

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 9 | Issue 3

2026

© 2026 International Journal of Law Management & Humanities

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

This article is brought to you for free and open access by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of **any suggestions or complaints**, kindly contact support@vidhiaagaz.com.

To submit your Manuscript for Publication in the **International Journal of Law Management & Humanities**, kindly email your Manuscript to submission@ijlmh.com.

The Doctrine of Precedent in Common Law: Historical Evolution, Jurisprudential Foundations, and Contemporary Relevance

KARTHIKA G NAIR* AND HANNA RAISHNA**

ABSTRACT

The doctrine of precedent, embodied in the principle of stare decisis, constitutes one of the foundational pillars of the common law system. It ensures consistency, predictability, and stability in judicial decision-making by requiring courts to follow previously established legal principles in cases involving similar facts and issues. This paper critically examines the historical evolution, theoretical foundations, operational mechanisms, and contemporary relevance of the doctrine of precedent, tracing its development from medieval English common law to its formal institutionalisation within a hierarchical judicial framework. It explores competing jurisprudential perspectives, including natural law theory, legal positivism, legal realism, and Ronald Dworkin's concept of law as integrity, to assess the philosophical justifications underlying the doctrine. The paper analyses the concepts of ratio decidendi and obiter dicta, the distinction between binding and persuasive precedents, and the mechanisms through which courts may avoid or depart from precedent, such as distinguishing, overruling, reversing, and the doctrine of per incuriam. Through an examination of landmark English and Indian decisions, it demonstrates how precedent functions both as a constraint on judicial discretion and as a vehicle for legal development, and how courts balance legal certainty with the need for adaptability. The paper concludes that the doctrine remains an indispensable instrument of judicial governance, promoting coherence, equality before the law, and institutional legitimacy while allowing for principled legal evolution, its enduring significance lying in its capacity to reconcile continuity with change and thereby preserve the rule of law in modern constitutional democracies.

Keywords: *Doctrine of precedent, stare decisis, ratio decidendi, obiter dicta, binding precedent, persuasive precedent, judicial law-making, judicial activism, rule of law, common law system, legal certainty, legal positivism, natural law theory.*

* Author is an LL.M. student at Bharata Mata School of Legal Studies, Aluva, Kerala, India.

** Author is an LL.M. student at Bharata Mata School of Legal Studies, Aluva, Kerala, India.

I. INTRODUCTION

The doctrine of precedent, encapsulated in the maxim *stare decisis et non quieta movere* ("to stand by decided matters and not disturb settled things"), constitutes one of the most defining features of the common law tradition. It embodies a disciplined and institutionalised technique of adjudication through which courts are required, in appropriate circumstances, to follow prior judicial decisions when confronted with materially similar facts and legal issues. Unlike codified legal systems that derive coherence primarily from comprehensive legislative enactments, the common law evolves incrementally through judicial decisions, with precedent functioning as the principal mechanism of continuity and coherence.

The historical development of the doctrine reflects a gradual transformation from a flexible practice of referencing past decisions to a rigid and hierarchical system of binding authority. In its early stages, English judges relied upon earlier decisions as persuasive illustrations of legal reasoning rather than as obligatory rules. However, with the consolidation of the royal courts, the emergence of a structured hierarchy, and the institutionalisation of law reporting, precedent acquired increasing normative force. By the nineteenth century, the doctrine had crystallised into a formal rule of judicial conduct, compelling courts, particularly lower courts, to adhere strictly to the decisions of superior tribunals. This shift marked the transition from a fluid jurisprudence to a system characterised by certainty, order, and institutional discipline.

At a functional level, the doctrine of precedent performs several indispensable roles within the administration of justice. It promotes legal certainty and predictability by ensuring that established principles are consistently applied, thereby enabling individuals and institutions to organise their affairs with a reasonable degree of confidence. It also advances the ideal of formal equality, as like cases are treated alike, reinforcing the legitimacy of judicial decision-making. Furthermore, it operates as a constraint on judicial discretion, anchoring decisions within an established framework of authority and reducing the risk of arbitrariness. At the same time, the doctrine is not devoid of flexibility; mechanisms such as distinguishing, overruling, and the recognition of decisions rendered *per incuriam* allow the law to adapt to changing social, economic, and technological conditions.

From a jurisprudential perspective, the doctrine of precedent is not merely a technical rule but a sophisticated methodology of legal reasoning. The process of identifying the binding element of a case (the *ratio decidendi*) and distinguishing it from non-binding observations (the *obiter dicta*) requires careful interpretative judgment. Judges do not mechanically apply precedents; rather, they engage in a constructive process of reasoning that involves analogical thinking,

evaluation of material facts, and normative justification. In this sense, precedent simultaneously constrains and empowers judicial decision-making, revealing an inherent tension between stability and creativity within the common law method.

