RETHINKING THE IMPLEMENTATION OF PERSUASIVE VALUE OVER MANDATORY APPLICATION OF JUDICIAL PRECEDENT IN THE HIERARCHY OF INDIAN COURTS

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ABSTRACT

This paper essentially examines the tension between binding force and persuasive value of judicial decisions within the Indian hierarchy of courts. It argues for the adaptability in the doctrine with preserving the legal certainty. It begins with defining the meaning of "Law of Precedent" along with it goes further in differentiating between Ratio Decidendi, which is the binding part, and Obiter Dicta. This paper also observes how these two key terms reflect different nature i.e. binding and persuasive, whenever the hierarchy changes. Building on doctrinal sources and comparative scholarships, the study maps the strictness of the "Law of Precedent" and the extent of its costs, practically and morally to the common people. It also delves into the criticism of how this law is undermining the rationale of the meaning of "to judge", in lower or subordinate courts. The paper contends that excessive reliance on the outdated judgements could hinder the possible development, and illustrates this through landmark Indian cases (e.g., Kesavananda Bharati, Navtej Singh Johar) and scholarly critiques. To reconcile these risks, it proposes a principled middle path of empowering the lower courts to apply its judicial minds, clarity on overruling, equal persuasive weights to "Obiter Dicta" like other legal sources. The study synthesizes jurisprudential theory, case law, and literature to argue that a calibrated embrace of persuasive authority would make precedent more responsive without sacrificing the rule-of-law values of predictability and uniformity. In sum, this paper urges doctrinal reforms and judicial practice changes to balance stability with necessary legal evolution in "Law of Precedent".

Key Words: *- Law of Precedent, Ratio Decidendi, Obiter Dicta, Judicial Hierarchy, Legal Certainty*

Introduction

A Precedent is a previously decided court case which is employed as an example or rule for cases in future with similar legal issues, promoting consistency and predictability in the judicial system. Precedent in broader sense a teacher who guides the students about certain topics that students must follow. In strict sense, the students are bound by the lessons of the teacher. Precedents comprise of "Ratio" and the opinion of the judge(s), where "Ratio" of the judgment alone is the binding precedent.[1] The precedents should be read with the respective facts and situation and in the context of those statutes. The precedent is something which follow a certain hierarchy, especially in Indian judiciary system. The doctrine of precedent mandates the subordinate or lower courts to follow the reasoning of the judgement and apply in the similar cases that they tackle. They don't have freedom to apply their own reasoning if the higher courts have already decided the matter of similar circumstances. That is to say that a smaller and a later bench has no freedom other than to apply the law laid down by the earlier and larger Bench, this is the law which is said to hold the field. A departure may only be made when a coordinate or co-equal Bench finds the previous decision to be of doubtful logic or efficacy and consequentially, its judicial conscience is to perturbed and aroused that it finds it is impossible to follow the existing ratio.[2] The term "ratio decidendi" means reasons for the decision. Broadly speaking, every ruling by higher courts consists three parts: (i) the background facts and the legal questions which are being addressed, (ii) the reasoning behind the court's decision, and (iii) the final judgment of order of the court.[3] On these basis lower court has to apply the precedent and deliver the judgements. But the law of precedents is not that simple or without criticism. As described above, it is binding on every lower court, the words BINDING puts doubt on the absolute inference of this source of law. where Indian courts used the law of precedents include the Kesavananda Bharati case for defining the "basic structure doctrine," Shayara Bano v. Union of India[4] to strike down triple talaq, Vishakha v. State of Rajasthan[5] for establishing guidelines against workplace sexual harassment, and the Bilkis Bano case[6] which involved setting precedent regarding the invalidation of remission orders. These cases form a foundation for all

