", so far as he knows them or can be advised. He must make a choice of rules within which to fit his unique case. Rules and principles are composed of "words", and words are as slippery as a banana peel. As Holmes has told, a word is not a "crystal", holding its form and its substance through the ages; it is "the skin of a living thought." It is merely a skin read to be filled with the thought of its user, to be blown across space until it can spill its contents into the mind of a receiver.[2]

The need of Interpretation of Statute arises because English language (in fact any language) is not precise; each word and sentence has different shades of meaning. It is, therefore, necessary to interpret the Statute to find out true meaning of the Statute so that it can be properly implemented. So, the object of interpretation is to find out the intention of the legislature. Thus,

[1] Benjamin N. Cardozo, *The Nature of the Judicial Process* 19 (Yale University, 1961).
[2] Benjamin N. Cardozo, *The Growth of the Law* xii - xiv (Yale University Press, New Heaven and London, 1924).

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difficulties of interpretation arise –

(i) when the legislature has had no meaning at all;

(ii) when the question which is raised on the Statute never occurred to it;

(iii) when what the Judges have to do is, not to determine what the legislature did mean on a point which was present to its mind, but to guess what it would have intended on a point not present to its mind, if the point had been present.[3]

Therefore, the Judge must not only make a choice of rules; he must also make a choice of meanings; and in the process he must fit the rule to apply to the unique case before him. A rule is never the same after a new application to a new case. A "rule" is merely a generalization from a number of instances, no two of which were incidental; and the content of a rule is no more or less than the sum total of its applications.[4]

1.1. Significance of the Study

In society there were problems, there are problems and there will be problems. Every aspect of human behaviour has problem. Therefore, we need to find out answer to those problems. Hence, it is the requirement of the society to conduct research work. The present Socio-legal research paper is conducted both on doctrinal and non-doctrinal research by analysing the existing statutory provisions and cases by applying the reasoning power as well as by method like case study. **Statute is the 'will of the legislature'.** The traditional judicial function is to "interpret the Statute" with a view to carry out the intention of the legislature that made the Statute. As per the basic structure of the Constitution of India, Parliament enacts the laws, Courts interpret the law and Government implements the law. Once an Act is passed by the Parliament, it has to be interpreted by the Courts so that the law can be properly implemented.

1.2. Methods or Techniques of Data Collection

The **primary sources** of this study are all the major substantive Laws, viz., Constitution of India; The Special Marriage Act, 1954[5]; the Indian Penal Code, 1860; the Constitution of India; and many Government Reports. As regards the Procedural Laws in India, our primary source is Code

[3] Cf. Pound, *"Courts and Legislation"* 226, 9 Modern Legal Philosophy Series.
[4] *Ibid.*
[5] *Act 43 of 1954.*

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of Criminal Procedure, 1973[6] as amended up to date.

Secondary sources of data have been taken from books, journals, articles of various authors; encyclopaedias, dictionaries; and from Internet. The secondary sources of law are those publications which refer and relate to the law while not being themselves primary sources.

1.3. Review of Literature

For the preparation of the present research paper, text books and articles played a pivotal role. Judicial pronouncements also help to give shape this paper.

Benjamin N. Cardozo in his book **The Growth of the Law (New Heaven and London Yale University Press, 1924)** elucidates the need of a philosophy of law as an aid to growth, the problems of legal philosophy and the meaning and genesis of law. In this book the author authoritatively discussed the growth of law and the methods of judging and the functions of law.

Benjamin N. Cardozo in his locus classicus **The Nature of Judicial Process (Yale University Press, U.K. 1961)** vividly discussed the subconscious elements of judicial process, method of philosophy and how Judges play a crucial role as a Legislator and the importance of Precedent.

H. R. Khanna, a well-known Jurist in the Book **Judiciary in India and Judicial Process (University of Calcutta, 1985, Ajay Law House S. C. Sarkar & Sons Private Ltd., 1985)** which contains Tagore Law Lectures delivered in March 1984 by him is of great importance in the field of judicial process. A galaxy of distinguished jurists from all over the world have successively adorned Tagore Law Professorship and have delivered these lectures which occupy a prestigious position in the world of law. The lectures delivered on six days have been divided into six heads – Our Judicial System, the Independence of Judiciary, Judicial Restraint and Activism, the Rendering of Judicial Decision, Great Names in Indian Judiciary and Danger Signals and New Challenges. Under each head the speakers deal with a variety of matters germane to that head.

