



Judicial Precedent and Discipline under the Indian Constitution

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Abstract

The judicial system delivers justice which is of paramount importance. The judicial discipline is not for merely the disposal of cases but it is necessary for the smooth functioning and sustenance of the judicial system. Judicial discipline promotes confidence among the citizens and curbs the arbitrariness of judges and also avoids conflicting decisions. Judges are not only symbolic representations of courts; they are physical embodiments of the courts themselves. The judgments delivered by the judges impact the law and order and the credibility of the legal system. Judicial discipline, or the absence of it, is a complex topic. It consists of independence, accountability, transparency, impartiality, efficiency, justification and public participation. At present, the doctrine of precedent is wholly accepted and has become an essential component of judicial discipline in view of various decisions by the Supreme Court of India and advancements in law. Article 141 of the Indian Constitution states that decisions made by the Supreme Court must be followed by other courts in India. The principle of precedent is a fundamental aspect of the hierarchical structure of the judicial system. When a higher or concurrent court lays a principle, all the courts shall follow the said principle in similar cases. This research paper shall discuss about the Judicial Precedent and Discipline under the Indian Constitution.

I. Introduction

On January 3, 2024, the Supreme Court emphasised the importance of 'judicial discipline and propriety' and the notion of precedents, stating that they help ensure certainty and consistency in judicial rulings, giving individuals assurance about the outcomes of their acts. The doctrine of Precedent is a cornerstone of the common law system and refers to authoritative decisions issued by superior courts in prior adjudications, serving as guiding principles for lower courts when confronted with legally analogous cases. These decisions supplement and bridge any lacunae within the existing legal framework. The lower court has no authority to pass contrary to the

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pronouncements of higher courts.¹ Precedent doctrine also dictates that courts must follow authoritative decisions within established boundaries. Courts must distinguish between binding precedents and "obiter dictum," which are statements made by the court that lack binding authority but may carry persuasive weight. "Obiter dictum" is a passing statement that is not legally obligatory on future courts, but may be considered based on the judge's reputation, the court's prominence, and the context in which it was made. An "obiter dictum" is not considered binding since it may have been made without complete consideration of all potential repercussions or the Court may not have expressed a definitive conclusion. An interim order, which does not definitively resolve an issue, cannot serve as a precedent. The arguments given to support a non-final interim ruling typically only include preliminary findings and are subject to change. The temporary instructions granted based on initial findings are meant to maintain the current situation until a final decision is made, preventing the subject from becoming irrelevant or a done deal before the final hearing. Hence, the interim order issued by a court does not serve as a precedent for later instances.²

It is a well-established legal principle that a court's decision is only binding on issues that were considered during the case. The court should not base its decision on a previous ruling without thoroughly examining how the current factual situation aligns with the facts of the previous case. The court shall appreciate all relevant facts and arguments presented by both parties. The judgement must be interpreted in relation to specific legislative requirements as determined by the Court. The Court must analyse the legal principles established in the decision and it cannot be used to support a notion that was not resolved.³

High Court decisions serve as binding precedents for all subordinate courts within the same state where the High Court is located. The Supreme Court has overturned the rulings of the High Courts in numerous instances through appeals or its extraordinary powers. One High Court's ruling is persuasive for other High Courts, which may lead to varying opinions on comparable situations or laws. Furthermore, there is no mechanism in place to ensure precise adherence and compliance with the legislation as established by the Supreme Court under Article 141. To ensure the judge is

¹ Mary Pushpam v. Telvi Curusumary & Ors. 2024 INSC 8.

² Abu Bakar and Varun Vinod Nambiar, "Precedent as a Source of Law", 1 *Indian JL & Legal Rsch* 5 (2023).

³ Union of India v. Raghbir Singh, AIR 1989 SC 1933.



constrained by past decisions, he must have access to all pertinent authorities. The subordinate Court's ignorance has led to unfairness for many indigent litigants unable to appeal.⁴

Decisions made in ignorance (*per incuriam*) are further complicating the situation for disadvantaged litigants. Superior courts use the 'pleas of decision, sub-silento and per-incuriam' to evade responsibility in the event of conflicting judgements by courts of equal standing. Furthermore, the concept of overruling in part and retaining in part involves judges revisiting legal issues resolved in a previous judgement and making distinctions in their own ruling.⁵ The Supreme Court has failed to adhere to the law of precedent and has passed contrary orders in identical cases which has confused the sub-ordinate Courts. In some cases, it is difficult to identify the principle laid down by the Supreme Court and this leads to different interpretations and understanding.