[1]State of Rajasthan vs. Ganeshi Lal, AIR 2008 SC 690
[2] State of UP Vs. Ajay Kumar Sharma, 2016 (92) ACC 985 (SC).
[3] Sanjay Singh vs. U.P. Public Service Commission, Allahabad, (2007) 3 SCC 720
[4](2017) 9 SCC 1
[5](1997) 6 SCC 241
[6](2024) 1 S.C.R. 743

those cases which deals in the same legal arena. The nation has been applying and respecting these legal foundation for several years. But cases like Navtej Singh Johar & Ors. V. Union of India[7], finds the gaps in motivation to go hand in hand with the dynamic society, which overturned Suresh Kumar Koushal v. Naz Foundation[8] by the Supreme Court of India. There is various criticism by various authors like Gary Lawson**.** The focus are on various prospects such as the independency of the lower or trial court to determine any judgement with their own prudent reasoning, the consistent overriding of its own judgements by the apex court, sometimes precedent overrides the very nature of the statute as implemented by legislature. And many more like these which are in the controversy with another controversy.

Statement of the Problem

The problem arises when we need to check the weighing scale where at one side, we'll have the binding authority of precedent and on the other side flexibility offered by persuasive values. Till now, Indian courts are more inclined, or we can say completely stick to the binding nature of "Law of Precedent" but the excessive reliance on precedent can eternize the outdated legal doctrines, where it needs change. While on the other side over emphasis on the persuasive value also undermine this serene law, but before over emphasising we should at least consider the persuasive value then only the problem to over emphasise will show up. WE, THE PEOPLE OF INDIA, are not stagnant like this law. We are living in one of the dynamic Nation of the world, where we often navigate complex socio-legal challenges. So, from this zestful point of view, the balance between binding precedent and persuasive value both become important.

This assignment seeks to address and revolves around the issue of "To what extend persuasive value can legitimately be considered with the law of precedent to make it more dynamic to deal with the complex socio-economic problem. Or other ways to enhance the applicability of "Law of Precedent".

[7] 2018 INSC 790
[8] CIVIL APPEAL NO.10979 OF 2013

Research Questions

1. Through this assignment, we will delve into the true nature and meaning of "Precedent as a Law". How it usually looks like in textbooks and how it differs from textbook interpretation when it comes to the legal application?
2. Further we will also try to find the sole application of "Ratio Decidendi" in law of precedent and how "Obiter Dictum" can empower or forbid the fluidity of judgement applicable in hierarchy of the Indian court?
3. In furtherance we will also investigate the complexion and consequences of "overriding" its own judgement by different Constitutional courts in India and also the critical part, where there arises a conflict between the same benches.
4. Enduring to the above areas, we will dig into the **Mandatory** nature of Precedent, and whether the **Obligatory** nature of observing precedent can have finer effect on delivering judgement?
5. Lasting to these, we will question the authority of the lower courts or trial courts in India, if there are any, in terms of the diversion from the law of Precedent?

Significance of the Study

This study is significant as it is antithetical to the universal law of precedent. This study is finding another way to better understand and interpret the law as its precedent and applying to the lower courts. This can give overall moral boost to the lower courts also which can ultimately balance the binding authority of precedent and the flexibility of persuasive values. While precedent ensures consistency, the persuasive value in some essence will remove the rigidity from its very nature. This will open a prudent legal gate for foreign judgments, academic commentary and obiter dicta to invoke persuasive sources effectively. This will also set the seal for authoritative nature of Law of Precedent yet responsive.

Hypothesis

The study hypothesizes that Precedent as a completely authoritative source of law is prudent but if the precedent is applied as a persuasive norm, it will lead to better and flexible justice delivery system.

Objective of the Research

The study aims to analyse the "Precedent as Law" in present day scenario. This focuses on the adaptability of the persuasive value as an obligatory source of law not mandatory or strict. It unfolds the scope for better judicial interpretation while remaining respectful yet practical.

Research Methodology

The present study primarily adopts a critical and evaluative methodology, where it examines the applicability of Persuasive value in law of precedent rather than the strict or mandatory culture. This primary study also adopts the qualitative methodology, where it is drawing upon scholarly writings, law commission reports, and academic critiques to support analysis.

Literature Review

V.D. Mahajan's book, *Jurisprudence And Legal Theory*,[9]has been taken as a primary source to obtain conceptual understanding of the Precedent in Indian legal system.

