DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume I Issue X is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis
EDITORIAL TEAM

EDITORS

Ms. Ezhiloviya S.P.
Nalsar Passout

Ms. Priya Singh
West Bengal National University of Juridical Science

Mr. Ritesh Kumar
Nalsar Passout

Mrs. Pooja Kothari
Practicing Advocate

Dr. Shweta Dhand
Assistant Professor
ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Quarterly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN

2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

ROLE OF JUDICIAL PRECEDENTS IN THE INDIAN LEGAL SYSTEM:
INTRODUCTION

The meaning of the word precedent in legal sense refers to any authority or guidance taken from the past decisions for the purpose of reference in the future decisions/cases. The decisions which specifically lays down new principle or rules, only such decisions are known as judicial precedents. According to the legal scholar Salmond, the precedent means including the previously reported or cited case laws as the guide for future decisions by the courts.¹ The view of the famous philosopher Bentham, on the precedent is that they are considered to be the laws made by judges. Precedents play a very important role in the Indian legal system as the Indian Judiciary adjudicates, interpret and keep a check on the rights and obligations of the people of India. In earlier times, the judges use to refer to their own sense of judgement and customs for guidance to make the decision. Nowadays the legislation has become the important part to frame the laws and it is the duty of the judges to decide the cases accordingly. The judges also have the right to interpret the law and fill up for the lacunae made by the legislature in legislation while framing the law.

The doctrine of stare decisis is a doctrine of precedent means “to stand by things decided”. It is a legal doctrine that binds the court to look into the historical and similar case as a guide to make a future judgement.² This legal doctrine ensures that the cases with similar facts and issues be addressed in the same way as the previously decided cases. According to Sacks and Hart, there are three main objective of stare decisis. Firstly, this legal doctrine aims at promoting affairs of a citizen by enabling them to strategize their economic and social transactions with the view that they are complied with the existing law. Secondly, it helps in the efficient and fair adjudication by way of referring to the previously decided cases for similar issues and facts. Thirdly, it helps to gain public confidence by binding the judges with certain obligations to refer to prior decisions. The doctrine requires the maintenance of consistency, stability, certainty and some predictability in law for achieving its goal or objective. In the case of Hari Singh v. State of Haryana³, it was held that the courts should have the co-ordination and consistent opinions in the cases which have the similar facts, circumstances, issues or question of law. It is necessary for the achieving the harmony in the judicial system that the opinion of judges on the cases with identical facts should be similar and consistent for the better judicial system. The view that has been taken into

consideration from a long time should not be disturbed with the possibility of the different of opinion or view. The Precedent act as one of the important sources of law as they help in strengthening the judicial system and law of the nation. The precedents help in the framing of the laws and helps the judges for the future reference to make the decisions, if the circumstances and other relevant facts of the particular case is comparable to the previously decided case law. The judicial precedent helps in maintaining the predictability and consistency as through observing the precedents, the lawyers can assist and guide their clients regarding a particular subject matter in that field.\(^4\) It gives the guarantee that each and every case will be looked upon and treated in a similar manner as that of the passed decisions.

### HISTORICAL BACKGROUND

In the ancient times, the disputes were less as compared to the present times. There were local courts like Shreni, Shashan, Puga and Kula for the settlement of disputes. The cases used to be decided on the basis of customs and on the sense of judges of right or wrong. The cases were decided by different courts based on the dominions. There was less scope of judicial precedent in ancient and medieval times because of the lack of adequate sources to maintain the record. The legal doctrine of precedent was developed in the England as during that time Indian legal system was not well organised. The primary source of Indian law is the English common law because India was ruled by the British Raj for the long period of time. At that time precedents became the major source of law for the reference and guidance. The development of precedents started when according to the Government of India Act 1935, there was establishment of privy council and federal court and the decisions of these courts were binding on each and every authority and courts of India. This led to the usage of precedent as important source of law in Indian legal system for making decisions. With the time the precedents have gained lot of importance in India.

