
BETWEEN FIDELITY AND FLEXIBILITY: JUDICIAL CONSISTENCY AND THE USE OF PRECEDENT IN THE INDIAN SUPREME COURT

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"Precedent is not a prison from which there is no escape, but neither is it a license to wander at will."

- Justice Benjamin Cardozo¹

I. ABSTRACT

The doctrine of 'stare decisis' refers to the legal principle of determining points in litigation according to precedent.² To stand by things decided, or 'stare decisis', is the bedrock of common law jurisprudence.³ Following precedents ensures legal certainty, institutional legitimacy, and the commitment to the rule of law. This doctrine is enshrined in Article 141 of the Indian Constitution, which states that the law declared by the Supreme Court is binding on all courts within the territory of India.⁴

It is imperative to note that despite the enshrinement of the doctrine in the Constitution, the Indian Supreme Court does not always follow the precedents stringently. The Supreme Court engages in numerous tools of interpretation, including 'distinguishing' whilst deciding the cases. Interestingly, the court may overlook precedents that it conceives to be inconvenient.

These approaches, while occasionally acceptable, raise fundamental questions regarding doctrinal coherence and judicial accountability. This article analyses how interpretation tools are used to support or undermine precedents. It critically investigates whether these interpretation methodologies uphold the integrity of Article 141 or undermine it under the pretext of constitutional flexibility.⁵

¹ Benjamin N. Cardozo, *The Nature of the Judicial Process* (Yale Univ. Press 1921).

² *Stare Decisis*, Oxford English Dictionary, available at https://www.oed.com/dictionary/stare-decisis_phr?tab=factsheet#20863079 (last visited Apr. 25, 2025).

³ Thomson Reuters Legal, *The Doctrine of Stare Decisis* <https://legal.thomsonreuters.com/blog/the-doctrine-of-stare-decisis/> (last visited Apr. 25, 2025).

⁴ India Const. art. 141.

⁵ *Id.*

II. Dworkin's Vision for Judicial Interpretation

Interpretation entails the search for meaning in the face of uncertainty. Legal texts, such as statutes and precedents, do not always provide a simple, conclusive solution. This ambiguity derives from the indeterminacy of language, the changing nature of cultural values, and the inability to predict all future scenarios in which a law may be applied as hypothesised by **Andrew Morrison Stumpff** in '*The Law is a Fractal: The Attempt to Anticipate Everything*'.⁶ In such a situation, judges must not only locate relevant precedents but also interpret them in a cohesive, principled, and contextually appropriate manner.

A framework for assessing how judges should strike a balance between consistency and flexibility in their legal interpretations is provided by **Ronald Dworkin** in his '*Law's Empire*'.⁷ As per Dworkin, **Conventionalism** is a theory of law that holds that legal rights and duties are determined strictly by established legal conventions, such as statutes, precedents, and procedural rules. Under this approach, **law is a set of fixed rules that judges must apply as written, without interpreting them based on moral reasoning or societal values.**

Dworkin's Conventionalism can explain how the Indian Supreme Court handles established norms and practices in court rulings. **A conventionalist approach is reflected in the doctrine of stare decisis as reflected in Article 141 of the Indian Constitution, which holds that the Court is frequently bound by past rulings.**⁸

Dworkin also proposes the theory of '**Law as Integrity**'.⁹ According to this theory, the law should be viewed as a dynamic system of principles that represent the moral values of the community rather than just a set of fixed rules, whilst also making sure that the judicial decision-making is **consistent** with earlier rulings. **Therefore, a deviation from the norm needs to be supported by a moral argument based on the larger legal and constitutional framework.**

An example of the Court reinterpreting earlier rulings is the Supreme Court in its landmark judgement of *Navtej Singh Johar v Union of India*, overruling the case of *Suresh Koushal v*

⁶ Andrew Morrison Stumpff, *The Law is a Fractal: The Attempt to Anticipate Everything*, 44 Loy. U. Chi. L.J. 649 (2013).

