

***PROJECT***  
***LEGAL THEORY II***  
***TOPIC***  
***MEANING OF STARE DECISIS***  
***AND ITS***  
***EVOLUTION IN INDIAN LEGAL SYSTEM***

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## INTRODUCTION

●Judicial methods are the techniques adopted by the judges in deciding cases. Judicial method plays an important role in the development of law, irrespective of the fact whether a community lives in rural simplicity or modern complexity, or whether it follows case laws to decide cases or codified laws.<sup>1</sup>

●It gives away no secret to observe that lawyers have their own unique discipline and approach to the resolution of legal problems. Not surprisingly, there are laws about determining the law. One of the most important of these laws is the law of precedent or stare decisis

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<sup>1</sup> Introduction from

<http://www.legalindia.in/a-critical-analysis-of-the-doctrine-of-legal-precedents>

## A) • MEANING AND DEFINITION OF STARE DECISIS<sup>2</sup>

“Stare decisis” is an abbreviation of the Latin phrase “**stare decisis et non quieta movere**” which translates as “to stand by decisions that are already settled and not to disturb those settled matters”. And “Stare decisis” literally means “**to stand by decided matters**”.

Stare decisis is a policy adopted by the court to stand by a precedent. The word “decisis” means ‘the decision’. Under the doctrine of stare decisis, the decision of the court for a case is only what is important and not the real facts and proceedings of the case. In other words it is the ‘what’ of a case which is important and not the ‘how’ and ‘why’.

### • THE PRINCIPLE OF ‘STARE DECISIS CAN BE DIVIDED INTO TWO COMPONENTS OR PRINCIPLES:

1) The first is the rule that a decision made by a higher court is binding precedent which a lower court cannot overturn.

2) The second is the principle that a court should not overturn its own precedents unless there is a strong reason to do so and should be guided by principles from lateral and lower courts. The second principle is an advisory one which courts can and does occasionally ignore.

Basically, under the doctrine of stare decisis, the decision of a higher court within the same provincial jurisdiction acts as binding authority on a lower court within that same jurisdiction. The decision of a court of another jurisdiction only acts as persuasive authority. The degree of persuasiveness is dependent upon various factors, including, first, the nature of the other jurisdiction. Second, the degree of persuasiveness is dependent upon the level of court which decided the precedent case in the other jurisdiction. Other factors include the date of the

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<sup>2</sup><http://legalresearch.org/writing-analysis/stare-decisis-techniques/>  
legal theory II project

precedent case, on the assumption that the more recent the case, the more reliable it will be as authority for a given proposition, although this is not necessarily so. And on some occasions, the judge's reputation may affect the degree of persuasiveness of the authority.

For stare decisis to be effective, each jurisdiction must have one highest court to declare what the law is in a precedent-setting case. In India, The Supreme Court of India is the supreme authority in legal matters as it is the highest judicial body and the cases decided by it form the precedent for all the other courts in India; it includes the High Courts, district courts and the other lower courts. The Supreme Courts serves as the precedential body, resolving conflicting interpretations of law. Whatever this court decides becomes judicial precedent.

- Historically, the doctrine of precedent began by asserting the doctrine of “stare decisis”. **This means ‘to stand by precedent and not to disturb the settled point of law’.** In other words, judicial decisions have a binding force, and enjoy status of law per se.

### **B)DEFINITIONS OF VARIOUS JURIST AND PROFESSORS:**<sup>3</sup>

- **As Blackstone observe,:** ‘It is an established rule to abide by former precedents, where the same point comes again in litigation as well as to keep the scale of justice even and steady and not liable to waiver with every new judge’s opinion. Therefore ,it is considered proper to stand by the earlier decisions in the interest of stability of the legal system.

- **Julius Stone, :**     Has identified the rationale of the doctrine as resting on maximizing fairness and efficiency in adjudication or as fulfilling expectations of litigants or as a basis of

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<sup>3</sup> [http:// legal rsearch. Org /writing –analysis/stare-decisis techniques/.](http://legalresearch.Org/writing-analysis/stare-decisis-techniques/)

confidence in the judiciary. He says that the essence of stare decisis is that where there is no sufficient reason for departing from principle laid down in a prior decision, judges should not depart from them. In other words, there should be sufficient reasons for departing from prior decisions.