- **Precedents and Dissenting Judgments Under Indian Constitution**
  - **Role of Precedents in Indian Legal system**

The legal doctrine of judicial precedent has been incorporated in the Indian Constitution, 1950 under Article 141 which states that “The law and decisions given by the supreme court shall be binding on all the courts within the territory of India.” The meaning of the word “all the courts” was in the question that whether all courts is inclusive of Supreme Court. In the landmark judgment of “Kesavananda Bharti v. State of Kerala”,\(^5\) it was held that “Supreme court is not bound by its own decisions.” It is not specifically given in the constitution but by the convention, the decisions made by the HC is obligatory on the lower authorities and courts which falls in the dominion of


\(^5\) AIR 1973 SC 1461.
that particular High Court. Also, the decision given by the higher bench is binding on the all the lower bench. The judgment of Supreme Court and other precedents are considered to be the source of law.

It is not necessary that judgment given by the Supreme Court cannot be modified. In the case of “Jamnadas Prabhudas v. Commr. of Income-Tax”, it was held that Article 141 does not infer that the any law given by the supreme court cannot be modified or altered, the judgments of Supreme Court can be modified by the competent authority. If any amendment comes into existence then automatically the declaration of change in law would end the effect of existing precedents. In the judgment of “Nand Kishore v. State of Punjab”, the court has critically interpreted the statement that “The law is what the SC says it is”, it was held by the court that this grant the excessive power to the Supreme Court and totally deteriorates the perception of Separation of Power.

The main purpose of Article 141 is to empower the Supreme Court to pass or declare any law that is necessary for serving justice. The judgment given by the majority in Supreme Court is of persuasive value. The decision can only become a precedent when there is question of law is involved. In the case of “Maru Ram v. Union of India”, it was held that the recommendation of supreme court is also not binding on the any court, those recommendations can be helpful in forming a guideline on a particular issue.

- **Dissenting Judgments**

Dissenting judgments are those decisions that differ from the majority judges, these types of judgments have a great persuasive value as right to dissent is part of Article 19 of the Constitution. In the case of “Additional District Magistrate v. S. S. Shukla”, the court has given the importance of dissenting judgments, “While it is regrettable that judges may not always agree, it is better that their independence should be maintained and recognized, than that unanimity should be secured through sacrifice, a dissent in the court of last resort is an appeal to the brooding spirit of the law, to the intelligence of a future day, when a later decision may possibly correct the error which the dissenting judge believes the court to have made.” Dissenting judgments are therefore important and very valuable, even though it is minority judgment and not counted in the ratio at the time of judgment but considered as part of persuasive value. The dissenting judgements are an opinion which indicates that judges are under no obligation and they are provided with

---

6 AIR 1951 Bom 438.
7 Indian Const. Art. 141.
9 AIR 1967 SC 1643.
10 AIR 1980 SC 2147.
11 AIR 1976 SC 1207.
12 (1955) 1 SCR 298.
independence of judiciary.

**Judgments by High Court and Supreme Court**

Article 141 gives the power to Supreme Court to make any law obligatory and binding on other courts in the hierarchy. But the decision of the Supreme Court is not obligated to follow the decision of the any lower court or authority. The Supreme Court has the authority to overrule the previously decided case laws. In this manner, the higher authority can keep the checks and balances in the Indian legal system. The supreme has the power to overrule its own judgment, in case of occurrence of error and for the public interest such decision can be overruled in “**Bengal Immunity Co. v. State of Bihar**”\(^{13}\), Supreme Court has overruled its decision for the interest of public in “**State of Bombay v. The United Motors Ltd.**”\(^{14}\)