⁷ Ronald Dworkin, *Law's Empire* 107 (Hart 1986).

⁸ India Const. art. 141.

⁹ Dworkin, *supra* note [7], at 107.

Naz Foundation.¹⁰ The case of *Navtej Singh Johar v Union of India* was decided in the backdrop of India's changing societal structure, **especially in acknowledging the right to human dignity of the LGBTQ community.** The court's ruling was not just a legal but also a moral awakening, an act of the judiciary that reshaped the idea of equality and dignity in modern India, at a time when the views of society were changing.

Another significant approach of the Indian Supreme Court is the role of pragmatism in decision-making.¹¹ **Pragmatism**, as per Dworkin, is a flexible and result-oriented theory that **prioritizes the best future outcome over consistency with past legal decisions.** A pragmatist judge disregards precedents when doing so would lead to **better social consequences.**

For instance, the Court acknowledged in *Navtej Johar v Union of India* that criminalizing consensual sexual relationships between adults of the same gender under Section 377 was **realistically harmful to people's fundamental rights, including their right to privacy and dignity.**¹² Even if it meant overturning a precedent, this practical approach showed that justice and equality should direct legal interpretation.

Allowing practical reasons to take precedence over legal principles, however, **carries a risk of producing arbitrary rulings** that compromise the stability and predictability of the law. Therefore, pragmatism needs to be weighed against the coherence of the law that Dworkin propounds.

Moreover, **Ronald Dworkin** in '*Law as Interpretation*' proposes the '**Chain Novel**' theory wherein the judges must decide cases based on previous judicial decisions while also shaping the future of the law.¹³ He imagines a group of novelists engaged in a project where they take turns writing chapters of a novel. The first novelist begins the story, and each subsequent writer must continue writing it, treating what has been written as an existing narrative rather than starting afresh. While each novelist must respect what has come before, they also have some creative discretion in determining how the story unfolds. However, their contributions must ensure that **the novel remains a coherent whole** rather than a disjointed collection of stories.

¹⁰ Suresh Kumar Koushal v. Naz Found., (2014) 1 S.C.C. 1 (India).

¹¹ Dworkin, *supra* note [7].

¹² Navtej Singh Johar v. Union of India, (2018) 10 S.C.C. 1 (India).

¹³ Ronald Dworkin, *Law as Interpretation*, 60 *Critical Inquiry* 179 (1982).

Dworkin argues that this is exactly how judges operate when interpreting the law. **Each judge, when faced with a legal dispute, does not create the law from scratch but must interpret the chain of legal decisions that have preceded them.** Judges must determine **what the legal principles underlying the past decisions are and how best to extend them.** Judges are not passive historians merely describing past rulings; they are active participants in the legal tradition. **Each judge must determine not only what has been decided before but also what principle best explains past rulings and provides a coherent path forward.**

The Court has the authority to distinguish or overturn earlier decisions where it deems them to be unworkable or out of date, as was the case with *Kesavananda Bharati v State of Kerala* concerning the “basic structure” concept.¹⁴ **This act of ‘distinguishing’ acknowledges the need for change while attempting to bring new decisions into line with accepted norms, in which the Court recognizes that the law is dynamic and can change to accommodate novel situations whilst adhering to established legal norms.**

III. Arie Rosen: Strategic Flexibility and the Manipulation of Precedent

Arie Rosen provides an interpretive framework for analyzing the Supreme Court's selective adherence to precedent in his “**Statutory Interpretation and the Many Virtues of Legislation**”.¹⁵

Rosen makes a distinction between two prevalent methods of interpretation. A rigorous division of labour between the legislature and the judiciary is emphasized by the **control-maximizing approach**. To maintain the legitimacy of laws passed by democratic means, **judicial discretion is kept to a minimum.** This method requires a strict **adherence to the precedent.**

Contrarily, the **correctness-oriented approach**, which is akin to **Dworkinian interpretivism**, prioritizes interpretive results that significantly advance justice, reason and morality. When moral or constitutional principles require, this method allows and even encourages overruling past decisions.