Moreover, the doctrine reflects deeper constitutional values underpinning the rule of law. By ensuring consistency, transparency, and reasoned justification in judicial decisions, it enhances public confidence in the legal system. Precedent situates individual judgments within a broader institutional dialogue, thereby mitigating the perception of law as an expression of personal will. However, it also raises significant theoretical and practical questions, particularly concerning the extent of judicial law-making, the limits of hierarchical authority, and the balance between legal certainty and substantive justice.

A critical examination of the doctrine of precedent must therefore move beyond descriptive analysis to engage with its underlying philosophical foundations and practical implications. It requires an exploration of competing jurisprudential perspectives, including legal positivism, natural law theory, and interpretivist approaches, as well as an assessment of how the doctrine operates in contemporary legal systems. Ultimately, the doctrine of precedent stands as both a stabilising force and a dynamic instrument of legal development, occupying a central position in the structure and functioning of the common law.

II. HISTORICAL DEVELOPMENT OF THE DOCTRINE OF PRECEDENT

The doctrine of precedent in English law did not emerge as a fully articulated rule at a single historical moment; rather, it developed gradually as part of the institutional and intellectual evolution of the common law system. Its growth is closely connected with the establishment of centralised royal justice, the professionalisation of the judiciary, the systematisation of law reporting, and the crystallisation of a hierarchical court structure.

The foundations of precedent can be traced to the period following the Norman Conquest of 1066, when the King's courts began to assert jurisdiction over local and feudal tribunals. The development of the King's Bench, Common Pleas, and Exchequer introduced a centralised system of adjudication. Judges, appointed by the Crown, travelled on circuit and administered a uniform body of law that gradually evolved into what came to be known as the "common law".¹

In this early period, judicial decisions were not regarded as formally binding authorities. Instead, they were treated as evidence of customary law. Judges relied upon earlier decisions

¹ J.H. Baker, *An Introduction to English Legal History* (5th edn, Oxford University Press 2019).

for guidance, but the practice was flexible and pragmatic rather than doctrinal. As the legal historians Pollock and Maitland note, medieval judges were primarily concerned with achieving consistency in practice rather than articulating abstract rules of binding authority.²

The recording of judicial proceedings in the Year Books (late thirteenth to early sixteenth centuries) played a significant role in shaping reliance on prior decisions. The Year Books were unofficial reports prepared by lawyers and apprentices, documenting the arguments of counsel and judicial reasoning.³ Although they did not possess authoritative status, they created a repository of legal reasoning that enabled lawyers to cite past cases as persuasive illustrations. This practice laid the intellectual groundwork for the later doctrine of *stare decisis*.

The sixteenth and seventeenth centuries witnessed the publication of the Nominate Reports, named after individual reporters such as Plowden and Coke. Sir Edward Coke's *Reports* were particularly influential in shaping the authority of judicial decisions.⁴ Coke treated judicial decisions not merely as examples of custom but as authoritative expositions of the common law. This shift strengthened the perception that decided cases carried normative force.

The Glorious Revolution of 1688 and the subsequent affirmation of parliamentary supremacy further influenced judicial method. As legislative enactments became more prominent, courts increasingly relied upon prior interpretations to ensure consistency in statutory construction.⁵ This reinforced the idea that earlier judicial interpretations deserved respect and continuity.

By the eighteenth century, the declaratory theory of common law gained prominence. According to this theory, judges did not create law but merely declared existing legal principles embedded in custom and reason.⁶ Under this conceptual framework, earlier decisions were authoritative because they represented correct statements of the law rather than new law-making acts. William Blackstone famously asserted that judicial decisions are "the principal and most authoritative evidence" of common law.⁷ Although he acknowledged that precedents could be overruled if "manifestly absurd or unjust", the overall tone of his analysis reinforced respect for settled decisions.

The modern doctrine of binding precedent emerged decisively in the nineteenth century. Several institutional developments contributed to this transformation: the Judicature Acts of 1873 to

² Sir Frederick Pollock & Frederic William Maitland, *The History of English Law before the Time of Edward I* (2nd edn, Cambridge University Press 1898).

³ T.F.T. Plucknett, *A Concise History of the Common Law* (5th edn, Little, Brown and Co 1956).

⁴ Sir Edward Coke, *Reports* (1600-1615).

⁵ Baker, *supra* note 1.

⁶ A.W.B. Simpson, 'The Common Law and Legal Theory' (1973) 2 OXFORD J. LEGAL STUD. 155.

⁷ William Blackstone, *Commentaries on the Laws of England* (1765-1769).

1875 reorganised the court system into a clear hierarchical structure; official law reporting improved reliability and accessibility; and the judiciary became more professionalised and conscious of doctrinal coherence.