- **Professor A Lakshminath .:** Discusses the sociology of stare decisis, saying that while identifying stare decisis as a judicial attitude, a judge is required to consult accumulated wisdom. Stare decisis is both a social and legal norm. It is an unwritten social rule which contains clusters of rules and values on shared understanding among groups. It also embodies a complexity of unwritten or half-written legal rules of practice having distinct consequences. He holds that the social justification of stare decisis is in its promise of certainty and stability. Besides, the doctrine fosters fairness in adjudication, promotes efficiency, disciplines the court, excludes arbitrariness, and legitimizes judicial power. The doctrine helps to generate judicial accountability.

#### C) ● **HISTORICAL BACK GROUND OF STARE DECISIS:**<sup>4</sup>

To begin with there was no doctrine of stare decisis as there was no reporting of the decision of the courts.

It was in the 17<sup>th</sup> century that the decisions of the Exchequer courts came to be reported in England and were given a binding force.

In 1833 the famous decision of chief justice “park in **Mirehouse v. Rennel** reiterated the urgent need for recognizing the binding force of precedents.

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<sup>4</sup> Jurisprudence & legal theory by V.D. Mahajan's, fifth Edition

Then came the supreme court of judicature Acts of 1873 and 1875 and the theory of stare decisis was firmly established. Today it is a characteristic feature of the legal systems of England and India

### [THE DOCTRINE OF STARE DECISIS: SUPREME COURT EXPLAIN<sup>5</sup>](#)



Justice D.K. Jain

The Supreme Court, speaking through Justice D.K. Jain and H.L. Dattu, in **Shanker Raju** v. **Union of India** has explained the legal concept of Stare Decisis. The doctrine pertains to the concept of being bound by one's earlier decision. The concept, as applicable in India, has been explained by the Supreme Court as under;

### **The Doctrine of Stare Decisis**

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<sup>5</sup> <http://www.legalblog.in/2011/01/doctrine-of-stare-decisis-supreme-court-html#sthash.icxjmzrj.dpuf>

It is a settled principle of law that a judgment, which has held the field for a long time, should not be unsettled. The doctrine of stare decisis is expressed in the maxim "stare decisis et non quieta movere", which means "to stand by decisions and not to disturb what is settled." Lord Coke aptly described this in his classic English version as "those things which have been so often adjudged ought to rest in peace." The underlying logic of this doctrine is to maintain consistency and avoid uncertainty. The guiding philosophy is that a view which has held the field for a long time should not be disturbed only because another view is possible.

1) **Case :In Manganese Ore (India) Ltd v. Regional Asstt. CST, (1976) 4 SCC 124, at page 127,**<sup>6</sup>

**Fact:** it was opined that the doctrine of stare decisis is a very valuable principle of precedent which cannot be departed from unless there are extraordinary or special reasons to do so.

2) **In Union Of India v. Raghbir Singh (1989) 2 SCC 754, at pa766,**<sup>7</sup>

**Fact** : this Court has enunciated the importance of doctrine of binding precedent in the development of jurisprudence of law. Taking note of the hierarchical character of the judicial system in India, it is of paramount importance that the law declared by this Court should be certain, clear and consistent. It is commonly known that most decisions of the courts are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the dispute

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<sup>6</sup> **(1976) 4 SCC 124, at page 127**

<sup>7</sup> **(1989) 2 SCC 754, at pa766,**



between them, but also because in doing so they embody a declaration of law operating as a binding principle in future cases.

3) In Krishena Kumar v. Union Of India, (1990) 4 SCC 207, at page 233<sup>8</sup>

**Fact:** this Court has explained the meaning and importance of sparing application of the doctrine of Stare Decisis: ". Stare decisis et non quieta movere. To adhere to precedent and not to unsettle things which are settled. But it applies to litigated facts and necessarily decided questions. Apart from Article 141 of the Constitution of India, the policy of courts is to stand by precedent and not to disturb settled point.

In Hari Singh V. State Of Haryana, (1993) 3 SCC 114, at page 120,<sup>9</sup>

**Fact:** this Court stated the importance of consistent opinions in achieving harmony in Judicial System:

It is true that in the system of justice which is being administered by the courts, one of the basic principles which has to be kept in view, is that courts of coordinate jurisdiction, should have consistent opinions in respect of an identical set of facts or on a question of law. If courts express different opinions on the identical sets of facts or question of law while exercising the same jurisdiction, then instead of achieving harmony in the judicial system, it will lead to judicial anarchy."