¹⁴ *Kesavananda Bharati v. State of Kerala*, (1973) 4 S.C.C. 225 (India).

¹⁵ Arie Rosen, *Statutory Interpretation and the Many Virtues of Legislation*, 41 Oxford J. Legal Stud. 1 (2021).

For instance, in *K.S. Puttaswamy v. Union of India*, the Court upheld the right to privacy.¹⁶ The same was read into Article 21 of the Constitution.¹⁷ The case of *ADM Jabalpur v Shivkant Shukla*, which had denied such a right under the Emergency, was directly overturned by this ruling.¹⁸

Aligning with Dworkinian principles, the Court used the moral bankruptcy of the arguments proposed in the *ADM Jabalpur v Shivkant Shukla* case to support the departure in addition to its doctrinal justifications.¹⁹ This is a traditional **correctness-oriented method**.²⁰ According to Rosen's theory, this is equivalent to dismissing a gardener's advice to water during a downpour: the judge recognizes the ultimate purpose of the law and modifies its application to fulfil its fundamental purpose.

However, there are **occurrences when the Court hollows out precedent** while feigning adherence to it. This is the **negative aspect of interpretive flexibility**. In *Suresh Koushal v. Naz Foundation*, the Court viewed the case of *Naz Foundation v Govt of NCT of Delhi* as an anomaly.²¹ The court revived a Victorian morality-based interpretation of **Section 377 of IPC**²². Ironically, the decision demonstrated **selective deference** by disregarding the Delhi High Court's constitutional analysis **in favor of an outdated literalism, all while maintaining a tone of judicial constraint**.

Here, the criticism of control-maximization approach becomes relevant since it can be used as a justification for maintaining power structures while seeming to respect precedent.²³ The Court did not realign with a correctness-based approach until *Navtej Johar v Union of India*, which explicitly overturned *Suresh Koushal v Naz Foundation*, rereading the same text through the text of **constitutional morality**.²⁴

The Court's purposeful application of both paradigms is evident in this **oscillation**. It employs correctness-oriented discourse when it aims to leave a moral legacy and control-maximizing

¹⁶ K.S. Puttaswamy v. Union of India, A.I.R. 2017 S.C. 4161, (2017) 10 S.C.C. 1.

¹⁷ India Const. art. 21.

¹⁸ ADM Jabalpur v. Shivkant Shukla, A.I.R. 1976 S.C. 1207, (1976) 2 S.C.C. 521.

¹⁹ *Id.*

²⁰ Rosen, *supra* note [15].

²¹ Suresh Kumar Koushal v. Naz Found., A.I.R. 2014 S.C. 563, (2014) 1 S.C.C. 1.

²² Indian Penal Code, 1860, § 377 (India).

²³ Rosen, *supra* note [15].

²⁴ Navtej Singh Johar v. Union of India, (2018) 10 S.C.C. 1 (India) (overturning Suresh Kumar Koushal v. Naz Found., (2014) 1 S.C.C. 1 (India)).

rhetoric when it is politically convenient, often to avoid addressing contentious social concerns.²⁵ The key tactic is "distinguishing," which allows the Court to ostentatiously follow precedent yet avoid its binding logic by declaring a case factually distinct or doctrinally inapplicable.

It is worthwhile to apply Rosen's caution regarding the normative instability of the correctness-oriented approach in a pluralist society in this context. Although frequently liberating, the **Indian Court's broad moral interpretations lack a consistent standard** by which to be applied. Without explicit theoretical limitations, moral reasoning is **susceptible to the bench's ideological inclinations.**

For example, the Court referenced "constitutional morality" in *Joseph Shine v. Union of India*, which decriminalized adultery, but it did not clearly define when this morality should take precedence over existing precedent or statutory wording.²⁶ **This uncertainty exemplifies the conflict that the correctness-oriented interpretations may promote justice, but if they are not based on democratically accountable reasoning, they run the risk of turning into tools of judicial majoritarianism.**²⁷