The decisive moment in establishing strict binding authority came with the decision of the House of Lords in *London Street Tramways v London County Council* (1898).⁸ The House held that it was absolutely bound by its own previous decisions, even if they were erroneous. Lord Halsbury justified this rigidity on grounds of certainty and finality in litigation. This decision marked a turning point: precedent was no longer merely persuasive or presumptively authoritative; it became strictly binding within a defined hierarchy. Lower courts were unequivocally bound by decisions of superior courts, and the House of Lords considered itself bound by its own prior rulings.

Legal scholars have described this nineteenth-century development as a movement toward formalism in judicial reasoning. A.W.B. Simpson observes that the rigidity of precedent during this period reflected broader Victorian values of order, predictability, and institutional discipline.⁹ The strict rule laid down in *London Street Tramways* eventually attracted criticism for excessive rigidity. The inability of the House of Lords to correct its own mistakes created difficulties in areas of rapidly changing social and economic conditions. The Practice Statement of 1966 was subsequently applied in several important cases, demonstrating a more balanced approach between stability and justice. Modern jurisprudence thus reflects a moderated doctrine: binding authority persists, but with carefully controlled mechanisms for departure.

III. THEORETICAL FOUNDATIONS OF THE DOCTRINE OF PRECEDENT

The doctrine of precedent is not merely a procedural rule governing judicial hierarchy; it is deeply rooted in competing theories about the nature of law and the judicial function. Jurisprudential debates surrounding precedent centre upon a fundamental question: do judges create law, or do they merely declare it? The answer to this question significantly shapes the understanding of why precedent binds and how it operates within the judicial process.

A. Natural law theory

Natural law theory offers a normative and evaluative framework for understanding the doctrine of precedent within the common law system. In contrast to legal positivism, which locates the validity of law in its formal sources and institutional recognition, natural law theory asserts that the legitimacy of law depends upon its conformity with principles of morality, reason, and

⁸ *London Street Tramways Co Ltd v London County Council* [1898] AC 375 (HL).

⁹ A.W.B. Simpson, 'The Rise and Fall of the Legal Treatise' (1981) 48 U. CHI. L. REV. 632.

justice. Accordingly, the authority of precedent cannot be regarded as absolute; it must be assessed against higher standards of fairness and ethical correctness.

The theoretical basis of natural law, especially as articulated by Thomas Aquinas, is grounded in the idea that an unjust law does not possess genuine legal validity. This principle has important implications for the doctrine of precedent. Although precedent seeks to ensure stability and consistency in the legal system, natural law theory maintains that courts are not morally obligated to follow decisions that lead to unjust or unreasonable outcomes. Thus, the authority of precedent depends not only on its institutional status but also on its consistency with principles of justice. Natural law theory therefore introduces a critical corrective to the rigid application of precedent. It recognises that adherence to earlier decisions may sometimes perpetuate injustice, particularly where such decisions reflect outdated values, social inequalities, or flawed reasoning. In such circumstances, courts are justified in departing from precedent through mechanisms such as overruling or reinterpretation. This capacity for moral reassessment ensures that the law remains responsive to evolving standards of justice and human dignity.

At the same time, natural law theory does not advocate the abandonment of precedent altogether. It acknowledges that certainty, predictability, and consistency are essential features of the rule of law. However, it maintains that these values must be balanced against the demands of justice. The doctrine of precedent must therefore function as a flexible instrument, allowing courts to depart from earlier decisions where strict adherence would result in manifest injustice or undermine fundamental rights. In contemporary legal systems, the influence of natural law is particularly evident in constitutional adjudication and human rights jurisprudence. Courts increasingly rely on principles such as dignity, liberty, and equality to reassess established precedents. This demonstrates that the doctrine of precedent, while grounded in tradition, remains capable of moral and intellectual evolution.

B. Positivist perspectives

Legal positivists critiqued the declaratory theory by focusing on the institutional origins of law. From their perspective, the authority of law stems from established legal institutions and formal procedures, rather than from abstract ideas of reason or custom. Accordingly, judicial decisions become part of the law because they are issued by duly recognised courts within the legal system. This approach implies that judges inevitably exercise a creative function, particularly in cases where statutory guidance is absent or ambiguous. H.L.A. Hart famously argued that in "hard cases", where legal rules are indeterminate, judges must exercise discretion and

effectively create new law within the framework of the legal system.¹⁰ In such situations, precedent operates not as a mechanical constraint but as a structured guide within which judicial choice occurs.

From the positivist perspective, precedent binds because it is recognised as a rule of the legal system that decisions of higher courts must be followed. The binding force of precedent is thus institutional rather than metaphysical. It is grounded in the rule of recognition accepted by legal officials, not in the notion that earlier decisions perfectly captured pre-existing truths. This view acknowledges the dynamic character of common law development. Judicial decisions are not mere declarations but authoritative contributions to legal doctrine. The nineteenth-century formalisation of *stare decisis* reflected the institutionalisation of this recognition: once a decision was authoritatively rendered, it became part of the law to be followed by subordinate courts.