IN ITO, TUTICORIN V. T.S DEVINATH AIR 1968 SC 623<sup>10</sup>

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<sup>8</sup> (1990)4 scc 207 at page 233

<sup>9</sup> (1993)3 scc 114 at page 120

<sup>10</sup> AIR 1968 sc 623

Fact: Hegde, J . Said in his dissenting judgment that the supreme court should not overrule its decisions except under compelling circumstances . It is only when the court is fully convinced that public interest of a substantial character would be jeopardised by a previous decision that the court should overrule that decision.

D)• **The usefulness of the doctrine of stare decisis**<sup>11</sup>

- 1) The doctrine achieves equality, consistency and impartiality by treating like cases alike.
- 2) The doctrine helps the courts to dispense justice in all efficient manner. It saves much time to the courts as well as reduces cost for litigants.
- 3) The doctrine helps the law in combining the need for certainty and the need to keep the law abreast of changing ideas and social conditions. Certainty is preserved within the limits of rules and concepts, flexibility and adaptability are achieved through their interpretation.
- 4) The doctrine has a great controlling influence on the judges, who if not bound by established judicial precedents will be inclined to interpret law according to their own predictions there by creating a chaos in the human relations as well as in the administration of justice.
- 5) The doctrine is based on a universal sense of justice .i.e all men should be treated alike in like circumstances.

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<sup>11</sup> Jurisprudence & legal theory by V.D.Mahajan's

6) As a matter of great convenience it is necessary that a question once decided should be settled and should not be subject to re-argument in every case in which it arises. It will save the labour of the judges and the lawyers.

7) Precedents guide judges and consequently they are prevented from committing errors which they would have committed in the absence of precedents. The law in precedents, is laid down after thrashing of the points and argument in great detail therefore it is of great value to the judges. By following precedents judges are prevented from any prejudice and partiality because precedents are binding on them. By deciding cases on established principles the confidence of the people in the judiciary is strengthened.

8) The doctrine should not be rigidly observed. The court may in an appropriate case reverse its own decisions, if it is satisfied of its error and its benefit effect on the general interest of the public.

**E) • ARTICLE 141 OF THE CONSTITUTION OF INDIA<sup>12</sup>**

**Article 141: Law declared by supreme court to be binding on all courts :**

The law declared by the supreme court shall be binding on all courts with in the territory of India.

**1) Case : In Suganthi Suresh Kumar v. Jagdeesham (AIR 2002 SC 681)<sup>13</sup>**

**Fact:** The supreme court held that it is impermissible for the H.C to overrule the decision of the Apex court on the ground that the Supreme court laid down the legal position

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<sup>12</sup> Jurisprudence & legal theory by V.D. Mahajan's

<sup>13</sup> AIR 2002 sc 681)

without considering any other point. It is not only a matter of discipline for the H.C in India, it is mandate of the constitution as provided in Article 141 that the law declared by the supreme court shall be binding on all courts with in the territory of India.

**2) Case: Bengal Immunity Co. Ltd v. State of Bihar (AIR 1955 SC 661)<sup>14</sup>**

**Fact:** That the expression does not include the supreme court of India. The result is that like the House of Lord, the supreme court is free to depart from its previous decision if valid reasons exist for doing so .

**3) In Minerva Mills Ltd .v Union of India (1980 3 SCC 625)<sup>15</sup>**

**Fact:** The Supreme court observed : “certainty and continuity are essential ingredients of the rule of law”

Under the “stare decisis” rule a principle of the law which has become settled by a series of decisions is generally binding on the courts and shall be followed in similar cases. This rule is based on expediency and public policy. Although this rule is generally followed by the courts it is not applicable in all cases. The reason is that previous decisions should not be allowed to perpetuate a wrong if the court is convinced that the previous decision is wrong.

The rule of stare decisis is not so imperative or inflexible that it cannot be departed from but its application must be determined in each case by the discretion of the court and previous decisions should not be followed to the extent that error may be perpetuated and grievous wrong may result.

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<sup>14</sup> AIR 1955 sc 661

<sup>15</sup> (1980 3 scc 625)

## **F) WHAT IS MEANT BY PRECEDENT?<sup>16</sup>**

● A precedent or authority in common law parlance means a previously decided case which establishes a rule or principle that may be utilized by a court or a judicial body in deciding cases that are similar in facts or issues

### **● It has been stated by The United States Court of Appeals:**

For the system of precedents to work effectively there are three elements that are very important to be present in the legal system of that country. First, there needs to be an undisputed and accepted hierarchy of courts with one court having the supreme authority over all the other courts of the land. The second is the presence of an efficient law or case reporting system. And the third element is to strike a balance between the need of having consistency and certainty in legal matters resulting from following the previously decided binding cases and on the other hand to avoid the restricting effect on the development of law by following such a method. ”

## **G) TYPES OF PRECEDENTS<sup>17</sup>**

**There are different types of precedent within the law.**

### **1) ORIGINAL & DECLARATORY PRECEDENTS**

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<sup>16</sup> <http://www.legalindia.in/a-critical-analysis-of-the-doctrine-of-legal-precedents>

<sup>17</sup> Jurisprudence & legal theory ,V.D.Mahajan's fifth Edition

The first is 'original precedent' which refers to a case having a point of law which has never been decided before, then the decision of the judge in such a case forms an original precedent. An original precedent is one which creates and applies a new rule. It is law for the future because it is now applied.

