



ABHIDHVAJ LAW JOURNAL

[www.abhidhvajlawjournal.com]

The goal of Abhidhvaj Law Journal is to offer an open-access platform where anyone involved in the legal profession can contribute their research on any legal topic and aid in building a quality platform that anyone can use to advance their legal knowledge and experience.

Editor In chief – Assistant Professor Mr. Janmejy Singh

Publisher & Founder – Vaibhav Sangam Mishra

Frequency – Quarterly (4 Issue Per year)

ISSN : 2583-6323 (Online)

Copyright © 2023 - 24

PRECEDENTS AS A SOURCE OF LAW IN THE INDIAN LEGAL SYSTEM

AUTHOR'S NAME - Nidhi Mishra, LL.B, Second Year.

INSTITUTION NAME - Gopaldas Jhamatmal Advani Law College, Mumbai, Maharashtra.

ABSTRACT:

“Precedent” literally means something that precedes or comes before. In every legal system, the courts rely on precedents. i.e. the previously established principles, laws, or decisions that form a backdrop for present and future judgments in case of similar facts and circumstances to guide them to decide and provide fair justice. The precedent is generally the decision led by the Higher Court. i.e. Supreme Court and it is binding on the lower courts to follow while deciding on a particular case. Hence judicial precedents are considered as guiding paths for the judges to decide for present and future cases.¹ On the other way, it helps to save time, and labor for judges, and also helps to establish reliability, monotony, and stability in the application of the law.²

Definition of Precedents:

According to “Salmond” Precedent is the making of law by the recognition and application of new rules by the Courts themselves in the administration of Justice.³

In the words of “Keeton,” a judicial precedent is judicial to which authority has in some measure been attached.⁴ So it can be deduced from the above definitions, that a decision is considered as precedent when it decides and settles a question of law. Whereas if the decision

ABHIDHVAJ LAW JOURNAL

¹ Abhilash Jha , *What are Precedents and Precedents as a Source of Law*, (Law Bhoomi , 3rd July 2021), July. 22, 2023, 9:32 AM <[What are Precedents and Precedents as a Source of Law \(lawbhoomi.com\)](http://www.lawbhoomi.com)> July. 22, 2023, 9:32 AM

² Ayushmaan Chouskey, *PRECEDENT AS SOURCE OF LAW AND ITS IMPORTANCE* ,(The Law Gurukul, 1st june 2022), July. 22, 2023, 9:32 AM, < [PRECEDENT AS SOURCE OF LAW AND ITS IMPORTANCE \(thelawgurukul.com\)](http://www.thelawgurukul.com)

³ Justice Nagendra kumar Jain , *Law of Precedents*, (Hon'ble Justice Nagendra Kumar Jain Former Chairperson, Rajasthan State Human Rights Commission Former Chief Justice of Karnataka and Madras High Court), July. 22, 2023, 9:32 AM ,< https://justicenagendrakjain.com/Law_of_Precedents3.php

⁴ Abhilash Jha , *What are Precedents and Precedents as a Source of Law*,(Law Bhoomi , 3rd July 2021), July. 22, 2023, 9:32 AM ,<[What are Precedents and Precedents as a Source of Law \(lawbhoomi.com\)](http://www.lawbhoomi.com)

does not fulfill the criteria of deciding on the question of law and settles it, then it cannot be termed as a precedent that will have a binding effect on the present and future cases.⁵

Difference between Legislation and Precedents:

Firstly, Legislation is the making of a new law at the same time has the power to abrogate laws that are of no importance whereas precedent is binding and its operation is irreversible in nature. Secondly, the legislation promotes the division of labor i.e. legislature must only make the laws and implementation is in the hands of the executive whereas, in the case of Judicial Precedents, it carries the whole responsibility of the judiciary to apply the principles to the facts of the current case and decide upon the same.⁶ Thirdly, the laws made by the legislation are formally passed before they apply to the whole of India, whereas the precedent is created and declared in the Act but it is applicable retrospectively. Hence Salmond describes 'Case law is gold in the mine a few grains of the precious metal got the ton of useless matter while statute law is coin of the realm ready for immediate use'.⁷

The doctrine of Stare Decisis:

Stare Decisis in its literal sense means to follow the decided things. i.e. when there is any legal argument in a particular case, then the judge must look into the previously settled law or the related issue and decide in light of the previously settled decisions.⁸

The two requirements to fulfill the condition of Stare decisis are

- 1) It should follow a judicial hierarchy
- 2) There should be some reliable reports to support the contentions.⁹