C. Realist perspectives

The realist movement further challenged the classical model by questioning the determinacy and objectivity of precedent. Legal realists argued that judicial decisions are influenced by social, economic, and psychological factors, and that precedents often provide competing lines of authority from which judges select according to underlying policy preferences. Karl Llewellyn famously suggested that for almost every precedent there exists a counter-precedent capable of supporting the opposite conclusion.¹¹ According to the realist critique, precedent does not mechanically dictate outcomes; rather, it supplies a vocabulary of justification for decisions shaped by broader considerations. Legal realists emphasised that precedent is inherently interpretive, contending that identifying the *ratio decidendi* is not a purely mechanical or logical exercise but requires judicial evaluation. Later courts actively decide which parts of an earlier ruling are binding, and in doing so they modify and refine its meaning. As a result, precedent operates as a dynamic process of reinterpretation rather than a strict application of fixed rules.

D. Ronald Dworkin's concept of law as integrity

Ronald Dworkin's concept of law as integrity provides a normative framework for understanding the doctrine of precedent beyond a mechanical application of past decisions. According to Dworkin, law must be interpreted as a coherent and principled system in which judicial decisions are not isolated rulings but part of a continuous chain of legal reasoning.¹² In this view, precedents are not binding merely because of their authoritative status, but because

¹⁰ H.L.A. Hart, *The Concept of Law* (2nd edn, Clarendon Press 1994).

¹¹ Karl N. Llewellyn, *The Bramble Bush* (Columbia University Press 1930).

¹² Ronald Dworkin, *Law's Empire* (Harvard University Press 1986) 225.

they contribute to the integrity and consistency of the legal system. Judges are therefore required to interpret prior decisions in a manner that best fits and justifies the existing body of law, ensuring that like cases are treated alike while maintaining coherence in legal principles.¹³

Under this framework, the doctrine of precedent becomes an interpretive exercise rather than a rigid rule-following process. Dworkin argues that judges must engage with both the fit and the justification of earlier decisions, selecting interpretations that align with the broader moral and legal principles embedded within the legal system.¹⁴ This approach allows for flexibility in distinguishing or overruling precedents where they fail to uphold principles of justice, fairness, and equality. Consequently, law as integrity transforms precedent into a dynamic tool that promotes principled consistency, rather than mere formal adherence, thereby strengthening the legitimacy and moral authority of judicial decision-making.

IV. TYPES, ADVANTAGES, AND LIMITATIONS OF THE DOCTRINE OF PRECEDENT

The doctrine of precedent operates through different categories of authority, depending upon the source of the decision and the position of the court within the judicial hierarchy. Not all precedents carry identical force. The distinction between binding and persuasive precedent is fundamental to understanding how judicial reasoning functions within the common law system.

A. Binding precedent

A binding precedent is a judicial decision that courts are required to follow. Its authority stems from the hierarchical structure of the judiciary and the principle that similar cases should be decided in a consistent manner. Accordingly, a lower court must apply the *ratio decidendi* of a higher court when the material facts of the cases are substantially alike. Within the English legal system, decisions of the Supreme Court are binding on all lower courts, while decisions of the Court of Appeal bind the High Court as well as subordinate courts. This system of binding precedent promotes consistency, legal certainty, and institutional discipline in the administration of justice.

The authority of binding precedent does not extend to every statement within a judgment; it is limited strictly to the *ratio decidendi*. The rule is thus not merely hierarchical but analytical: the court must extract and apply the essential principle underlying the earlier case. Binding precedent reflects the structural logic of *stare decisis*. It reinforces the rule of law by preventing arbitrary departures from established doctrine. However, as previously discussed, the rigidity of binding precedent is moderated at the highest level by the Practice Statement of 1966, which

¹³ *Id.* at 243.

¹⁴ Ronald Dworkin, *Taking Rights Seriously* (Harvard University Press 1977) 81.

allows the highest court to depart from its own decisions where necessary in the interests of justice.¹⁵

B. Persuasive precedent

Persuasive precedent refers to decisions that a court may consider and respect but is not legally bound to follow. Persuasive authorities influence judicial reasoning through their logical force, doctrinal coherence, or institutional prestige rather than through hierarchical compulsion. The persuasive value of a precedent depends on factors such as the eminence of the judge, the cogency of the reasoning, and the similarity of the legal context. The use of persuasive authorities demonstrates that precedent functions not solely through compulsion but also through intellectual persuasion.