According to Sebastian Lewis, in his article *Towards a general practice of precedent*[10]describes how lower courts are binding with the higher court's decisions even sometimes they are suboptimal. But he also given the rationale why it is so, if left without improvisation.

Another scholar, M. Burke Craighead, in his journal *TheParadox of Precedent About Precedent*,[11]has shown the connection of how overruling its own judgement discards its credibility to the suggestion that stare decisis should be flexible.

Joseph W. Mead, in his research paper, *STARE DECISIS IN THE INFERIOR COURTS*[12], described the strictness on the inferior courts despite their significant role in decision making. He also focused on the how "Precedent" outside the supreme courts or higher court to be followed.

Andrea Pin, in her research paper, *The (In)evitability of Precedent*[13], pointed out the changing usage of Precedent as a source of law. She discussed that precedents could have a rhetorical value rather than a normative one and how it can be selective and manipulative in veneer sense.

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[9]V.D. Mahajan, *Jurisprudence and Legal Theory*, 5th ed, (Eastern Book Company, Lucknow, 2019).
[10] Sebastian Lewis, *"Towards a General Practice of Precedent"* 14(2) Jurisprudence (2023)
[11] M Burke Craighead, *"The Paradox of Precedent About Precedent"* 138(3)(Harvard Law Review, 2025)
[12] Joseph W. Mead, *Stare Decisis in the Inferior Courts of the United States*, 12 ed, (Nevada Law Journal, 2012)

Another author, William Baude in his Journal article *Precedent and Discretion*[14], observes how judges use their discretion on respecting the precedent which ultimately neither adhere to precedent nor respecting it, and becomes a tool to expand discretion.

Key words- Precedent in Indian Law, Ratio Decidendi, Obiter Dicta, Judicial Overruling, Persuasive Authority, Indian Constitutional Law, Stare Decisis, Supreme Court of India Comparative Jurisprudence, Judicial Innovation.

True essence and interpretation of "Precedent as a source of law"

Precedent means any official action that has happened in past and is considered as an example or rule to follow later if the same situation arises. In broader sense, the essential meaning is "to follow", sometime as an example and also as law when it comes to legal dimension, in particular. We are not devoid of its meaning or its concept;it's just acquiring a special meaning when we are working in the field of law. Any sagacious student, who actively read his school textbooks would have come across the glimpse of this concept. Let me take an example of 9th standard mathematics textbook where everyone came to know about axioms and postulates, which is defined as "fundamental truths accepted without proof, serving as the starting point for mathematical reasoning"[15]. These concepts also serve as a similar meaning to precedent. Another very well verse example is that of Newton's law[16]. That we all know serves as the base and foundation of science for a school going student, no one is deprived of these natural laws has laid down by foremost scientist. However, these are scientific laws, which could be accurately laid down most of the time by the proof and confidence of various experiments but when it comes to society it differs significantly. Still there are splendid examples, where the great scientists nevertheless left the vacant spaces for further perfection in their almost perfect experimental models. You might have knew about Dalton's Model of atom in 1803, but there were some scientists who further worked on it and found the lacuna in his theory. Thomson's "Plum Pudding" Model (1898) and then again after some time Rutherford's Model in 1911. Which

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[13] Andrea Pin, *"The (In)evitability of Precedent," in* Essays on Judicial Precedent (Department of Public, International and Community Law, University of Padua, Version of Record 6 September 2024)

[14]William Baude, "*Precedent and Discretion*", in Public Law and Legal Theory Working Paper (University of Chicago Law School 2020).

[15] National Council of Educational Research and Training, *Mathematics: Textbook for Class IX (*1st edn, NCERT 2006).

[16]National Council of Educational Research and Training, *Science: Textbook for Class IX (*1st edn, NCERT 2006).

became the precedent for all the other scientists. They proved that one theorised or granted model can't hinder the dynamics of invention and the need of the society. They hadn't completely rejected the previous models but took it as their learning part in their own experiment and resonance their owns.[17]

From the above brief discussion, it is clear that we all know the basic essence of the word "Precedent". Now let's explore and examine the interpretation of the word "Precedent" as a source of law. According to Sir John William Salmond, "A precedent is a judicial decision which contains in itself a principle. The underlying principle which thus forms its authoritative element is often termed the ratio decidendi. It is this element of a case which is binding as a precedent."[18] 'Precedent' is the making of law by the recognition and application of new rules by the Courts themselves in the administration of Justice.