Judges generally follow this doctrine to maintain stability and avoid conflicts. In the legal aspects, it is followed that the judges believe that the case should not get into conflict with the settled law. The doctrine that holds binding precedence has value but is not valid in civil laws

⁵ Sparsh Agrawal, Vaishali N, Doctrine of precedent, ipleaders, Sep. 01, 2023, 9:29 PM, <https://blog.ipleaders.in/scope-and-application-of-the-doctrine-of-precedents-under-article-141-of-the-constitution/>

⁶ Subodh Asthana, ipleaders, Sep. 01, 2023, 9:29 PM, <https://blog.ipleaders.in/legislation-source-law/>

⁷ Justice Nagendra kumar Jain, *Stare decisis* note 03, at 829.

⁸ stare decisis, (Cornell law school), Sep. 01, 2023, 9:29 PM, https://www.law.cornell.edu/wex/stare_decisis#:~:text=Stare%20decisis%20means%20%E2%80%9Cto%20stand,with%20the%20previous%20court's%20decision.

⁹ Inder Jain, Stare Decisis:, legalserviceindia, Sep. 01, 2023, 9:29 PM, <https://www.legalserviceindia.com/legal/article-12172-stare-decisis-the-pillar-of-legal-consistency-and-precedent.html#:~:text=%22Stare%20decisis%20is%20a%20legal,precedents%20set%20by%20previous%20decisions.%22>

as it abridges the right of judges to interpret independently whereas the legislation to make laws on it and this is because the majority system follows the theory of jurisprudence, which expresses that, judges being in an independent position, they should analyze in a manner that it is easy for the society to form a chain and understand the settled law which is predictable and non-chaotic to maintain peace and stability in the society.

Kinds of Precedents:

Judicial precedents have high importance in the eyes of the law. Judicial precedents are four types namely-

- 1) Authoritative precedent.
- 2) Persuasive precedent.
- 3) Original precedent.
- 4) Declaratory precedent.

Authoritative Precedent:

Authoritative precedent is considered a source of law and is binding in nature. The decision of the Supreme Court is considered to be binding on the lower courts whether they approve it or not. According to the Indian Constitution, Article 141 expresses that all the laws made by the Apex Court are to be followed by all courts within the territory of India.¹⁰

Types of Authoritative Precedents-

- 1) Absolute Precedent
- 2) Conditional Precedent

Absolute Precedent:

It is a type of precedent in Authoritative precedent that a court cannot ignore while deciding on a case. i.e. the judges must look and interpret according to whether they accept it or not in their capacity.

Conditional Precedent:

¹⁰ INDIA CONST. art. 141.

It is a type of precedent in Authoritative precedent that is also binding on the courts but is not compulsory to be followed. It's the discretion of the judge whether to apply or not to take account of it in the case.¹¹

Persuasive Precedent:

A precedent that is not generally preferred as a legal force in itself. It acts as a guiding agent in deciding upon a case for a reference purpose. These are generally historical textbooks.¹²

Original Precedent:

An original Precedent is a precedent that is created or established because there are no previous laws on the same for reference. The Judges come to an analogy when they have to establish an original precedent. Because this original precedent will be a guiding factor for a present and future case.¹³¹⁴

Declaratory Precedent:

This is a type of precedent used to declare the past precedent or apply the previous rules or the judicial decision decided by the courts.

Binding Nature of Precedents:

Article 141 of the Indian Constitution states that “Law declared by Supreme Court to be binding on all courts. The laws decided by the Apex Court shall apply to all the courts in India to follow while deciding on any present or future cases.¹⁵

The article further states that laws declared by the Supreme Court must be followed by all the courts in India. The term “Law declared” means the procedure of law-making by the courts in India. And the assertion “binding on all courts” refers to the hierarchy of courts i.e. the lower

¹¹ Vaishali Makne , *Kinds of Precedents* (LAW COLUMN , 16TH MARCH 2021), Sep. 01, 2023, 9:29 PM, <<https://www.lawcolumn.in/kinds-of-precedents/>

¹²

wikipedia, [https://en.wikipedia.org/wiki/Precedent#:~:text=Persuasive%20precedent%20includes%20cases%20decided,United%20States\)%2C%20statements%20made%20in](https://en.wikipedia.org/wiki/Precedent#:~:text=Persuasive%20precedent%20includes%20cases%20decided,United%20States)%2C%20statements%20made%20in), (last visited July. 22, 2023).

¹³ Id, at 831.