Judicial discipline mandates that decisions made by higher authorities must be adhered to by subsequently linear authorities, especially in the case of quasi-judicial authority. Therefore, an Assessing Officer is obligated to follow the Tribunal's decision, especially when dealing with the same assessee. This concept mandates that decisions made by higher authority, such as the Tribunal, must be adhered to by subordinate officers, namely the CIT(A) and Assessing Officer. The lower authority must adhere to the decision of the Tribunal, even if it is not a jurisdictional Tribunal.⁶ At times, the Department disputes a decision reached by the Tribunal and files an appeal in the High Court. Courts have consistently ruled that the wording of refusing to accept a decision is offensive and inappropriate about the directive of a superior authority. Suppose the order of the higher authority has not stayed in an appeal. In that case, it serves as a valid and binding decision for the lower authority, not only for the same assessee but also for subsequent instances involving the same legal issue. Decisions made by benches of the Tribunal in different locations are binding on the law point resolved if the Statute is applicable nationwide, following the idea of judicial discipline.

⁴ Bhairav Acharya, "The Evolution of Judicial Accountability in India", 1(1) *Journal of Public Affairs and Changes* (2017).

⁵ Nick Robinson, "Expanding judiciaries: India and the rise of the good governance court", 8 *Wash. U. Global Stud. L. Rev.* 1 (2009).

⁶ K. G. Balakrishnan, "JUDICIARY IN INDIA: PROBLEMS AND PROSPECTS", 50(4) *Journal of the Indian Law Institute* 461-467 (2008).



The directives given by the Supreme Court in a ruling are not considered the law established by the Supreme Court according to Article 141 of the Indian constitution. These directives are provided based on the authority granted by Article 142 of the Constitution.⁷

In essence, the doctrine of precedent serves as a crucial tool in

- Maintaining consistency in legal interpretations and applications.
- Ensuring predictability in judicial outcomes for similar cases.
- Bridging gaps within the existing legal framework.
- Upholding the authority and expertise of superior courts.

II. Constitutional Insight and Doctrine of Stare Decisis

The legal term of stare decisis, derived from the Latin phrase "stare decisis et non quieta movere," translates to "let the decision stand and do not disturb settled matters." While not explicitly codified at first, the doctrine gained traction in the English legal system. In 1833, Chief Justice Park, in the landmark case of *Mirehouse v. Rennel* (1833), recognized the "urgent need" to acknowledge the binding nature of past legal decisions. This pivotal case is credited with solidifying stare decisis as a foundational principle within the English common law system, which later influenced legal systems in countries like India.

Stare Decisis is the principle where courts use prior analogous legal cases as a basis for their decisions. These verdicts serve as a precedent for judges to use when deciding similar legal disputes in the future. Stare Decisis concept obligates courts to consider previous rulings when making decisions.⁸ The judiciary's independence and impartiality are key features of a democratic government. An impartial and independent judiciary is essential for safeguarding individual rights and ensuring equitable justice without bias or favouritism. The Indian constitution grants numerous privileges to uphold the autonomy of the judiciary. If we consider the 'Preamble' to our Constitution

⁷ Shivaraj Huchhanavar, "Judicial conduct regulation: do in-house mechanisms in India uphold judicial Independence and effectively enforce judicial accountability?", 6(3) *Indian Law Review* 352-386 (2022).

⁸ *Megh Singh v. State of Punjab*, AIR 2003 SC 3184.



as a representation of the hopes and essence of the people, one noticeable aspect is the multitude of objectives that the Constitution framers aimed to achieve for the population. Article 141 of the Indian Constitution grants the Supreme Court broad authority to deviate from previous decisions. However, an issue occurs when comparable cases within a brief period follow distinct paths due to being adjudicated by various judges. Each Supreme Court Justice holds equal authority, and there is no avenue for challenging a Supreme Court ruling. The outcome of a case is frequently determined by the specific panel of judges assigned to it. Some judges are more predisposed to grant bail than others. Some have a higher level of expertise in tax law than others.⁹