To ascertain the precedent, we need to know that ratio of the judgement is binding in nature. And the ratio must be in reference to the whole reading of the judgement. It is never appreciated to pick up the lines and observe those as precedent. The court carefully ascertains the true principle laid down in the decision and not to be divorced from the essential part. Precedent mandates that an exposition of law by the lower courts and not applying their reasoning and not to disturb the settle law, popularly known as "Stare-decisis" in legal area. Apart from article 141, none is permissible to intervene in other legal reasoning, even the apex court or high court. The term ration decidendi means the reason behind the judgement, which is only going to be applicable for the later judgements. Another important principle which is denoted above is of Stare-decisis, in maxims "*stare decisis at non quieta movere*". It is regarded as the safe policy which stabilises the whole legal system and provide certainty and prevent frivolous question on the bare reasoning. There is a provision of overruling, but it doesn't depend upon the mere opinion or inclusion of words "may/should" in different judgements, but only if the court comes to the conclusion that precedent is manifestly wrong[19]. But still the tyranny nature of this law arises question, as to what extend the rationale of the above decision be applied. Although this remains

[17]National Council of Educational Research and Training, *Chemistry: Textbook for Class XI, Part I* (NCERT, 2006).
[18]Sir John William Salmond, *Salmond on Jurisprudence,* 12th Edition, P. J. Fitzgerald (ed.) (Sweet & Maxwell, London, 1966) p. 191.
[19]Kanthammani v. Nasreen Ahmed(2017) 4 SCC 297

an unnecessary part to enquire, unless we aspire to bring optimal changes in the application of this source of law i.e. Precedent.[20]

If we leave the aperture of the "Precedent". There are particularly important applications of law of precedent. Stability is of utmost importance for any nation to not only sustain but to develop as well, and same is the importance of a strong and confident judiciary of such nations. Here Precedent brings such stability and consistency in interpretation of law[21]. Supreme Courts of various nations have repeatedly emphasized the deviation from the same should be only on a procedure known to law. "Rule of precedent" is an important aspect of legal certainty in rule of law[22]. It is also very paramount to discuss the difference between discretion and precedent. Discretion can only be applicable when there any declared principle or authority in use.[23]if the facts change scenario of application of precedent changes.

There are mainly two kinds of precedent: first is binding precedent and another is persuasive precedent. The precedent, which is not of its own high court, only have persuasive value, which give the other high courts to apply their own application in persuasion with other court's reasoning. But the same judgement will have the binding effect on the lower courts of its own state, which may suffice the hierarchy. Any disobedience will lead to contempt.[24]other courts must give deference to the other court's decisions.[25]

There are two exceptions to this law of precedent, a) the rule of Sub-silentio and b) being per incuriam. A decision passes sub-silentio, when the court has no point of law involved at that particular point or at those particular circumstances. Incuriam literally means 'carelessness'. When the judgement involves carelessness or ignorance of application of any statute, then it should not be treated as precedent. The Supreme Court has held, in one case that the 'quotable in law' is avoided and ignored if it is rendered 'in ingoratium of a statute or other binding authority'.[26]

[20]Waman Rao vs. Union of India, (1981) 2 SCC 362
[21]Union of India v. Raghubir Singh (1989) 2 SCC 754
[22] Honda Siel Power Products vs. CIT, Delhi, (2007) 12 SCC 596
[23]SundarjasKanyalalBhathija vs. The Collector, Thane, Maharashtra, AIR 1990 SC 261.
[24]Jagdish Narain Vs. Chief Controlling Revenue Authority, AIR 1994 All 371
[25] Neon Laboratories Ltd. Vs. Medical Technologies Ltd., (2016) 2 SCC 672
[26] State of U.P. Vs. Synthesis & Chemicals Ltd., (1994) 4 SCC 139