C. Original precedent

An original precedent is a judicial decision that establishes a new rule of law where no clear legal rule previously existed. In such cases, the court is not merely applying existing law but is effectively creating new legal principles to resolve a novel issue. This usually occurs in situations involving new social, technological, or legal developments where prior authority is absent. Original precedents play a crucial role in the development of law, as they fill gaps in the legal system and adapt the law to changing circumstances. However, they also raise concerns regarding judicial law-making, as courts are traditionally expected to interpret rather than create law.

D. Declaratory precedent

A declaratory precedent is a decision in which the court declares or applies an already existing rule of law. According to the traditional or declaratory theory, judges do not create new law but merely discover and declare what the law has always been. In such cases, the court clarifies or interprets existing legal principles and applies them to the facts at hand. Declaratory precedents therefore reinforce stability and continuity in the legal system, as they rely on previously established legal rules rather than introducing new ones.

E. Exceptions for avoiding precedent

Distinguishing. A court may decline to follow an earlier decision if it identifies material differences in the facts or legal issues. The earlier precedent remains valid, but it is confined to its specific factual context. The distinction between *Balfour v Balfour*¹⁶ and *Merritt v Merritt*¹⁷

¹⁵ *Practice Statement (Judicial Precedent)* [1966] 1 WLR 1234 (HL).

¹⁶ *Balfour v Balfour* [1919] 2 KB 571 (CA).

¹⁷ *Merritt v Merritt* [1970] 1 WLR 1211 (CA).

illustrates this technique. In *Balfour*, the Court of Appeal held that agreements between spouses made in an amicable domestic setting lacked the intention to create legal relations. In *Merritt*, however, the court distinguished the earlier decision on the ground that the parties were separated and negotiating at arm's length. The factual distinction justified a different legal conclusion without overruling the earlier case. Distinguishing demonstrates the interpretative flexibility inherent in precedent. It allows incremental development while formally respecting prior authority.

Overruling. Overruling takes place when a higher court determines that an earlier decision, whether of a lower court or its own prior ruling, was wrongly decided and should not be followed in the future. As a result, the earlier decision ceases to have binding authority in subsequent cases, though it continues to remain valid for the parties involved in the original case. The power to overrule is most significant when exercised by the highest court. The decision in *Herrington v British Railways Board*¹⁸ overruled *Addie v Dumbreck*, thereby reformulating the duty owed to trespassers. Similarly, *R v Shivpuri*¹⁹ overruled *Anderton v Ryan*, correcting what the House of Lords regarded as an erroneous interpretation of criminal attempt. Overruling illustrates that precedent, while binding, is not immutable. It allows correction of serious doctrinal mistakes and adaptation to evolving social conditions.

Reversing. Reversing differs from overruling. It occurs when a higher appellate court overturns the decision of a lower court in the same case on appeal. The reversal affects only that particular litigation. Unlike overruling, it does not necessarily invalidate a previous rule for future cases unless the appellate court explicitly lays down a new principle. Reversing reflects the appellate structure of the judiciary and ensures hierarchical supervision. It corrects error within the same proceeding rather than altering general legal doctrine retrospectively.

Per incuriam. The doctrine of *per incuriam* permits a court to disregard a previous decision that was rendered in ignorance of a relevant statutory provision or binding authority. A decision given *per incuriam* is considered defective because it failed to consider controlling law. The decision in *Young v Bristol Aeroplane Co Ltd* recognised *per incuriam* as an exception to the Court of Appeal's self-binding rule.²⁰ However, courts apply this exception cautiously to prevent erosion of certainty. The *per incuriam* principle reflects a commitment to doctrinal coherence. It ensures that oversight or omission does not entrench erroneous precedent within the legal system.

¹⁸ *Herrington v British Railways Board* [1972] AC 877 (HL); overruling *Addie v Dumbreck* [1929] AC 358 (HL).

¹⁹ *R v Shivpuri* [1987] AC 1 (HL); overruling *Anderton v Ryan* [1985] AC 560 (HL).

²⁰ *Young v Bristol Aeroplane Co Ltd* [1944] KB 718 (CA).

F. Advantages of the doctrine of precedent

Certainty and predictability. A major advantage of precedent is the certainty it offers. By following established principles, courts maintain a stable legal framework that allows individuals, businesses, and public authorities to guide their actions accordingly. This predictability in legal outcomes enables people to plan their affairs with a reasonable understanding of the legal consequences. In this way, certainty also strengthens the rule of law. If judicial decisions were unpredictable or inconsistent, public confidence in the legal system would be undermined. The strict rule adopted in *London Street Tramways v London County Council* reflected this concern for certainty, even at the cost of flexibility.²¹ Although later moderated by the Practice Statement, the central objective of stability remains fundamental to the doctrine.