Various courts may issue varied interim orders as they see appropriate. Interim orders issued by specific courts based on specified factors are not considered precedents for subsequent cases with comparable circumstances. A decision holds authority only for what it explicitly determines. The crucial aspect of a decision lies in its proportion and not every detail or logical consequence derived from the observations within it. It is not advantageous to choose to extract sentences from a judgement and base arguments on them.¹⁰ For an exposition of law and ratio decidendi to be considered a binding precedent, it must be grounded on the matters that were addressed and debated by both parties. An observation without justification can be differentiated from a ratio decidendi. Circumstantial flexibility means that a single additional or different fact might significantly alter the conclusions drawn in two circumstances. Relying on a judgment without careful consideration is not an appropriate way to handle issues.¹¹

III. Types of Precedents

Several variables contribute to enhancing the authority of precedents. The quantity and prestige of judges in a Bench is crucial elements. A unanimous decision by the Bench or multiple affirmations by other courts increase the authority of the precedent. Moreover, if a legislation is passed after a precedent has been set, it further solidifies its power. Furthermore, time is a factor in this situation.

⁹ Sarim Naved, “The Supreme Court and the Need for Judicial Discipline”, *The Wire*, Jun. 2, 2020, *available at*: <https://thewire.in/law/supreme-court-judicial-discipline> (last visited Feb. 27, 2024).

¹⁰ Dhananjay Mahapatra and Amit Anand Choudhary, “Row on ‘judicial discipline’ takes a sharper turn in SC”, *The Times of India*, Feb. 23, 2018, *available at*: <https://timesofindia.indiatimes.com/india/row-on-judicial-discipline-takes-a-sharper-turn-in-sc/articleshow/63035973.cms> (last visited Feb. 27, 2024).

¹¹ Jayant Verma v. Union of India, AIR 2018 SC 1079.



Long-standing adherence to a precedent enhances its authority. The judicial precedents are classified into following basis:¹²

- *Declaratory and Original*- In a declaratory precedent, a court applies a well-established legal principle to a new case. This clarifies and solidifies existing law without creating new rules. Conversely, original precedents establish new legal principles by addressing novel situations or reinterpreting existing laws. These decisions serve as binding authority for future cases facing similar legal issues, shaping the legal landscape. Both declaratory and original precedents carry equal legal force, serving critical roles in maintaining consistency and predictability within the legal system.
- *Persuasive*- In the legal realm, persuasive precedents hold weight but not the force of law. Unlike binding precedents, which courts must follow, persuasive precedents offer a compelling argument for a particular outcome. However, the court retains discretion to decide whether the reasoning in the persuasive precedent applies to the current case. While not setting legal precedents themselves, persuasive precedents can influence future court decisions and pave the way for the development of new legal principles.
- *Authoritative*- These precedents are established legal principles that judges must adhere to, even if they hold personal reservations about the underlying reasoning. They serve as binding legal pronouncements, dictating the course of action for other courts within the same jurisdiction to follow in similar cases. In essence, authoritative precedents act as cornerstones of the legal system, providing a predictable and consistent application of law.
 - *Absolutely Authoritative*- These precedents have to be obliged and compulsorily followed by every court in the hierarchy while delivering a judgment.
 - *Conditional Authoritative*- Such precedents although have to be followed absolutely but in certain special circumstances or in the case of disregard to law such precedents can be disregarded.

¹² Suparna Bandyopadhyay, A. Lakshminath: *Judicial Process Precedent in Indian Law* (Eastern Book Company, Lucknow, 2009).



IV. Binding Nature of Directions and Res-judicata

Precedents must be adhered to in order to ensure the consistency of applying legal concepts in case decisions. Disregarding precedents in court can disturb the uniformity and predictability of legal outcomes. Continuous appeals and challenges to the court's decision may lead to significant complexity within the legal system. Continuing to ignore established norms without valid explanations could result in the Court losing credibility and public trust.¹³ A problem arises when there are inconsistencies in the application of the law by various judges that need to be addressed. Several judges have varying interpretations of the law. They will also have different understandings. Individuals can file Writ Petitions with the Supreme Court under Article 32 of the Constitution of India to challenge abuses of their fundamental rights. The court can choose whether to review a petition under Article 32, but it is crucial to recognise the need for a uniform approach.¹⁴

Res judicata pertains to people from the preceding case, but the theory of precedent applies to the full jurisdiction of the High Court and the Supreme Court. This binds the parties involved in the legal proceedings to guarantee conclusiveness. Lawsuits and any other legal actions among the parties are forbidden. Res judicata concerns the same issue, while precedent deals with applying the law in a similar scenario. In res judicata, the accuracy of the decision is usually inconsequential, unless when the erroneous verdict concerns the jurisdictional authority of the organisation involved.¹⁵