Sir Peter Benson Maxwell in his locus classicus **On the Interpretation of Statutes (W.**

[6] Act 2 of 1974.

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Maxwell & Son, London, Second Edition, 1883) presented in some order the leading principles which govern the English Courts in the interpretation of statutes, with illustrations of their application selected from recent decisions; explained and gave precision to their meaning and scope.

Dr. Mona Purohit in her book **Legal Education and Research Methodology (Central Law Publications, Second Edition Reprint, 2014)** demonstrates various methods and tools of legal research. It helps the researcher to prepare the research work in the present form.

V. S. Datey in his book **Interpretation of Statutes [Taxmann Publications (P.) Ltd., 2019]** explicitly discusses the background of Interpretation of Statute, basic rules and general principles of interpretation with the help of various judicial pronouncements.

Prof. T. Bhattacharya in his book **The Interpretation of Statutes (Central Law Agency, Eighth Edition, 2012)** demonstrates various principles if Interpretation. The whole area has been examined with the help of important judicial pronouncements by the Supreme Court up to the end of 1984. The decisions of the High Courts in India as also certain foreign pronouncements have been referred to

Dr. S. R. Myneni in his book **Legal Research Methodology (Allahabad Law Agency, Fifth Edition Reprint, 2014)** elucidates meaning, definition, objectives, nature and scope of legal research as well as various methods, tools and techniques of legal research.

Ram Ahuja in his book **Research Methods (Rawat Publications, Reprinted 2021)** explicitly discussed the methods of social research based on empirical studies as well as theoretical knowledge of the author.

2. Nature and Scope of Judge-made Law

The main spheres and forms of the judicial development of law are the interpretation, the concretization, and the individualization of legal rules, the filling of legal gaps by way of analogy, and the setting of examples of equity.

Administration of justice is the firmest pillar of the Government. For the maintenance of legal

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rights and for the prevention of wrongs and injustice, there must be efficient administration of justice according to pre-declared principles of law.[7]

Administration of justice means justice according to law. While administrating the justice what are the legal source to which, help the State to implement the justice in the society, i.e., what are the sources of law, which help the State to administration of justice? The expression 'source of law' is capable of three meaning. Firstly, it may mean the formal source that confers binding authority as a rule and coverts the rule into law. The State, therefore, is the formal source of law and for every law this type of source is the same, the will of the State. No rule can have authority as law unless it has received the express or tacit acceptance of the State. Secondly, the expression 'source of law' may mean the place, where, if a person wants to get information about the law, he goes to look for it. In this sense the source means the literary source i.e., that from which actual knowledge of the law may be gained e.g., statues, reports of decided cases and textbooks. Thirdly, the expression source of law may mean that which supplies the matter on the content of the law. Custom, religion, agreement, opinion of text writers, foreign rules of law, statute, precedent or judge made law, all come under this category.

3. Application of Judicial Precedents and Legal Research

In India there are two main institutions which make necessary changes in law, namely, the Legislature, where new laws are enacted or amendments are done to the old Acts to suit the need of the hour; and the second institution is the Judiciary, where interpretation of the rule of land and law of land coexist. So, Indian Judiciary has generally been found to be alive to the needs of social thinking. The Courts have brought their fresh implications and added new dimensions to the law. As rightly quoted by **Justice P. N. Bhagwati –**

> "It is the Judge who infuses life blood into the dry skeleton provided by the legislature and creates a living organism appropriate and adequate to meet the needs of the society."

To show the instrumentality on social change, it is necessary to study some special changes that have taken place in India, because nothing is permanent but change is permanent. The

[7] Prof. (Mrs.) Nomita Agarwal, *Jurisprudence -(Legal Theory)* 63 (Central Law Publications, Allahabad, 4th Ed. 2003).

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Fundamental Rights[8] have indeed been a reflection of law as an instrument for straying social change. Fundamental Rights enforced right to live freely under Article 21, right to free and compulsory education under Article 21A[9], right to equality under Article 14, right to freedom under Article 19 and several other rights that prove to be essential to make a difference in the existing society.