Another view can be laid down on the understanding and importance of Article 141 of the Indian constitution. It states that the law enunciated by Supreme Court is final and binding in its very sense. Article 141 is the heart and soul of the Constitution, even the advisory released by Supreme Court under this article is also binding in nature.If most of the judges of the Supreme Court express a particular opinion on a point of law, that majority opinion becomes the law declared by the Supreme Court and is binding on all courts.[27] If any conflicts arises in the delivery of the judgement then the court with larger bench will need to decide the same matter. However, a decision of the Supreme Court rendered in a case having "peculiar facts and circumstances" cannot be precedent in subsequent cases.[28] However the "Obiter Dictam" is not seen with the same view or the advisory or opinion of the apex court. Where a decision of the Supreme Court had only given certain directions to dispose of the matter in special circumstances of the case but had not declared any law or principle, such order of the Supreme Court could not be mechanically adopted by the High Court as a general formula.[29] As like opinion of the courts are treated as persuasive in nature, likewise the mandatory imposition of the Precedent should also be rebuff. "Restraint in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law."[30]

The Weight and Fate of Judicial Observation and Obiter Dictam

"An obiter dictum is a statement of law made by a judge in the course of a decision but not necessary to the decision itself. It has persuasive but not binding authority."[31]And in another sense "An obiter dictum is any observation by a court which, though included in the judgment, is not essential to the decision of the case."[32] As the practice of obiter dictum is non-binding in nature because of the several reasons. The main reason is that it is only the observation of the court which varies court to court and cases to cases. The circumstances and facts of the cases may remain same, but the socio dynamic nature of that condition may remain same only rarely. The observations are unnecessary for the decision pronounced by the Court, as per the practice by the today's norm and practice. Another reason that, while delivering the judgements the

[27] M/s New Krishna Bhavan Vs. Commercial Tax Officer (AIR 1961 MYS.3)
[28] P.G.I. of M.E. and Research Vs. Raj Kumar (2001 AIR SCW 77)
[29] Delhi Admn. Vs. Manoharlal (AIR 2002 SC 3088)
[30] State of U.P. vs. Synthetics & Chemicals Ltd., (1991) 4 SCC 139
[31]Sir John William Salmond, *Salmond on Jurisprudence*, 12th ed., P. J. Fitzgerald (ed.) (Sweet & Maxwell, London, 1966) p. 153
[32] T. E. Holland, *The Elements of Jurisprudence*, 13th ed. (Oxford University Press, London, 1924) p. 187.

judge(s) often give opinion regarding the same, which couldn't be the necessary part that can be considered as precedent. But it shouldn't be disregarded at its full length. Judges are considered as the wisest mind of the society. The society respect the judiciary almost in every judgement. We all know the case of NJAC in case of Supreme Court Advocates-on-Record Association & Another v. Union of India[33], where the involvement of legislature has been unfasten and given the Judiciary a free hand to discuss on its matter independently without any interference, can be deducted from the meaning of article 50 of the Indian constitution (about independency of judiciary). Judges are the enlightened and acute human being of this society, so every society around this globe give a much severance to his opinion. According to Salmond, the Dicta of House of Lords or of Judges who were masters of their fields, like Lord Blackburn, may often in practice enjoy greater prestige than the rationes of lesser judges.[34]

It has been held in one of the cases that though not binding as a precedent, the Supreme Court being the highest tribunal, its obiter is worthy of respect and considerable weight.[35] And again reiterated in D.G. Viswanath Vs. Chief Secretary, Government of Mysore that that the Obiter Dicta by Supreme Court is binding on all subordinate Courts.[36] "When the Supreme Court deliberately pronounces upon a question with the intention of settling the law, the pronouncement is binding on all Courts by virtue of Article 141 of the Constitution. It cannot be treated as mere obiter dictum. But that rule does not apply to a decision of a High Court."[37] From here we can eventually infer that there is certain situation where the importance of SC opinions have been considered as binding and giving a more significant effect. So, it is true to say that what the judges state don't vanish all around, just like this we can take a flexible approach on the mandatory part of the precedent which are treated as law.