¹⁴ Vaishnavi Makne, *Kinds of Precedents*, lawcolumn, Sep. 01, 2023, 9:29 PM, https://www.lawcolumn.in/kinds-of-precedents/#google_vignette,

¹⁵ Abhilash Jha , *What are Precedents and Precedents as a Source of Law*,(*Law Bhoomi* , 3rd July 2021), Sep. 01, 2023, 9:29 PM, <[What are Precedents and Precedents as a Source of Law \(lawbhoomi.com\)](https://www.lawbhoomi.com/what-are-precedents-and-precedents-as-a-source-of-law/)>

courts present in different states and districts of India are bound to follow the decision made by the Apex Court. High courts are bound by the law they cannot ignore the pertinent rules passed by the Supreme Court. There was a question raised whether the Supreme Court is also under the obligation to follow its judgment under the expression of “all the courts” under Article 141 of the constitution and it was settled under the case of “**Bengal Immunity Co Ltd vs. the State of Bihar**”¹⁶ and in this case, it was decided that the expression “all the courts” is a broad expression to cover Supreme Court of India, it does not. Hence Supreme Court is not under the obligation to follow its judgment decided in the past and the court has the authority to revisit its judgment’s erroneous part and make the requisite corrections.¹⁷ Another example of the same is “**Kesavnanda Bharati vs. The State of Kerala**”¹⁸ It supports as a prominent example that the Supreme Court is not obliged to follow its ruling.

Ratio Decidendi & Obiter Dicta:

Ratio decidendi meaning in Latin “rationale for the decision.”¹⁹ It means referring to factual points and analyzing the chain of reasoning for making a decision. The Supreme Court’s decision in the case of **Dalbir Singh V. State of Punjab (AIR 1979 SC 1384)** held that every decision has three important points to consider before making it a binding decision.²⁰

- 1) The findings of material facts are direct and inferential;
- 2) The principles of law applicable to the legal problems disclosed by the facts, and
- 3) The judgment is based on the combined effect of 1 and 2.²¹

In the decided judgment, the Ratio is binding on the court. Ratio means pointing out the principles after analyzing the judgment in light of the question asked before the court.

The literal meaning of “Obiter Dicta” is which is sent in passing”. In precedent, it is generally a judicial opinion that has value while making present or future cases. It has been held in a case

¹⁶ **Bengal Immunity Co Ltd vs. the State of Bihar**

¹⁷ Ayushmaan Chouskey, *PRECEDENT AS SOURCE OF LAW AND ITS IMPORTANCE*, (The Law Gurukul, 1st June 2022), Sep. 01, 2023, 9:29 PM, < [PRECEDENT AS SOURCE OF LAW AND ITS IMPORTANCE \(thelawgurukul.com\)](https://www.thelawgurukul.com)

¹⁸ **Kesavnanda Bharati vs. The State of Kerala**

¹⁹ Ratio decidendi ((*Cornell law school*), Sep. 01, 2023, 9:29 PM, https://www.law.cornell.edu/wex/ratio_decidendi#:~:text=Ratio%20decidendi%20is%20Latin%20for,that%20drives%20the%20final%20judgment. >

²⁰ **Dalbir Singh V. State of Punjab (AIR 1979 SC 1384)**

²¹ *Britannica*, < <https://www.britannica.com/topic/obiter-dictum> > (last visited July. 22, 2023).

reported in *Narbada Prasad Vs. Awadesh Narain* (AIR 1973 MP 179)²² states that all the courts are bound to follow the precedents whereas in the situation of the clash between the judgment of two divisions benches then in this scenario always the importance is given to the larger division bench²³. But if there is a conflict between a ratio decidendi of one bench and obiter dicta of another then ratio decidendi will be followed by the lower courts.

CONCLUSION:

The precedent acts as the foundation for legal decisions by the court. It helps to maintain stability, uniformity, and certainty. Precedents save the time of the court and help to deliver errorless judgments. If the courts don't abide by the precedents and the judges deliver the judgment without having recourse to the precedent and the rulings of the past it will create instability and would be unpredictable to rely on any judgment. This is because there is a need to have recourse to the precedent to maintain the predictability and reliability of the judgment delivered in a time-bound manner for the speedy disposal of the piled-up cases in India.

²² *Narbada Prasad Vs. Awadesh Narain* (AIR 1973 MP 179)

²³ Ayushmaan Chouskey, *PRECEDENT AS SOURCE OF LAW AND ITS IMPORTANCE*, (*The Law Gurukul*, 1st june 2022), July. 22, 2023, 9:32 AM, < [PRECEDENT AS SOURCE OF LAW AND ITS IMPORTANCE \(thelawgurukul.com\)](https://www.thelawgurukul.com)>