The notion of binding precedent does not apply to interlocutory orders. Consistency and uniformity in judicial discretion are necessary to avoid discriminatory treatment. Similar cases should be treated alike unless factual differences justify different treatment, ensuring predictability and certainty in judicial decisions. It is essential to adhere to the legislation established by the Supreme Court. A court ruling must be interpreted in light of the issues that were raised in the case where the ruling was made. An "obiter dictum" is a court's remark on a legal issue brought up in a matter before it

¹³ Shrutanjaya Bhardwaj and Ayush Baheti, "Precedent, stare decisis and the Larger Bench Rule: Judicial Indiscipline at the Indian Supreme Court", 6(1) *Indian Law Review* 58-83 (2022).

¹⁴ Paramita Dhar and Partha Pratim Paul, "Doctrine of Precedent and Its Departing through Curative Jurisdiction in India: An Analysis", 8 *Indian JL & Just.* 134 (2017).

¹⁵ Experion Developers(P) Ltd. v. Himanshu Dewan, 2023 SCCOnline SC 1029.



that is not essential for making a ruling, unlike a "ratio decidendi." While an obiter dictum may not be legally binding, it nonetheless carries significant influence. The High Court's lack the authority, as the Supreme Court does under Article 142 of the Indian Constitution. Just because the Supreme Court granted specific reliefs using its power under Article 142, the High Court's cannot issue similar orders.¹⁶

The decisions made by the High Court would have legal authority over the trial courts. If a judge encounters an irrelevant mention of a legal precedent or a mistaken legal argument, they will likely dismiss the reliance on it or the argument itself. Reference to a judicial precedent cannot be considered a contumacious act.¹⁷

V. Conclusion & Suggestions

Since gaining independence, India's legal system has adopted the principle that all public officials, including judges, should strive for exceptionally high levels of honesty, integrity, and moral uprightness that exceed the norms expected of the general population. The Supreme Court of India and the several High Courts have implemented these guidelines and have instructed judges to ensure they are free from any suspicion in both their public and private affairs.

Judges cannot shirk their responsibility by attributing it to the overall decline in societal ethical standards, as proven by courts. Concerns are raised about the process of selecting cases for hearings, including some that are rejected right away or postponed to a later date, making them insignificant. In the 1950s, we received brief legal reports including all the Supreme Court's rulings for a year. Nowadays, we receive larger volumes with increasing page counts annually. The court's organisation and structure require re-assessment. The Supreme Court should handle this task itself. Grant the Supreme Court the authority to determine definitive interpretations of the law. Let other courts then apply this understanding and for a smoother functioning the following suggestions should incorporate:

¹⁶ Vidhi Trivedi, "The Doctrine of Legal Precedent: Analysing Sub-Silentio and Per Incuriam", *3 Jus Corpus LJ* 304 (2022).

¹⁷ Holger Spamann (et al.), "Judges in the Lab: No Precedent Effects, No Common/Civil Law Differences", *13(1) Journal of Legal Analysis* 110-126 (2021).



- Courts should not rely on decisions without analysing how the factual circumstance aligns with the decision being referenced.
- Court observations should not be interpreted as Euclid's theorems or statutory provisions, especially when given out of context. These observations should be interpreted within their specified context.
- Court judgements should not be interpreted as statutes.
- Judges may need to engage in extensive debates to interpret the terms, phrases, and clauses of a statute, with the purpose of explaining rather than defining them.
- Judges analyse statutes, not judgements. They analyse the language of statutes; their own words should not be treated as statutes.

The challenges of a self-regulating system of judicial ethics and discipline are issues with enforcement, lack of transparency, tendency for self-protection, and reluctance to address internal problems. Crucial for any reform is the state judicial systems' thorough investigation and correction of judicial misconduct, which should be seen as a sign of a well-functioning system that boosts public trust in the courts. Judicial accountability and the judges obligation to provide answers are well-established concepts. Several countries have previously included provisions in their constitutions to guarantee judicial accountability. This is to avoid the accumulation of power in one branch of government, particularly in nations where judicial activism encroaches on the responsibilities of other branches. However, judicial independence is essential for every judge to fulfil their oath of office, which mandates them to act impartially and maintain the constitutional and legal integrity of the country.