But the Obiter dicta of Supreme Court is not binding on Supreme Court.[38] While very observation of a superior court is entitled to the highest respect from the inferior Courts in India. Then, why not the decision of inferior courts be treated as of some respect. They, shouldn't be completely act as a mirror guidance to the law of precedent but have soe active participation

[33] 2016 (5) SCC 1
[34] Justice N. K. Jain, "Law of Precedents (With Particular Reference to Article 141 of the Constitution of India)", available at: https://justicenagendrakjain.com/Law_of_Precedents.php
[35] Commissioner of I.T., Hyderabad vs. Nazir Sultan (AIR 1959 SC 814)
[36] AIR 1964 MYS. 132
[37] Narbada Prasad Vs. Awadesh Narain (AIR 1973 MP 179)
[38] Bulbul Mondal vs. National Insurance Co. Ltd., 2010 ACJ 826

from the extremely basic need of the society. Courts are not permitted to explicitly rely on their own past rulings or cite previous cases as a legal foundation for their decisions. Since judicial decisions do not possess binding authority, precedents are not usually recognized as having official legal force. As Merryman and Pérez-Perdomo observe: '[in the civil law] prior judicial decisions are not "law." Therefore, in order to reach decisions justified by law, civil law courts usually rely on undisputed legal sources. [39] Many of the Court's questionable precedents nonetheless go unquestioned. They propose is neither a regime of Adherence to precedent, nor a regime without precedent, but rather A regime in which individual Justices have substantial discretion Whether to adhere to precedent or not. This turns precedent from a Tool to constrain discretion into a tool to expand discretion, and ultimately into a tool to evade more fundamental legal principles.[40]

The final expression would be that as obiter dicta has been given importance by the judiciary despite of its non-binding nature, various Supreme Court judgements have laid down the guidelines for the binding effect of the same. Likewise, we can have the flexible nature of this law (Precedent) and could have significant impact on the society for its betterment, as we have seen the impact of obiter dicta.

Judicial Self-contradiction: Overriding its own Judgement & Contrary Decisions

Overruling a decision come into effect in subsequent litigation where the precedent is itself under a question. The court would have to decide the judgement on the basis of subsequent judgement which overruled the previous one. The earlier application will be declared as null and void will not be effective after overruling. The Supreme Court and High Courts can overrule its own judgement only in exception cases and by the sitting of larger benches. And it must be guided by the observation of the higher courts and inferior courts. There already exists some of the conflicting precedents. "The Bench being of superior strength, we can, if we so find, declare that the earlier decision does not represent the law"[41]. Once the law has been so declared by the Supreme Court, it is no longer possible to hand on to views expressed earlier by High Court

[39] Sebastian Lewis, "*Precedent and the Rule of Law"* 41(4) Oxford Journal of Legal Studies (2021) 873.
[40] William Baude, "*Precedent and Discretion*", in Public Law and Legal Theory Working Paper (University of Chicago Law School 2020).
[41]Bharat Sanchar Nigam Ltd. vs. Union of India, (2006) 3 SCC 1

running contrary to the said law, on the simple ground that these views were not analysed, touched upon, referred to and overruled specifically by the Supreme Court, while declaring the law. This is of no consequence at all.[42] But still there is some room to get flexible on this ground.[43] There may have been isolated cases of hardship but there must be some reservation about limitation on the court's power in the public interest. Obvious considerations of public policy make it a foremost importance that the person aggrieved must take action requisite effectively to assert his right to that end. High Courts or smaller benches of Supreme Court cannot ignore or by-pass the ratio of larger benches of Supreme Court including the Constitution benches.[44]

And while it comes to contrary view of the court or questions the precedent, a simple rule of larger bench should be followed. In cases where a High Court finds conflict between the views of the larger and smaller Supreme Court Benches, it may not disregard the views of the larger Bench. The proper course for the High Court would be to try to find out and follow the opinion of the larger Benches in preference to the opinion of the smaller Benches.[45]If there is a conflict between two Supreme court benches of same strength, then the later will prevail. Decision of a larger Bench has to be preferred thought it was earlier. When two directly conflicting Supreme Court Judgments of equal authority exist, the High Court must follow the judgment appearing to lay down the law more elaborately and accurately. Whether one of the judgments is earlier or later in time or whether the later judgment failed to consider the earlier judgment is hardly relevant, and, in any case, not conclusive.[46] The Supreme Court has inherent jurisdiction to reconsider and revise its earlier decisions. The Court will surely be slow to do so unless such a previous decision appears to be obviously erroneous.[47]