The application of judicial precedents is governed by different principles in different legal systems. These principles are called the 'doctrine of precedent'. It means two things. First, that 'such precedents are reported, may be cited and may probably be followed by courts. Second, that the precedent under certain circumstances must be followed. The doctrine of precedent, in its first sense, prevails in the continent and prevailed in England also before the 19th century. The application of the doctrine in the second is a special feature of the English legal system. With some modifications, it is followed in many countries including in India.

Among the modern legal systems, the Anglo-American law is judge made law. It is called 'common law'. It developed mainly through judicial decisions. Most of the branches of law, such as tort, have been exclusively by the judges. The constitutional law of England, especially the freedom of the citizens, developed through judicial decisions. With independence and the adoption of the Indian Constitution, there was a move to a significant new legal landscape and a whole range of new perspectives generated by the constitutional context, which led to a radical reorientation at the level of the Supreme Court in regard to the Court's continuing obligation to follow the common law doctrine of precedent.[10] The Supreme Court has been established by the Indian Constitution, 1950. It is the highest judicial tribunal of the Indian Union. It has very wide appellate, writ, revisional and in some cases, original jurisdiction. "The law declared by the Supreme Court shall be binding on all Courts within the territory of India". 33 When the Supreme Court, 'as the apex adjudicator declaring the law for the country and invested with constitutional credentials under Article 141 clarifies a confused juridical situation, its substantial role is of legal mentor of the nation.

[8] Part III, *The Constitution of India.*

[9] Right to free and compulsory education under Article 21A is a new addition under the right to life in the year 2002. The society felt the need to educate its children in order to make them more aware of the social change taking place around him or her. The way it was carried out was by law so as to make education a compulsory necessity for all children up to 14 years of age.

[10] A. Lakshmi Nath, *Precedent in The Indian Legal System* 16 (Eastern Book Company, Lucknow, 1990).

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4. The Scope of Judicial Law-making in the Common Law Tradition

Judge-made law is an independent source of law in common law systems.1 To jurists brought up in legal systems which have codified law this is one of the striking features of the common law tradition. Instead of interpreting a code to develop the law, Common Law Judges develop the law which their predecessors have made. While Statute Law now impinges on many areas of private law, large tracts of our private law remain predominantly the product of judicial decision.

The great constitutional lawyer, **A. V. Dicey**, had a high opinion of judge-made law. In a lecture entitled "Judicial legislation", which he published in 1905, Professor Dicey said: "Judicial legislation aims to a far greater extent than do enactments passed by Parliament, at the maintenance of the logic or the symmetry of the law."[11]

The law of obligations is essentially judge-made. The law of contract remains in large measure judge-made and in recent years the House of Lords and now the Supreme Court has tackled questions of interpretation,[12] the implication of terms,[13] rectification,[14] penalty clauses and illegality[15] unconstrained by statutory provisions. The law of tort (delict) is, with a few statutory adjuncts, also judge-made as is the law of unjustified enrichment. Thus, the boundaries of a person's involuntary obligations have been and are a matter of judicial decision-making. Judges have been responsible for determining the boundaries of the tort of negligence, including, famously, a manufacturer's liability to the ultimate consumer,[16] and negligent misstatements,[17] and limiting the circumstances in which there is liability in negligence for causing pure economic loss[18] and where the injury suffered is psychiatric damage.[19] Similarly, the extent of the damage for which a negligent person is liable is determined by judge-made rules on remoteness of

[11] A V Dicey, *Lectures on the relation between Law and Public Opinion in England during the Nineteenth Century* 362 (1905).
[12] *Investors Compensation Scheme Ltd v. West Bromwich Building Society* [1998] 1 All ER 98; *Rainy Sky SA v. Kookmin Bank* [2011] UKSC 50, [2011] 1 W.L.R. 2900; *Arnold v. Britton* [2015] UKSC 36, [2015] A.C. 1619; *Wood v. Capita Insurance Services Ltd* [2017] UKSC 24, [2017] A.C. 1173.
[13] *Marks & Spencer Plc v. BNP Paribas Securities Services Trust Co (Jersey) Ltd* [2015] UKSC 72, [2016] A.C. 742.
[14] *Marley v. Rawlings* [2015] AC 129.
[15] *Patel v Mirza* [2016] UKSC 42, [2017] A.C. 467.
[16] *Donoghue v. Stevenson* [1932] AC 562, 1932 SC (HL) 31.
[17] *Hedley Byrne & Co Ltd v. Heller & Partners Ltd* [1964] A.C. 465
[18] *Hedley Byrne (Supra); Caparo Industries plc v. Dickman* [1990] 2 AC *605; Customs and Excise Commissioners v. Barclays Bank* [2007] 1 AC 181.
[19] *McLoughlin v. O'Brian* [1983] 1 AC 410; *Alcock v. Chief Constable of South Yorkshire Police* [1992] 1 AC 310.