Consistency and equality before the law. Precedent promotes consistency by ensuring that similar cases are decided in a similar manner. This principle of formal equality is fundamental to the idea of justice. Without it, if courts relied solely on subjective judgment, identical cases could lead to inconsistent and conflicting outcomes. The doctrine thus safeguards impartiality and fairness in adjudication. Lord Denning emphasised that consistency in judicial reasoning is integral to justice, as it prevents arbitrary distinctions and promotes coherence in the law.²² Consistency fosters respect for judicial authority and enhances the legitimacy of the legal system.

Judicial discipline and institutional restraint. The doctrine of precedent enforces discipline on judges by obliging them to base their decisions on established legal authority. It curbs arbitrary rulings and limits the influence of personal preferences. By grounding judicial reasoning in recognised principles, it ensures that decision-making remains institutional rather than purely individual. This form of structural discipline is especially vital in a system largely shaped by judge-made law. Without the constraints of precedent, the common law could become fragmented, reflecting differing judicial viewpoints. The binding nature of decisions from higher courts thus helps maintain coherence and continuity within the legal system.

Efficiency and practical convenience. Precedent enhances judicial efficiency by eliminating the need to revisit fundamental legal principles in every case. Once an issue has been conclusively decided, later courts can rely on the established rule without undertaking detailed reanalysis. This conserves judicial time and resources, enabling courts to concentrate on new or

²¹ *London Street Tramways Co Ltd v London County Council* [1898] AC 375 (HL).

²² Lord Denning, *The Discipline of Law* (Butterworths 1979).

complex matters. Additionally, a well-developed body of case law aids lawyers in advising clients and constructing arguments. In this way, the doctrine improves the overall functioning of the legal system.

G. Criticisms of the doctrine of precedent

Despite its advantages, the doctrine of precedent has been subject to sustained criticism from jurists and scholars. These critiques highlight the tension between stability and justice inherent in the system.

Rigidity. Historically, the most prominent criticism was excessive rigidity. The decision in *London Street Tramways* entrenched the principle that the House of Lords was absolutely bound by its own previous decisions.²³ This rigidity sometimes perpetuated error and prevented adaptation to changing social conditions. The issuance of the Practice Statement in 1966 acknowledged this difficulty and restored limited flexibility to the highest court.²⁴ Nonetheless, critics argue that lower courts remain tightly constrained, even where precedent appears outdated or unjust.

Complexity in identifying the ratio decidendi. Another major criticism relates to the difficulty in identifying the binding *ratio* of a case. Judicial decisions often include detailed reasoning, multiple opinions, and wide-ranging policy discussions, making it challenging to determine the precise principle that is binding. In some instances, later courts effectively reconstruct the *ratio* rather than relying on a clearly stated rule in the original judgment. This interpretive aspect can weaken the certainty that the doctrine of precedent is intended to ensure.

Judicial manipulation through distinguishing. While distinguishing offers useful flexibility, critics argue that it can sometimes be used in an artificial manner to sidestep inconvenient precedents. Courts may highlight minor factual differences in order to depart from earlier decisions without formally overruling them. Legal realists argue that this technique enables judges to reach preferred outcomes while maintaining the appearance of fidelity to precedent. Karl Llewellyn suggested that for almost every precedent a counter-interpretation can be found, illustrating the elasticity of judicial reasoning.²⁵

Volume and proliferation of case law. The vast accumulation of reported decisions presents practical difficulties. The proliferation of precedents can overwhelm practitioners and courts alike. Identifying relevant authority among thousands of reported cases may itself become a

²³ *London Street Tramways Co Ltd v London County Council* [1898] AC 375 (HL).

²⁴ *Practice Statement (Judicial Precedent)* [1966] 1 WLR 1234 (HL); see *supra* note 15.

²⁵ Llewellyn, *supra* note 11.

complex and resource-intensive task. The growth of specialised legal fields further intensifies this challenge. While modern digital databases mitigate the problem to some extent, the sheer volume of precedent remains a structural concern within common law systems.

Masking judicial law-making. A more profound jurisprudential critique is that the doctrine of precedent can conceal the creative role of judges. By portraying decisions as mere applications of existing principles, courts may downplay the innovative aspects of their reasoning. Scholars point out that many landmark judgments involve significant doctrinal evolution, even when expressed in terms of continuity. Consequently, the declaratory theory, despite its historical importance, fails to fully reflect the dynamic nature of judicial decision-making.

V. PRECEDENT AND JUDICIAL LAW-MAKING

The connection between precedent and judicial law-making is central to the common law system. Although traditional theory viewed judges as simply declaring existing law, contemporary jurisprudence recognises that judicial decisions often involve creative development of legal principles. The doctrine of precedent does not eliminate judicial innovation; instead, it guides and shapes it. Legal development occurs gradually through the reinterpretation, expansion, and refinement of prior decisions. The growth of negligence law provides a clear example of how judicial law-making operates within the framework of precedent. In *Donoghue v Stevenson*,²⁶ the House of Lords articulated Lord Atkin's "neighbour principle", which generalised the concept of duty of care beyond contractual privity. Although framed as a logical development of existing authority, the decision marked a transformative moment in tort law. It expanded liability and reoriented negligence around foreseeability and proximity. Subsequently, in *Hedley Byrne & Co Ltd v Heller & Partners Ltd*,²⁷ the House of Lords recognised liability for negligent misstatements causing economic loss where a "special relationship" existed. This development was not dictated by earlier authority; rather, it emerged through judicial reasoning responsive to commercial realities.