The Indian Supreme Court exhibits a **dual allegiance, vacillating between faithfulness and adaptability.** The Courts frequently instrumentalize both models **based on convenience rather than principle**, in contrast to Rosen's call for context-sensitive interpretation that **honours the inherent logic of each legislative choice.** The problem is not judicial flexibility in and of itself, but rather the **theoretical opaqueness** around the application and timing of such flexibility. **The true danger to judicial consistency is not overturning precedents but rather manipulating them under the pretence of interpretation.**

IV. Selective Silence: The Supreme Court's Strategic Erasure of Precedent

The more subtle strategy of burying precedent rather than overturning it outright is one of the most unsettling developments in the Indian Supreme Court's interpretive toolbox. In some cases, this deliberate erasing of legal history **violates the constitutional norm of stare decisis and veers dangerously close to legal realism.**

²⁵ Rosen, *supra* note [15].

²⁶ Joseph Shine v. Union of India, A.I.R. 2019 S.C. 489, (2019) 3 S.C.C. 39.

²⁷ Rosen, *supra* note [15].

A prime example of this phenomenon is the ***Hindutva Judgement***, a historic ruling that attempted to ascertain if religiously motivated appeals to the democratic process qualify as "corrupt practices" under the Representation of the People Act.²⁸ It is a citadel of precedent, full of case law superstructure that gives it the appearance of rigour and genuineness.

What is striking, however, is what is left out, not what is mentioned. The Court fails to bring up ***S.R. Bommai v. Union of India***²⁹, a ruling that specifically addressed the constitutional parameters of secularism in the Indian republic, in an almost **deliberate act of judicial forgetfulness**.

The nine-judge bench ruling in the Bommai case is not a forgotten artifact. It maintains that religion and politics cannot coexist and that secularism is a fundamental component of the Constitution, making it one of the strongest declarations of India's secular identity.³⁰ **S.R. Bommai was, if ever, a precedent that was immediately pertinent to the issues raised in the Hindutva judgement on a factual and legal level.** Nevertheless, it was buried under the guise that it was irrelevant to the case at hand.

This selective reference to precedent is a part of a broader judicial trend rather than an isolated incident. For example, the ***Ayodhya Judgment*** is a ruling that draws its reasoning from a plethora of judgments, some of which are obscure and some of which are irrelevant.³¹ Despite this, Bommai is mentioned just once, in passing, without any interaction or even a remark.³² It is a glaring absence. Bommai's strong support for secularism and state's neutrality in religious matters stands in stark ideological contrast to the underlying tone of the Ayodhya ruling, which prioritized a majoritarian stance and sidelined the minority religion.

Citing what works while disregarding what does not is not judicial activism. Under the guise of discretion, it is **intellectual dishonesty**. It undermines the principle of stare decisis, which holds that laws ruled by the Supreme Court under **Article 141** must be enforceable.³³

Ultimately, the Court's inaction on Bommai constitutes a **constitutional betrayal** rather than just a legal lapse.³⁴ **A threat more serious than dissent is present in that erasure: the threat**

²⁸ Dr. Ramesh Yeshwant Prabhoo v. Prabhakar Kashinath Kunte, (1996) 1 S.C.C. 130 (India).

²⁹ S.R. Bommai v. Union of India, (1994) 3 S.C.C. 1 (India).

³⁰ *Id.*

³¹ M. Siddiq (D) Thr. LRs v. Mahant Suresh Das, (2020) 1 S.C.C. 1 (India).

³² S.R. Bommai v. Union of India, (1994) 3 S.C.C. 1 (India).

³³ India Const. art. 141.

³⁴ S.R. Bommai v. Union of India, (1994) 3 S.C.C. 1 (India).

of a judiciary that forgets because it chooses to, not because it is required to do so out of necessity.