DECLARATORY: According to Salmond, a declaratory precedent is one which is merely the application of an already existing rule of law. In the case of a declaratory precedent, the rule is applied because it is already law.

## **2) AUTHORITATIVE OR BINDING PRECEDENT:**

As the name suggests authoritative precedent or decision (a.k.a binding decision) is one which judges must follow whether they approve it or not. It is also known as **mandatory precedent or binding authority**. As per the doctrine of stare decisis, a court lower in the hierarchy follows and honours the findings of law made by a court higher in the hierarchy. The decisions of lower courts are not binding on courts higher in the system.

Lower courts are bound by precedent (that is, prior decided cases) of higher courts within their region.

## **3) PERSUASIVE PRECEDENT:<sup>18</sup>**

And a persuasive decision or precedent is one which the judges are under no obligation to follow but which they will take into consideration and attach as much weight as it deserves.

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<sup>18</sup> Authoritative & persuasive precedent from  
Jurisprudence & legal theory, V.D. Mahajan's fifth Edition

It is a precedent that the court need not follow, but may consider when a decision is being made as it is relevant and might be useful. Persuasive precedent comes from many places. Courts lower in the hierarchy can create a persuasive precedent.

These cases could be cases that are decided by lower courts, or courts equivalent in the hierarchy or in some exceptional circumstances, cases of other nations, judicial bodies of the world etc.

Once a persuasive precedent has been adopted by a higher court it becomes a binding precedent for all the lower courts that time onwards.

### **●HOW RELEVANT IS THE IDEA OF JUDICIAL PRECEDENTS<sup>19</sup>**

In the words of one British journalist, “Judicial precedent means a trick which has been tried before, successfully.”

In the language of a layman the term ‘precedent’ implies that what was done before should be done again the same way. The method adopted in any problem solving exercise is to find out if a similar problem has been tackled before. If yes, then the next step is to find out the degrees of similarity that exists between the problems. If the similarities are found to be significant then next it needs to be analysed whether the same principle that was applied to the previously solved problem can be applied successfully to solve the problem at hand. This way the precedent works as an effective guide to solve new problems having similarity with the earlier one. This helps in achieving consistency and certainty in legal matters. And the corollary of this situation is that people making decisions are often afraid to do something new and striking in case ‘it creates a precedent’.

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<sup>19</sup> <http://www.legallIndia.in/a-critical-analysis-of-the-doctrine-of-legal-precedents>

## H) • WHAT IS THE BINDING ELEMENT OF THE CASE?

What is binding on the lower court??

### • EVERY JUDGMENT CONTAINS OF FOUR ELEMENTS

- statement of material (relevant) facts
- statement of legal principle(s) material to the decision – the ratio decidendi
- discussion of legal principles raised in argument but not material to the decision – obiter dicta
- the decision or verdict

It is not the entire judgement that is binding on the lower courts but only the ratio decidendi. The ratio decidendi of a case is the underlying principle or legal reason on which the result of the case depends. This ratio is different from the obiter dicta which is not held to be binding but may be regarded as having persuasive control. And what we are concerned with is not who won or lost but the legal principles that can be extracted from the case which is known as the ratio decidendi. In the words of the Supreme Court: “A decision is binding not because of its conclusion but in regard to its ratio and the principle laid down therein.”

## I) WHY SHOULD WE FOLLOW PRECEDENTS IN DECIDING CASES?<sup>20</sup>

The weight attached to precedent in every department of life is closely connected with the force of habit, and has its root deep in human nature. That judicial precedents have exercised

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<sup>20</sup> <http://www.legalindia.in/a-critical-analysis-of-the-doctrine-of-legal-precedents>  
—jurisprudence & legal theory by V.D.Mahajan’s



great influence in all systems of law is more than probable; the feeling that a rule is morally right has often arisen from the fact that it has long been followed as a rule; but the degree in which judicial decisions have been openly recognized as authoritative, simply because they are judicial decisions, has varied greatly in different systems. Judges are everywhere largely influenced by what has been done by themselves or their predecessors, but the theories to explain and control such influence have been diverse, and the development of the law has not been unaffected by them.