There is no specific law in the constitution pertaining to bind the decision of the High Court on other subordinate courts. It is well settled law that the subordinate’s courts are under the obligation to follow and decide the cases on the basis of decisions of the higher authority. This issue was also discussed in “**M/s East India commercial Co. Ltd. v. collector of Customs, Calcutta.**”\(^{15}\) where the question was raised that how far can HC decisions be binding or obligatory on other courts as there is no specific provision for it. The SC decided that cumulative study of Article 227,226 and 215, states that decisions of HC are binding on the all the subordinate courts and have a persuasive value. It is necessary for the smooth functioning of the legal system to give the necessary powers to higher courts as state is also considered to be binding authorities, it is necessary that decisions of such authority should be taken into consideration for the public interest and justice.\(^{16}\)

- **Importance of Judgments of High Courts and Supreme Courts**

The judgements of HC and SC act as the Precedent which is one of the important sources of law as they help in strengthening the judicial system and law of the nation. The precedents help in the framing of the laws and helps the judges for the future reference to make the decisions, if the circumstances and other relevant facts of the particular case is comparable to the previously decided case law. The judicial precedent helps in maintaining the predictability and consistency as through observing the precedents, the lawyers can assist and guide their clients regarding a particular subject matter in that field.\(^{17}\) It gives the guarantee that each and every case will be looked upon and treated in a similar manner as that of the passed decisions. The common law is also based on the law of precedents, precedents is also helpful in the statutory interpretation. Judges

---

\(^{13}\) AIR 1955 SC 661

\(^{14}\) AIR 1953 SC 255.

\(^{15}\) AIR 1962 SC 1893.


decide the law on the basis of interpretation of the statutes and referring to the precedents. Precedent promotes flexibility in the Indian legal system. The decision of the SC is not obligated to follow the decision of the any lower court or authority. The SC has the authority to overrule the previously decided case laws. In this manner, the higher authority can keep the checks and balances in the Indian legal system.

**Circumstances deteriorating the binding effect of the precedents.**

when a court has given a certain principle or rule for the particular set of facts, in that case, it is the responsibility of all the judges to adhere to that rule or principle for the future decisions where the facts and circumstances of the situation are substantially the identical. There are various legal issues and problems related to precedents such as: Precedents are rigid in its nature because the courts are obligated to follow the principles and rules that are already established. The precedents can only be changed by the judgment of the higher authority or by framing a new law.

The judicial precedents play the role of parliament and government elected officials by framing new principles or rules, which is undemocratic in nature. The duty of the courts is to apply those laws which are already established and not to frame the laws. It was also held in “R v. City of London” that “it was the judge's responsibility to give the words their ordinary meaning, and it was for Parliament to decide what the laws should be, and for judges to apply them.”

There are various other circumstances that weakens the binding effect of precedents are overruling, distinguishing, erroneous decisions, any inconsistency created due to the earlier decisions of higher courts or courts of same rank, reversal, decisions given by divided courts and if there is any refusal to follow decisions, all these weakens the effect of precedents in Indian Legal System. Precedent increases complexity and creates intricacy in the legal system as the judges need to refer to the previous judgments which are exceptionally long to reach the decision.

It is difficult for judges to use their logical thinking and sense as they are bound to follow the established principles, which can sometimes lead to injustice. Few judicial precedents need changes but judges treat precedents as established law, it is very rare that established principle or rules made by the judges are changed. The opinion of the judges differs, the precedents instead of development in laws or change in law with the circumstances of a present case, it takes backs to the previous ruling which are not even properly recorded for its implementation which makes the system more rigid. Amendments are required in the laws, principle and rules for the proper functioning of the legal system.

**Judgments Delivered in the Ignorance of Law**

---


A judgment or decision that is delivered in the ignorance of law is known as Per Incuriam. Meaning of the word Per Incuriam means the decision rendered or delivered ignoring the statute or law, this is the act of court of carelessness. A judgment is said to be Per Incuriam when the court was careless and has ignored the earlier judgment taken by any court having coordinate dominion or its own judgment. Any judgment that is delivered without referring to competent statute, rule or law in force comes under the category of Per Incuriam.