V. Creative Departure and Doctrinal Recalibration: The Supreme Court's Evolving Interpretive Strategies

The Court radically overturned *ADM Jabalpur v. Shivkant Shukla in K.S. Puttaswamy v. Union of India*, holding that basic rights cannot be suspended, not even in times of emergency.³⁵ The **Mischief Rule** was used in the decision to correct a moral and constitutional error. To restore constitutional coherence, it was a correctness-oriented recalibration of precedent, as Arie Rosen put it.

The case of *BCCI v. Cricket Association of Bihar* changed the Court's stance on public accountability.³⁶ It serves as an example of both **liberal statutory construction and selective reliance on precedent**. Without explicitly stating a departure from earlier rulings, the Court's broad interpretation of "public function" was in line with a **correctness-oriented approach** that harmonizes legal standards with public expectations.

The Court in *Arun Kumar v. Inspector General of Registration* construed the Hindu Marriage Act's definition of "bride" to encompass transgender women.³⁷ The Court adopted **purposivism** and incorporated inclusion into the law text, rejecting restrictive instruments such as **noscitur a sociis and ejusdem generis**.

VI. Baxi's Lens: Stare Decisis as Symbol, Not Constraint

Upendra Baxi in "*The Travails of Stare Decisis in India*" contends that precedent serves as a symbolic tool as well as a legally binding authority, frequently masking more fundamental inconsistencies while projecting judicial continuity.³⁸ He states that although rulings appear to uphold adherence to earlier rulings, judges usually carefully choose the precedents to **selectively validate their findings**.

³⁵ *ADM Jabalpur v. Shivkant Shukla*, (1976) 2 S.C.C. 521 (India); *K.S. Puttaswamy v. Union of India*, (2017) 10 S.C.C. 1 (India).

³⁶ *BCCI v. Cricket Ass'n of Bihar*, (2015) 3 S.C.C. 251 (India).

³⁷ *Arun Kumar v. Inspector Gen. of Registration*, A.I.R. 2019 Mad. 265, 268 (India)

³⁸ Upendra Baxi, *The Travails of Stare Decisis in India*, in Legal Change: Essays in Honour of Julius Stone 123 (A.R. Blackshield ed., 1983).

As a result, courts can use precedent without being completely bound by it. Notably, Baxi notes that **dissents are rarely mentioned directly but are frequently subtly incorporated into majority views in later instances, allowing for a minor doctrinal change without the institutional integrity of admitting reversal**. The end effect is a body of law that builds up **inconsistencies** without addressing them. The practice of "**distinguishing**" is one of the main ways that Supreme Court judges deviate from precedent. By demonstrating that the facts of the case at hand are fundamentally different, a judge can theoretically avoid adopting a precedent.

Baxi contends, however, that this instrument has developed into a more comprehensive method of judicial evasion. **Judges have the power to narrowly reinterpret an earlier case's ratio decidendi, making its wider ramifications moot**. Sometimes, procedural justifications are used to support departing from earlier decisions, or factual differences are overstated. Although each of these strategies can seem doctrinally acceptable when considered alone, Baxi shows that when combined, they create **a pattern of inconsistency** that calls into question the validity of the legal system.

As per Baxi, Chief Justice Hidayatullah's **retroactive dissension** from his own prior concurrence in *Vajravelu Mudaliar v. Special Deputy Collector for Land Acquisition* is one notable case, as it occurred in *Shamrao Vishnu Parulekar v. District Magistrate*³⁹. He demonstrated how judges may review and reinterpret their own previous stances to meet current legal or political necessities by effectively reducing the earlier unanimous decision to a 4:1 ruling by reclassifying crucial findings in Vajravelu as *obiter dicta*.⁴⁰

Another noteworthy case is *Indira Nehru Gandhi v. Raj Narain*, in which Justice Khanna introduced contradictions into the "**basic structure**" concept by **retroactively clarifying his position** in *Kesavananda Bharati v. State of Kerala*.⁴¹ In addition, this decision demonstrated the Court's readiness to deviate from previous rulings supporting legislative sovereignty in the face of contentious constitutional amendments.