The purpose is to create certainty and fairness. Precedent is created by the judgements on past cases. The judgement is the speech made by the judge who has made the decision on the case, and it is split into two parts. It should be noted that there is often more than one judge hearing a case, and so there may be many judgements on one case. The first part is the “ratio decidendi” (“reason for deciding”). This is the most important part as it gives the judge’s decision.

#### J)• **ADVANTAGES & DISADVANTAGES OF JUDICIAL PRECEDENT:**

##### **ADVANTAGES:**

1) The most significant advantage is the element of **consistency** and **certainty** that is brought in with the application of precedents. A good decision making process must be consistent. Similar cases must be decided similarly to avoid inconsistency. Consistency is perhaps the most important advantage claimed for the doctrine of judicial precedent.<sup>21</sup>

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<sup>21</sup> Judicial process precedent in Indian law by A.Lakshminath.  
<http://www.legallIndia.in/a-critical-analysis-of-the-doctrine-of-legal-precedents>

- 2) The interests of justice also demand impartiality from the judge. In this method the Judges have clear cases to follow.
- 3) It removes any element of ambiguity regarding the authority of the binding precedents and enables lower courts to follow the decisions of higher courts unanimously.
- 4) It is also a convenient time saving method. If a problem has already been answered, it is natural to reach the same conclusion by applying the same principle.
- 5) It also helps save unnecessary litigation. The existence of a precedent may prevent a judge making a mistake that he might have made if he had been left on his own without any guidance.
- 6) The doctrine of precedent may serve the interests of justice. It would be unjust to reach a different decision in a similarly situated case.

**DISADVANTAGES:**

- 1) The most evident disadvantage of this method is the rigidity it confers on the development of law.
- 2) The doctrine of stare decisis is a limiting factor in the development of judge-made law. Practical law is founded on experience but the scope for further experience is restricted if the first case is binding.<sup>22</sup>

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<sup>22</sup> Judicial process precedent in Indian law by A.Lakshminath,Third Edition

3) There are so many cases that it is hard for judges to find relevant cases and the reasoning may not be clear.

4) the advantage of certainty is lost where there are too many cases or they are too confusing.

5) It would be undesirable to treat a number of claimants unjustly simply because one binding case had laid down an unjust rule.

K)• CIRCUMSTANCES WEAKENING AND STRENGTHENING THE AUTHORITY OF A PRECEDENT.<sup>23</sup>

• The operation of precedent is based on the legal presumption that judicial decisions are correct. A matter once decided is decided once for all. What has been delivered in a judgment must be taken to be an established truth. Even if it is not, it is expedient that it should be held as true. **However, there are circumstances which destroy or weaken the binding force of a precedent. Those are exceptions to the binding force of precedent.**

1)The first is called **per incuriam**. Here due to a significant oversight, an important statute was overlooked and this affected the decision significantly. In other words per incuriam means that a court failed to take into account all the relevant and vital statutes or case authorities and that this had a major effect on the decision.

2) The second reason is the 'lapsed rule', this simply means that the previous decision was valid when it was made but has simply been outdated.

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<sup>23</sup> Jurisprudence & legal theory by V.D.Mahajan's, Fifth Edition  
Judicial process precedent in Indian law by A.Lakshminath Third Edition

3) The final reason is if there are conflicting decisions within the Court of Appeals own decisions, this could occur if two similar cases were being tried at the same time but different verdicts were reached

4) **Reversal:** Occurs when the same decision is taken on appeal and is reversed by the appellate court.

5) **Precedent sub- silentio or not fully argued:** Where a particular point of law involved in a decision has gone unnoticed and unargued by the counsel, the court may decide in favour of one party, but if all the points had been put forth, the decision might have gone in favour of all the other party. In such conditions, though the case a gets specific result, the decisions is not an authority on the point. Hence such a rule is not an authority on the point which had not been argued and this point is said to be sub-silentio

L)• **CIRCUMSTANCES STRENGTHENING THE AUTHORITY OF A PRECEDENT:** There are various factors that strengthen the authority of a precedent. The number of judges constituting the bench, their eminence and the majority strength in the decision (a unanimous decision is considered more valuable). Also the lapse of time meaning thereby the years that have passed after the judgment and its relevance in present times. All these factors help in strengthening the hold of a precedent.<sup>24</sup>

•**There are some circumstances which tends to increase the authority of a precedent.:**

1) The number of judges constituting the bench and their eminence is very important factor in increasing the authority of a precedent.