From the above discussion in the paragraph, we can aggregate the reasoning and information that why and how court can overrule. It is very exceptional to override its own judgements but there are always exceptions to exceptions also, as we have seen the above-mentioned cases. The overriding its judgement can have a detrimental effect on the moral of the trail or subordinate

[42] M.L. Krishnamurthy vs. District Revenue Officer, Vellore, AIR 1990 Madras 87 (F.B.)
[43] G.C. Gupta vs. N.K. Pandey, AIR 1988 SC 654.
[44] N. Meera Rani vs. Govt. of Tamil Nadu, AIR 1989 SC 2027
[45] Rudrayya Vs. Gangawwa (AIR 1976 Kar. 153)
[46]Mattu Lal Vs. Radha Lal (AIR 1974 SC 1596)
[47] The Keshav Mills Co. Ltd. Vs. The Commissioner of I.T. (AIR 1965 SC 1636)

courts or can also do injustice to many communities or societies. Overriding the judgement sets that the previous precedent was not adequate. And from this point of view, if any person had gone under trail or got punished; under previous precedent; will give a pessimistic effect on the society. The same society treats the same facts, circumstances, and offences in two separate ways, the difference is only that on has committed offence or act much before the others.

Another bias can move around the prevailing nature of the latter judgement. There is no reason given why the later part of the judgement will be considered if same strength of benches are in conflict.

While courts always have a legal (non-obligatory) reason for following precedent, morality may recommend the reverse – departing from precedent. This practice, which can be grounded in the Rule of Law, needs to make it the case that courts always have a legal reason for following relevant precedent – even if the precedent is morally suboptimal, so long as it is not evil. Without this reason, a precedent may be treated as having no legal influence for the later court ('the Null Model'), and this runs counter to the Rule of Law. On top of this reason, courts may have a general legal obligation to follow precedent – stare decisis – but these risks entrenching morally bad decisions in the law. The costs of a potential mismatch with morality are higher in stare decisis than in precedent-following. This is why we have argued for a general practice of precedent whereby this potential cost might be reduced by not following precedent – a non-obligatory reason that must be nevertheless put in the balance.[48] In other words, precedents can have a rhetorical value rather than a normative one.

Precedents can be weaponized to dilute a judicial novelty, give the readership the impression that a preordained judicial policy is the obvious and unescapable ramification of earlier decisions that bind the court, or that it reflects broader judicial trends. In other words, precedents can provide partisan adjudication with a veneer of neutrality and authoritativeness.

Such a use of precedent is inevitably selective and often manipulative. It is distant from an authentic usage of precedent. But it is nevertheless well documented in the controversial increase in judicial citations of foreign precedents across the globe in the late 20th century: a practice that has often consisted of taking out of context and misusing precedents decided in

[48]Sebastian Lewis, *"Towards a General Practice of Precedent"* 14(2) Jurisprudence (2023) 202–220.

different legal orders.[49]

The paradox of precedent about precedent is this: When the Court overrules a precedent about precedent, it cannot employ that precedent about precedent to evaluate the original precedent itself. As a result, precedent about precedent entitles all other cases to a certain amount of stare decisis weight before they are overruled, but the same stare decisis weight does not attach to the precedent about precedent when it faces its own repudiation. Unlike all other cases, precedent about precedent does not operate under the very rules the precedent establishes. If the Supreme Court were to adopt that approach and then later decide that such an approach was misguided, surely it could overrule its absolutist position, just as the House of Lords did, even though the absolutist approach to stare decisis would suggest that it could never itself be overruled. The Problem of Individual Approaches to Precedent About Precedent. The paradox also affects individual Justices' approaches to precedent about precedent. Yet this phenomenon too goes unrealized in the Court's current writings on precedent.[50]

There need to be some purview or solutions to these problems, where every judgement by a prudent judge should be considered as a valid application of juristic mind. If there would be an authority to the lower court to not only act as an analyser of law of precedent, but also have freedom to apply its own mind and statute in a more appropriate variation. This can shrink the case especially based on varied circumstances and social condition which are treated by the same law. At least, the justice system will not regret for the trails or judgement based on preceding judgements.