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damage.[20] The economic torts of inducing breach of contract, interference with trade by unlawful means, and conspiracy, which set limits on the lawful infliction of economic harm by commercial competition, have been developed and reshaped by judicial decision.[21]

In the nineteenth century, common law judges continued to develop the common law. A striking example of the development of a systematic corpus of law is the Law on the Sale of Goods,[22] which was developed in a series of judicial decisions[23] before being subjected to statutory codification in 1893.

In the twentieth century perhaps the most striking example of judicial innovation is the development of the law of negligence. The landmark case of **Donoghue v. Stevenson** in 1932[24] became the **fons et origo**[25] of the modern law of negligence in the common law. The case itself was concerned with product liability and its ratio as the headnote in Appeal Cases shows was that: "the manufacturer of an article of food, medicine or the like, sold by him to a distributor in circumstances which prevent the distributor or the ultimate purchaser or consumer from discovering by inspection any defect, is under a legal duty to the ultimate purchaser or consumer to take reasonable care that the article is free from defect likely to cause injury to health." But the neighbourhood principle, which Lord Atkins articulated, became the standard test for tortious or delictual liability for personal injury or damage to property.

From there judges have developed the law of negligence. In the **United Kingdom** there was a false dawn in 1978 when the House of Lords thought that there was a generalised principle of negligence based on a two-stage test, namely –

(i) whether there was a sufficient degree of proximity between the wrongdoer and the person who suffered damage giving rise to a prima facie duty of care and

[20] *Overseas Tankship (U.K.) Ltd v. Miller Steamship Co Pty Ltd* [1967] 1 A.C. 617.
[21] *OBG v. Allan* [2008] 1 AC 1.
[22] The Sale of Goods Act 1893 was an Act of the Parliament of the United Kingdom of Great Britain and Ireland which regulated contracts in which goods are sold and bought. The whole of this Act, except for Section 26 was repealed on January 1, 1980, subject to a number of savings. Section 26 was repealed on January 1, 1982. The 1893 Act is still operative in Ireland, although it has been amended on a number of occasions since it came into force.
[23] *Nichol v. Godts* (1854) 10 Ex. 191, *Jones v. Just* (1867-68) L.R. 3 Q.B. 197, *Mody v. Gregson* (1868-69) L.R. 4 Ex. 49 and *Drummond & Sons v. Van Ingen & Co* (1887) 12 App. Cas 284.
[24] [1932] AC 562, 1932 SC (HL) 31.
[25] *Fons et origo* is a Latin term meaning the 'source and origin'.

(ii) if so, whether there were considerations which ought to negative, reduce or limit the scope of that duty or the class of persons to whom it is owed or the damages to which it may give rise.[26] In that case, it was decided that a local authority, which had statutory powers to inspect the foundations of buildings, might owe a duty of care in private law to the purchaser or assignee of a lease of a defective building.

The decision was reversed by the House of Lords in 1991.[27] And the two-stage approach has been departed from in favour of a more pragmatic incremental assessment of the boundaries of tortious liability which relies on drawing analogies from established case law.[28] In the **United Kingdom**, the courts having established a core principle as the basis for liability in negligence, have reverted to the caution of Lord Wright's ancient Mediterranean mariner in identifying the boundaries of the tort or delict. By contrast, in **Canada** the Supreme Court has embraced the two-stage test and, in applying the second stage test, has relied on its own analysis of policy and the social and economic implications of its decisions in setting those boundaries.[29]