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<sup>24</sup> Jurisprudence & legal theory by V.D.Mahajan's, Fifth Edition  
Judicial process precedent in Indian law by A.Lakshminath Third Edition

2) To some extent eminence of the lawyers who argued the case enhances the authority of the precedent.

3) Unanimous decisions carry more weight. Affirmation, approval or following by other courts, especially by a higher tribunal, adds to the strength of a precedent.

4) If an Act is passed embodying the law in a precedent, the precedent gains an added authority.

5) To a limited extent, the lapse of time adds to the authority of a decision.

#### M) • **RATIO DECIDENDI**<sup>25</sup>

According to 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**. The concrete decision is binding between the parties to it but it is the abstract **ratio decidendi** which alone has the force of law as regards the world at large

It is not everything said by judge in giving judgment that constitute a precedent but the principle on which the law laid down is important (Ratio Decidendi)

If the judge is bound by precedent he must apply the Ratio- even though he disapproves of the ratio unless it considers that the two cases reasonably distinguishable.

It is well established that if a judge gives two reasons for his decision .It is not permissible to pick out one as the better reason and ignore the other one

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<sup>25</sup> Jurisprudence & legal theory by V.D.Mahajan's, Fifth Edition  
Judicial process precedent in Indian law by A.Lakshminath Third Edition

## **PRINCIPLES**

- 1) Judgment must be read in the light of the facts of the case in which they are delivered.
- 2) Every judgment must be read in the light of judgments in the other cases
- 3) Decisions without reasons

### **●Writers on jurisprudence have advanced different tests for ascertaining the Ratio Decidendi.<sup>26</sup>**

1) **Professor Wambaugh:** “ suggests that the Ratio Decidendi can be discovered by reversing the proposition of law put forward by the court and inquiring whether the decision would be the same notwithstanding the reversal. If it is the same, then the proposition of law is no part of the ratio.

2) **Professor Good hart:** points out that the Ratio Decidendi is not the reason for the decision because the reason may be bad and yet the case may come to be an authority. The Ratio Decidendi is also not necessarily the proposition of law stated in the judgment.

### **N)“Obiter Dictum”<sup>27</sup>**

All that is said by the court by the way or the statements of law which go beyond the requirements of the particular case and which lay down a rule that is irrelevant or unnecessary for the purpose in hand, are called Obiter dicta.

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<sup>26</sup> Jurisprudence & legal theory by V.D.Mahajan’s, Fifth Edition

<sup>27</sup> Judicial process precedent in Indian law by A.Lakshminath

This dicta have the force of persuasive precedents only. The judges are not bound to follow them.<sup>28</sup>

Dr .Good hart defines “ Obiter Dictum” a conclusion based on a fact the existence of which has not been determined by the court

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<sup>28</sup> Jurisprudence & legal theory by V.D.Mahajan’s, Fifth Edition

## CONCLUSION

Precedent, Stare Decisis and Ratio-decidenti all forming part of judgment and which are basic principles of judgment.

The principle that judges should build on the precedents established by past decisions is known as the doctrine of stare decisis.

This Doctrine achieves equality, consistency and impartiality by treating like cases alike. The above doctrine helps the courts to dispense justice in an efficient manner. It saves much time to the court as well as reduces cost for litigants. In today's world it is very import method of solving the cases.<sup>29</sup>

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<sup>29</sup> <http://www.legalIndia.in/a-critical-analysis-of-thedoctrine-of-legal-precedents>



## **BIBLIOGRAPHY**<sup>30</sup>

**1) Jurisprudence & legal theory**

**V.D. Mahajan's**

**Fifth Edition**

**2) Judicial Process**

**Precedent in Indian Law**

**A. Lakshminath**

**Third Edition**

**3) Precedent in English Law**

**Cross & Harris**

**Fourth Edition**

**4) [http://legalresearch.org/writing-analysis/stare-decisis techniques/](http://legalresearch.org/writing-analysis/stare-decisis-techniques/)**

**5) [http://www.legalblog.in/2011/01/doctrine-of-stare-decisis-supreme-court-\\_\\_\\_\\_html#sthash.icxjmzrj.dpuf](http://www.legalblog.in/2011/01/doctrine-of-stare-decisis-supreme-court-____html#sthash.icxjmzrj.dpuf)**