It is not the duty of judges to frame the laws but they are obligated to interpret the laws and fill the lacunae in the legislation. Precedents is of great convenience as it saves the time and reduces labour of lawyer or judges.20 As once the question of law regarding some matter is decided, it is not required to look into that issue again the future similar cases. It leads to spending less time on case by the judges for making the decision as they already have access and guide of the previously decided cases. Judicial precedents prevent any kind of errors as they just have to refer to the already decided case laws for the similar circumstances and in this manner, everybody stays on the same page. Precedents curbs the arbitrariness and prevents the error and bias as judges are supposed to follow the established principle for the purpose of making a decision. It thus helps in strengthening the confidence of public on judiciary as the cases are decide don already established principles and rules.

In “Morelle Ltd. v. Wakeling”21 it was held that “a judgement rendered in ignorance of a statute, or a rule having statutory force, which would have affected the result is not binding on a court otherwise bound by its own decisions.” It was observed by the house of lords that the ignorance of law or Per Incuriam is exception to the rule of judicial precedents and thus cannot have a binding effect.

The decision or judgment cannot be considered as carelessness or ignorance of law when the court possibility has not delivered the best arguments for the issues raised or for deficiency by the parties, only those can be considered to be of Per Incuriam which tends to be inconsistent with binding authority or statue. In “A.R. Antulay v. R.S. Nayak”,22 the judgement that is delivered with the ignorance of a rule or statute is not binding on the court in India. when the court while delivering its decision ignores, forgets or carless in using law or any terms of statute or an earlier case in the present judgment, and it is important and necessary for the court to use these rules and judgments, this ignorance in passing of judgment is Per Incuriam and such decision does not have any binding effect on any law, court or act as a source of law.

CONCLUSION

21 [1955] 1 All ER 708.
It can be concluded from the present study that precedents play a very important role in the Indian legal system as the Indian Judiciary adjudicates, interpret and keep a check on the rights and obligations of the people of India. Legislation has become the important part to frame the laws and it is the duty of the judges to decide the cases accordingly. The common law is also based on the law of precedents. Any decision of a common law court when cited in any dispute with similar facts and circumstances becomes precedents. The judges also have the right to interpret the law and fill up for the lacunae made by the legislature in legislation while framing the law. Precedents helps in gaining public confidence by binding the judges with certain obligations to refer to prior decisions. The decision given by the higher bench is binding on the all the lower bench. Dissenting judgments are therefore important and very valuable, even though it is minority view and not counted in the ratio at the time of judgment but it is of a persuasive value. There are various conditions that deteriorates the binding effect of precedents are overruling, distinguishing, erroneous decisions, any inconsistency created due to the earlier decisions of higher courts or courts of same rank, reversal, decisions given by divided courts and if there is any refusal to follow decisions. Also, the judgement that is delivered with the ignorance of a rule or statute is not binding on the court in India. It is necessary for the effective functioning of the Indian Legal System that both the legislature and judiciary work together.

SUGGESTIONS
The suggestion that can be made according to the present study is that there should be some limitation on the powers of the judges as precedents are rigid in its nature and the courts are obligated to follow the principles and rules that are already established, it affects the independence of judiciary. The concept of Separation of Powers should be strictly adhered in the interest of general public. The judicial precedents play the role of parliament and government elected officials by framing new principles or rules, which is undemocratic in nature. The duty of the courts is to apply those laws which are already established and not to frame the laws and this principle should be stringently followed.

It is difficult for judges to use their logical thinking and sense as they are bound to follow the established principles, which can sometimes lead to injustice. Few judicial precedents need changes but judges treat precedents as established law, it is very rare that established principle or rules made by the judges are changed. The opinion of the judges differs, the precedents instead of development in laws or change in law with the circumstances of a present case, it takes backs to the previous ruling which are not even properly recorded for its implementation which makes the system more rigid. Amendments are required in the laws, principle and rules for the proper
functioning of the legal system.

BIBLIOGRAPHY

BOOKS


JOURNALS/ARTICLES/REPORTS


CASES REFERRED