Other examples of judicial development in the law of obligations include the extension of the doctrine of vicarious liability, in which a doctrine which imposed no fault liability on an employer has been extended to institutions such as the prison service which was held vicariously liable for the negligence of a prisoner carrying out work in a prison[30] and to behaviour by an employee, such as assaulting a customer, which by no stretch of the imagination could be considered to be within the scope of his or her employment but was part of what judges have called "enterprise risk".[31] In medical negligence, perhaps as a result of the greater emphasis which society places on individual autonomy since the domestication of human rights law of the European Convention on Human Rights, the courts have developed the law governing the obligation of the medical practitioner to obtain informed consent for surgical procedures. Instead of deferring to a responsible body of medical opinion as to whether a patient should be warned of

[26] *Anns v. Merton London Borough Council* [1978] AC 728, 751 per Lord Wilberforce.
[27] *Murphy v. Brentwood District Council* [1991] 1 AC 398.
[28] *Caparo Industries Plc v. Dickman* [1990] 2 A.C. 605, *Michael v. Chief Constable of South Wales Police* [2015] UKSC 2, [2015] A.C. 1732; *Robinson v. Chief Constable of West Yorkshire Police* [2018] UKSC 4; [2018] A.C. 736
[29] *See*, Lewis N Klar, *Judicial Activism in Private law* (2001) 80 Canadian Bar Review 251-240.
[30] *Cox v. Ministry of Justice* [2016] UKSC 10, [2016] A.C. 660.
[31] *Lister v. Hesley Hall Ltd.* [2002] 1 AC 215 (sexual abuse); *Mohamud v. WM Morrison Supermarkets Plc* [2016] UKSC 11, [2016] A.C. 677 (assault); *Catholic Child Welfare Society v. Institute of the Brothers of the Christian Schools* [2012] UKSC 56, [2013] 2 A.C. 1 (the concept of enterprise risk).

specific risks of such procedures, the Supreme Court has developed an objective test of what the reasonable person would expect to be told in order to make an informed decision.[32] The development of a right of privacy may also be a response to public expectations arising out of human rights norms. The courts have developed the law of breach of confidence to protect reasonable expectations of privacy between private parties, again influenced by the growing social importance of the concept of personal autonomy.[33]

5. Relevancy of Judge-made Law in Legal Research

"Law" has its genesis and growth. **Benjamin N. Cardozo** says, "the law, like human kind, if life is to continue, must find some path of compromise."[34] Law has to be preceded by a serious study of the dynamics of law and social changes. In the absence of such a study, law is bound to be ineffective and an utter failure in its mission. In interpreting any Statute, earlier judgements on similar issue are highly relevant as the earlier judgements are often binding. One of the major requirements of legal system is **'Consistency and Certainty'.** In **Mamleshwar Prasad v. Kanahaiya Lal,**[35] it was observed, "Certainty of laws, consistency of ruling and comity of Courts – all flowering from the same principle coverage to the conclusion that a decision once rendered must later bind like cases."

Judicial process can be an area of research. Courts in Common Law Jurisdictions, do not only interpret law but also create law through their judicial pronouncements. "The Judge interprets the social conscience, and gives effect to it in law, but in so doing he helps to form and modify the conscience he interprets. Discovery and creation react upon each other."[36] So, a judgment reflects invariably the personalities; judicial background and philosophy of the Judges. Therefore, it becomes necessary to carry out research into some of the pertinent questions that associates with judicial process, such as –

- What Court should make law?
- How should Courts make law?

[32] *Montgomery v. Lanarkshire Health Board* [2015] UKSC 11, [2015] A.C. 1430.
[33] *Douglas and others v. Hello! Ltd and others* (No 3) [2008] 1 A.C. 1; *Campbell v. Mirror Group Newspapers* [2004] 2 AC 457.
[34] Benjamin N. Cardozo, *The Growth of the Law* 2 (Yale University Press, New Heaven and London, 1924).
[35] AIR 1975 SC 907: (1975) 2 SCC 324.
[36] Benjamin N. Cardozo, *The Growth of the Law* 96 - 97 (Yale University Press, New Heaven and London, 1924).

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- What are the limits within which they are expected to make law?
- What is family, educational and social background of the Judges?
- What kind of personal, social and judicial philosophy they hold and preach?
- What is the behavioural nature of the lawyers and Judges? Because lawyers play a pivotal role in the decision-making process. Therefore, behavioural studies of lawyers and Judges become necessary to appreciate the realities of judicial process.