Judicial law-making is also evident in the correction of erroneous precedents. The overruling of earlier decisions illustrates that precedent does not fossilise the law. In *Herrington v British Railways Board*,²⁸ the House of Lords overruled *Addie v Dumbreck*, reformulating the duty owed to trespassers and reflecting modern notions of social responsibility. Similarly, in *R v Shivpuri*,²⁹ the House of Lords overruled its recent decision in *Anderton v Ryan*, acknowledging

²⁶ *Donoghue v Stevenson* [1932] AC 562 (HL).

²⁷ *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC 465 (HL).

²⁸ *Herrington v British Railways Board* [1972] AC 877 (HL).

²⁹ *R v Shivpuri* [1987] AC 1 (HL).

interpretative error in the law of criminal attempts. Lord Bridge candidly recognised that adherence to certainty must sometimes yield to the correction of serious mistake. These examples reveal that precedent operates as a disciplined mechanism of legal evolution. It restrains judicial discretion while permitting necessary doctrinal change.

Judicial law-making through precedent is particularly visible in constitutional adjudication. In *R v Secretary of State for the Home Department, ex parte Daly*,³⁰ the House of Lords refined principles of proportionality within administrative law, drawing upon both domestic precedent and comparative jurisprudence. Likewise, in *R (Miller) v Secretary of State for Exiting the European Union*,³¹ the Supreme Court relied upon historical constitutional principles while articulating contemporary limits on executive authority. Though grounded in precedent, the decision shaped constitutional doctrine in a significant manner.

In English law, the development of negligence jurisprudence illustrates how transformative judicial reasoning can emerge within the framework of precedent. In *Donoghue v Stevenson*,³² the House of Lords articulated the "neighbour principle", thereby laying the foundation for modern negligence law. Although the reasoning was framed as an application of existing legal doctrine, the judgment significantly expanded the scope of duty of care beyond contractual relationships. The court did not present its reasoning as legislative innovation; rather, it relied upon analogical reasoning grounded in prior authority. Subsequently, in *Hedley Byrne & Co Ltd v Heller & Partners Ltd*,³³ the House of Lords recognised liability for negligent misstatement, further extending the law of negligence. This development was again justified through doctrinal reasoning that carefully engaged with earlier case law. The evolutionary character of judicial activism is further evident in *Caparo Industries plc v Dickman*,³⁴ where the House of Lords reformulated the test for duty of care into a structured threefold inquiry. Each of these decisions demonstrates that judicial law-making often proceeds incrementally through reinterpretation and refinement of precedent rather than abrupt departure.

More direct forms of activism may involve overruling outdated authority when social conditions demand reform. In *R v R*,³⁵ the House of Lords abolished the marital rape exemption, recognising that the historical fiction underpinning the immunity was incompatible with contemporary constitutional values. While this involved overruling prior common law

³⁰ *R v Secretary of State for the Home Department, ex parte Daly* [2001] UKHL 26, [2001] 2 AC 532.

³¹ *R (Miller) v Secretary of State for Exiting the European Union* [2017] UKSC 5, [2018] AC 61.

³² *Donoghue v Stevenson* [1932] AC 562 (HL).

³³ *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC 465 (HL).

³⁴ *Caparo Industries plc v Dickman* [1990] 2 AC 605 (HL).

³⁵ *R v R* [1992] 1 AC 599 (HL).

understanding, the decision was justified as consistent with principles of equality and personal autonomy that had gradually evolved within legal doctrine. The court thus maintained institutional legitimacy by situating change within an existing normative framework.

Article 141 of the Constitution of India declares that the law laid down by the Supreme Court shall be binding on all courts within the territory of India.³⁶ Judicial innovation therefore acquires binding authority once articulated by the Supreme Court. In *Kesavananda Bharati v State of Kerala*,³⁷ the court propounded the basic structure doctrine, limiting Parliament's amending power. Although the doctrine represented a profound assertion of judicial review, it was framed as a logical consequence of constitutional supremacy and structural interpretation. Over time, the doctrine itself became binding precedent, shaping subsequent constitutional adjudication.

Similarly, in *Maneka Gandhi v Union of India*,³⁸ the Supreme Court transformed the interpretation of Article 21 by integrating principles of reasonableness and procedural fairness. The decision departed from earlier restrictive readings yet grounded its reasoning in the broader scheme of fundamental rights under Articles 14 and 19. Judicial creativity was thus embedded within constitutional continuity.