Similar to this, in *ADM Jabalpur v. Shivakant Shukla*, Chief Justice Beg's post-Emergency admission that the Court's unanimous decision from the Emergency era, denying judicial

³⁹ *Vajravelu Mudaliar v. Special Dy. Collector for Land Acquisition*, A.I.R. 1967 S.C. 637, 639 (India); *Shamrao Vishnu Parulekar v. Dist. Magistrate*, A.I.R. 1956 S.C. 23, (1956) S.C.R. 644 (India).

⁴⁰ *Vajravelu Mudaliar v. Special Dy. Collector for Land Acquisition*, A.I.R. 1967 S.C. 637, 639 (India).

⁴¹ *Indira Nehru Gandhi v. Raj Narain*, A.I.R. 1975 S.C. 2299, (1975) 2 S.C.C. 159 (India); *Kesavananda Bharati v. State of Kerala*, A.I.R. 1973 S.C. 1461, (1973) 4 S.C.C. 225 (India).

recourse for suspended fundamental rights, had been "loosely expressed" and "misleading."⁴² This retroactive departure from a legally binding precedent demonstrates the Court's sporadic unwillingness to uphold unpopular decisions when political tides turn.

In India, precedent is a rhetorical and tactical tool used to support decisions that have already been made based on institutional, ideological, or political factors rather than a solid, binding force. In this way, the adaptability of judicial consistency reflects deeper structural ambiguity rather than being a mere consequence of a dynamic legal system. Therefore, developing institutional procedures that guarantee openness, intellectual integrity, and doctrinal coherence in the handling of precedent is the real challenge for the future.

VII. Conclusion: Between Fidelity and Forgetting

The precedents of the Indian Supreme Court serve as tools for the nation's democratic identity, coherence and social change, rather than merely reflecting the positive law. **However, the Court at times does not use but abuses the precedents.** A range of interpretive discretion, at times opportunistic, at times principled, and at times unsettlingly evasive, lies behind the formal vocabulary of *stare decisis*.

Departures from precedent demand justification, not mere convenience. When the Supreme Court distinguishes or disregards binding authority without reason, as seen in the omission of *S.R. Bommai* in the *Hindutva* judgement and the *Ayodhya* judgment, **it does not reinterpret the law; it reshapes it to fit an ideological narrative.**⁴³

Through Dworkin's lens of *Law as Integrity* and Arie Rosen's distinction between control-maximizing and correctness-oriented approaches, we see that the Court oscillates between restraint and activism without anchoring its decisions in a clear normative method.⁴⁴ This creates a jurisprudence vulnerable to arbitrariness and doctrinal inconsistency.

⁴² ADM Jabalpur v. Shivkant Shukla, A.I.R. 1976 S.C. 1207, (1976) 2 S.C.C. 521 (India).

⁴³ Dr. Ramesh Yeshwant Prabhoo v. Prabhakar Kashinath Kunte, A.I.R. 1996 S.C. 1113, (1996) 1 S.C.C. 130 (India); M. Siddiq (D) Thr. LRs v. Mahant Suresh Das, A.I.R. 2020 S.C. 1, (2020) 1 S.C.C. 1 (India); S.R. Bommai v. Union of India, A.I.R. 1994 S.C. 1918, (1994) 3 S.C.C. 1 (India).

⁴⁴ Ronald Dworkin, *Law's Empire* 107 (Hart 1986) (Chapter 5); Ronald Dworkin, *Law as Interpretation*, 60 Critical Inquiry 179 (1982); Arie Rosen, *Statutory Interpretation and the Many Virtues of Legislation*, 41 Oxford J. Legal Stud. 1 (2021).

Precedent must guide, not bind, but it must never be ignored. To use or discard it selectively is not an exercise of independence; it is a breach of constitutional duty. **The legitimacy of the judiciary lies not in its freedom from the past, but in its accountability to legal reason, democratic memory, and the enduring principles of justice.**