Recognising the Persuasive Value of Subordinate Court Decisions

There are two level of constitutional courts in India, Supreme Court, and High Courts. Each one makes law through precedent and it becomes binding on the lower or subordinate courts. Which is very accurate and stable practice by the judiciary system if the nation but it needs to expand its purview of ruling from a strict *mandatory approach* to a slight way towards *persuasive approach*. As persuasive value, leaves not only any legal working body but also any individual

[49] Andrea Pin, *"The (In)evitability of Precedent," in* Essays on Judicial Precedent (Department of PublicInternational and Community Law, University of Padua, Version of Record 6 September 2024)
[50] M Burke Craighead, *"The Paradox of Precedent About Precedent"* 138(3)(Harvard Law Review, 2025) p. 797.

to work with her/his independent mind, and, brings what can be best for society through law.Justice H.R. Khanna, in his eminent dissent in the case of *ADM Jabalpur v. Shivkant Shukla*[51], demonstrated that an independent mind must every so often prioritize the "spirit ofthe law" and "natural justice" over the prevailing political or legal pressures. If the law of precedent takes a shift to persuasive value then it will open the gate for the lower court and subordinate courts too, to practice at their best with the implementation of law by free will. Although it is not barely incorrect to say that mandatory implication has a disgraceful impact but opening the scope could corroborate the speedy trial motive.

Many cases have supported the persuasive value and implication of the lower courts. In one of the cases it was stated that, the judgments of coordinate and even subordinate courts can be considered persuasive where they contain sound reasoning.[52] While primarily on Article 141, the Court noted the importance of uniformity and consistency, hinting that even lower courts contribute to the development of law by maintaining consistency until overruled.[53]So, there should be some authority in the hands of lower courts to interpret statute and get the confidence of Rule of law. The judiciary shouldn't be so much reluctant towards the "law interpretation by the lower courts." This can solve problems like compiling of cases, examining, and finding of complex or conflicting precedents and can have some confidence if the higher courts also respect the persuasive interpretation of the lower courts.

Conclusion

The discussion above clearly demonstrates that the meaning of Precedent is not a new one for us, we all have experienced it in some way. The written rules, the verbatims, colossal of laws to which no one thought to change, but remarkably changed after applying the independent mind; not by strictly sticking to the same rule. But in the legal field the interpretation of precedent is a little bit different, nevertheless not much. The "Law of Precedent" is binding in nature, provides consistency and stability with some of the exceptions as highlighted in the paper, it advocates for a slight shift towards persuasive value and towards giving some independency to the lower courts. The independency to the judges of the lower court will serve the sole purpose of "to

[51](1976) 2 SCC 521
[52]Somawanti v. State of Punjab (1963) 2 SCR 774 : AIR 1963 SC 151
[53] Union of India v. Raghubir Singh (1989) 2 SCC 754

judge".The lacuna or the tenuous part of the law of precedent like overriding its own judgement or conflict between the benches of same strength, loudly voice for the acceptance of the persuasive value. The persuasive application won't make the legal process very exhausting for the common people. Many landmark judgements have shown the importance of "giving liberty to every judge to use their judicious mind according to assorted facts and circumstances". The justice to the common people could be served even before another landmark judgement be given in favour of him. Recent trend of giving importance to "Obiter Dictum" boldens the argument for opening the gate to include persuasive value and ultimately the participation of the lower court in judicial application of law. Where every level of court will have a due respect to every judgement. This calibrated approach protects reliance interests, promotes transparency, and ensures equitable, predictable, and adaptable jurisprudence for evolving societal needs effectively.

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