Recent transformative judgments further illustrate this dynamic. In *Navtej Singh Johar v Union of India*,³⁹ the Supreme Court decriminalised consensual same-sex relations, relying upon accumulated precedent concerning dignity, privacy, and equality. Likewise, in *Joseph Shine v Union of India*,⁴⁰ the court invalidated the offence of adultery as unconstitutional. In both instances, the court invoked prior constitutional jurisprudence to justify its conclusions, thereby presenting activism as principled doctrinal development rather than judicial overreach.

Ultimately, the doctrine of precedent serves a dual role in the context of judicial activism. On one hand, it limits judicial discretion by requiring adherence to established principles; on the other, it enables innovation by framing change within an ongoing legal tradition. Major developments in both English and Indian constitutional law illustrate that significant transformation often occurs through reinterpretation of existing doctrines rather than sudden breaks. Thus, precedent functions not only as a conservative force but also as a mechanism for orderly and disciplined legal evolution. In this sense, judicial activism and *stare decisis* are not

³⁶ INDIA CONST. art. 141.

³⁷ *Kesavananda Bharati v State of Kerala* (1973) 4 SCC 225 (India).

³⁸ *Maneka Gandhi v Union of India* (1978) 1 SCC 248 (India).

³⁹ *Navtej Singh Johar v Union of India* (2018) 10 SCC 1 (India).

⁴⁰ *Joseph Shine v Union of India* (2019) 3 SCC 39 (India).

in conflict but operate as complementary aspects of a sophisticated and evolving judicial system.

VI. CONCLUSION

The doctrine of precedent reflects the depth and maturity of the common law tradition by transforming individual judicial decisions into elements of a coherent and evolving legal order. It ensures that legal development does not occur in isolation, but within a structured framework grounded in continuity and reasoned analysis. By embedding innovation within established principles, *stare decisis* allows the law to adapt to changing social realities without undermining its foundational stability. Its authority is sustained through disciplined judicial reasoning, adherence to hierarchical structures, and the requirement of principled justification for both following and departing from precedent.

The enduring significance of the doctrine lies in its capacity to maintain a delicate balance between stability and progress, as well as between flexibility and restraint. It neither immobilises the legal system through rigid adherence to the past nor permits unregulated judicial discretion. Instead, it provides a methodical process through which courts can refine, reinterpret, and, where necessary, depart from earlier decisions in a reasoned and transparent manner. In doing so, it preserves public confidence in the judiciary and reinforces the rule of law. Ultimately, precedent stands as one of the most sophisticated instruments of judicial governance, enabling courts to harmonise continuity with change while ensuring that the legal system remains both principled and responsive in modern constitutional democracies.

Furthermore, the doctrine plays a crucial role in fostering institutional legitimacy and accountability within the judiciary. In constitutional democracies, where courts often adjudicate sensitive questions involving rights and governance, such legitimacy is essential for maintaining the balance between judicial authority and democratic principles. At the same time, the adaptability of the doctrine ensures that it remains responsive to evolving societal needs and values. Mechanisms such as overruling, distinguishing, and reference to larger benches allow the legal system to correct past errors and accommodate new realities without disrupting its foundational coherence. In this sense, precedent operates as a living instrument, one that preserves the wisdom of the past while enabling progressive development. This dynamic quality underscores its continuing relevance as a cornerstone of modern legal systems.

VII. BIBLIOGRAPHY

1. Baker, J.H., *An Introduction to English Legal History* (5th edn, Oxford University Press 2019).

2. Blackstone, William, *Commentaries on the Laws of England* (1765-1769).
3. Cross, Rupert & Harris, J.W., *Precedent in English Law* (4th edn, Clarendon Press 1991).
4. Denning, Lord, *The Discipline of Law* (Butterworths 1979).
5. Dworkin, Ronald, *Law's Empire* (Harvard University Press 1986).
6. Dworkin, Ronald, *Taking Rights Seriously* (Harvard University Press 1977).
7. Goodhart, A.L., 'Determining the Ratio Decidendi of a Case' (1930) 40 Yale Law Journal 161.
8. Hart, H.L.A., *The Concept of Law* (2nd edn, Oxford University Press 1994).
9. Llewellyn, Karl N., *The Bramble Bush* (Columbia University Press 1930).
10. Plucknett, T.F.T., *A Concise History of the Common Law* (5th edn, Little, Brown and Co 1956).
11. Pollock, Sir Frederick & Maitland, Frederic William, *The History of English Law before the Time of Edward I* (2nd edn, Cambridge University Press 1898).
12. Simpson, A.W.B., 'The Common Law and Legal Theory' (1973) 2 Oxford Journal of Legal Studies 155.
13. The Constitution of India, 1950.