Stare decisis[37] is a well-known doctrine of jurisprudence. It rests upon the principles that law by which men are governed should be fixed, definite and known. It that rules of law when clearly announced and established by a Court of last resort should not be disregarded and set aside, but should be adhered to and followed. It is binding on Courts and should be followed in similar cases. It is a wholesome doctrine which gives certainty to law and guides the people to mould their affair in future.[38] Article 141 of the Constitution of India lays down that the 'law declared' by the Supreme Court is binding upon all the Courts within the territory of India. The 'law declared' had to be construed as a principle of law that emanates from a judgment, or an interpretation of a law or judgment by the Supreme Court, upon which the case is decided. So, the 'law declared' in a judgment, which is binding upon Courts, is the **ration decidendi** of the judgment. It is the essence of a decision and the relation to the subject-matter of the decision.

'Obiter dicta' or '**Obiter dictum'** of Supreme Court should normally be followed though not binding. Obiter dicta means an incidental opinion by a judge in his judgment. Obiter means 'by the way', 'in passing' or 'incidentally'. Dicta or dictum means 'a remark, statement or observation of a Judge' that is not a necessary part of the legal reasoning needed to reach the decision in a case.

According to **Roscoe Pound**, "Law must be stable and yet cannot be stand still." The law is often used as an instrument of social reform. The final cause of law is the welfare of the society.[39] Thus, law should not be definite, but must transform according to the requirement and necessity of the society arising out of passing of time. It is this **foresight of the founding fathers**

[37] *Stare decisis* is a Latin term meaning 'to stand by decided cases.'
[38] *Sakshi v. Union of India*, AIR 2004 SCW 3449; *Shanker Raju v. Union of India* (2011) 2 SCC 132.
[39] Benjamin N. Cardozo.

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of the Constitution that inserted Article 368 to the Constitution which provides that any Part of the Constitution may be amended by adopting appropriate procedure except destroying the basic structure of the Constitution. It reflects the acceptance of the need of changing the law even the law of the land when situation warrants.

6. Conclusion

The traditional judicial function is to "interpret the Statute" with a view to carry out the intention of the legislature that made the Statute. As per the basic structure of the Constitution of India, Parliament enacts the laws, Courts interpret the law and Government implements the law. Once an Act is passed by the Parliament, it has to be interpreted by the Courts so that the law can be properly implemented.

The **aim** of the present socio-legal research work is to examine the purpose of Interpretation of Statute and the basic rules of interpretation. The Socio-legal research carries significance in the modern welfare State, which envisages socio-economic information through law and thereby perceives law as a means of achieving socio-economic justice and parity. Through empiricism, socio-legal research assesses 'rule and contribution of law' in bringing the intended social consequences. In this way it helps us in accessing the 'impact of law' on the social values, outlook and attitude towards the 'change' contemplated by law under inquiry. It also highlights the 'factors' that have been creating 'impediments' for the law in attaining its 'goal'. Socio-legal research renders an invaluable help in 'shaping' social legislations in tune with the **'social engineering'** philosophy of the modern State and in making them more effective instruments of the planned socio-economic transformation.

Judge-made law is very important for understanding law. An interpretation is placed in a judgment and over a period, that judgment is followed as a precedent and is taken as 'law' for all practical purposes. However, technically, Parliament makes laws and Judiciary interprets and decides on the law. If an interpretation made by Courts of Law is not what Parliament had in mind, Parliament can always amend the law. Theoretically, law is made by Parliament and Court can only interpret the same. However, this concept is no more true.

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It is essential that a judgment given should be followed in all subsequent cases, so that a citizen knows what decision he can expect in a particular case. This is also needed as a 'Judicial Discipline'. Doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequences of transactions forming part of his daily affairs.[40] So, what is binding is declaration of law under Article 141 and not what it does under Article 142 to do complete justice.[41]

[40] *Union of India v. Raghubir Singh* (1989) 2 SCC 754; *Purbanchal Cables v. Assam Electricity Board* (2012) 7 SCC 462.
[41] *Bir Singh v. Mukesh Kumar* (2019) 4 SCC 197.