LAW OF PRECEDENTS

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1(A). <u>Precedent--- What is & how to be ascertained?</u>--- Ratio of the judgment alone is a binding precedent. It has to be ascertained by analyzing all the material facts and the issues involved in the case and argued on both sides. Moreover, the decision should be read with reference to and in the context of the particular statutory provision interpreted by the court. It is neither desirable nor permissible to pick out a word or a sentence from the judgment of the Court, divorced from the context of the question under consideration and treat it to be the complete "law" declared by the Supreme Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before the Supreme Court. The decision on the question involved in the case in which it is rendered and while applying the decision to the later case, the courts must carefully try to ascertain the true principle laid down by the decision and not to pick out words or sentences from the judgment divorced from the context of the question under consideration by the Court. An authority must be understood in the context of facts based on which observations therein are made. See---

1. **State of Rajasthan vs. Ganeshi Lal, AIR 2008 SC 690**
2. **Rajendra Singh vs. State of U.P., AIR 2007 SC 2786**
3. **ICICI Bank vs. Municipal Corporation of Greater Bombay, (2005) 6 SCC 404**
4. **CIT vs. Sun Engg. Works (P) Ltd., (1992) 4 SCC 363**
5. **Madhav Rao Scindia vs. Union of India, (1971) 1 SCC 85**

1(B). <u>Principles & purpose of precedents ?</u>--- The Supreme Court has time and again emphasized the essentials and principles of 'Precedent' and of *stare decisis* which are a cardinal feature of the hierarchical character of all Common Law judicial systems. The doctrine of Precedent mandates that an exposition of law must be

followed and applied even by coordinate or co-equal Benches and certainly by all smaller Benches and Subordinate Courts. That is to say that a smaller and a later bench has no freedom other than to apply the law laid down by the earlier and larger Bench, that is the law which is said to hold the field. Apart from Article 141, it is a policy of the Courts to stand by precedent and not to disturb a settled point. The purpose of precedents is to bestow predictability on judicial decisions and it is beyond cavil that certainty in law is an essential ingredient of rule of law. A departure may only be made when a coordinate or co-equal Bench finds the previous decision to be of doubtful logic or efficacy and consequentially, its judicial conscience is to perturbed and aroused that it finds it impossible to follow the existing ratio. The Bench must then comply with the discipline of requesting the Hon'ble Chief Justice to constitute a larger Bench. See : **State of UP Vs. Ajay Kumar Sharma, 2016 (92) ACC 985 (SC).**

2. **Ratio decidendi & its applicability**--- The term "ratio decidendi" means reasons for the decision. Broadly speaking, every judgment of superior courts has three segments, namely, (i) the facts and the points at issue, (ii) the reasons for the decision; and (iii) the final order containing the decision. The reasons for the decision or the ratio decidendi is not the final order containing the decision. In fact, in a judgment of this Court, though the ratio decidendi may point to a particular result, the decision (final order relating to relief) may be different and not a natural consequence of the ratio decidendi of the judgment. This may happen either on account of any subsequent event or the need to mould the relief to do complete justice in the mater. It is the ratio decidendi of a judgment and not the final order in the judgment, which forms a precedent. The term "judgment" and "decision" are used, rather loosely, to refer to the entire judgment or the final order or the ratio decidendi of a judgment. See--- **Sanjay Singh vs. U.P. Public Service Commission, Allahabad, (2007) 3 SCC 720 (Three Judge Bench).**

3. **Principles of "Stare-decisis" & its meaning**—The full form of the principle, stare decisis at non quieta movere, which means 'to stand by decisions and not to

disturb what is settled', was put by Coke in his classic English version as: "Those things which have been so often adjudged ought to rest in peace." The doctrine of stare decisis originated in England and is the basis of common law. It is also firmly rooted in American jurisprudence. It is important to further fair and expeditious adjudication by eliminating the need to relitigate every proposition in every case and is regarded as a rule of policy which promotes predictability, certainty, uniformity and stability. An earlier decision may, therefore, be overruled only if the court comes to the conclusion that it is manifestly wrong and not upon a mere suggestion that if the matter were res ingetra, the members of the later court may arrive at a different conclusion. For the application of the rule of stare decisis, it is not necessary that the earlier decision or decisions of longstanding should have considered and either accepted or rejected the particular argument which is advanced in the case on hand. It is sufficient for invoking which arose or was argued, no matter on what reason the decision rests or what is the basic of the decision. In other words, for the purpose of applying the rule of stare decisis, it is unnecessary to enquire or determine as to what was the rationale of the earlier decision which is said to operate as stare decisis. See—

1.**Dr. Shah Faesal Vs. Union of India, (2020) 4 SCC 1 (Five-Judge Bench).**

2. **Waman Rao vs. Union of India, (1981) 2 SCC 362 (Five Judge Bench)**

4. **<u>Importance of precedents?</u>**--- Precedents which enunciate rules of law form the foundation of administration of justice under our system. This is a fundamental principle which every Presiding Officer of a Judicial Forum ought to know, for consistency in interpretation of law alone can lead to public confidence in our judicial system. Supreme Court has laid down time and again precedent law must be followed by all concerned; deviation from the same should be only on a procedure known to law. A subordinate court is bound by the enunciation of law made by the superior courts. Rule of precedent is an important aspect of legal certainty in the rule of law. See---

1. **Honda Siel Power Products vs. CIT, Delhi, (2007) 12 SCC 596**

2. **S.I. Rooplal vs. Lt. Governor, Delhi, AIR 2000 SC 594 (Three Judge Bench)**

5. **Discretion & precedent distinguished**--- One must remember that pursuit of the law, however glamorous it is, has its own limitation on the Bench. In a multi-judge court, the Judges are bound by precedents and procedure. They could use their discretion only when there is no declared principle to be found, no rule and no authority. The judicial decorum and legal propriety demand that where a single judge or a division bench does not agree with the decision of a bench of coordinate jurisdiction, the matter should be referred to a larger bench. It is a subversion of judicial process not to follow this procedure. In our system of judicial review which is a part of our constitutional scheme, is the duty of judges of superior courts and tribunals to make the law more predictable. The question of law directly arising in the case should not be dealt with apologetic approaches. The law must be made more effective a a guide to behaviour. It must be determined with reasons which carry convictions within the Courts, profession and public. Otherwise, the lawyers would be in a predicament and would not know how to advise their clients. Subordinate courts would find themselves in an embarrassing position to choose between the conflicting opinions. The general public would be in dilemma to obey or not to obey such law and it ultimately falls into disrepute. See--- **Sundarjas Kanyalal Bhathija vs. The Collector, Thane, Maharashtra, AIR 1990 SC 261.**

6. **Precedents & their application to cases with factual difference**--- The ratio of any decision must be understood in the background of the facts of that case. A case is only an authority for what it actually decides and not what logically follows from it. It is well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. A decision cannot be relied upon without disclosing the factual situation. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact-situation of the decision on which reliance is placed. Observations of Courts are

neither to be read as Euclid's Theorems nor as provisions of the statute and that too taken out of the context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. A little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. See---

1. **Deepak Bajaj vs. State of Maharashtra, AIR 2009 SC 628**
2. **Government of Karnataka vs. Gowramma, AIR 2008 SC 863**
3. **Sarva Shramik Sanghatana, Mumbai vs. State of Maharashtra, AIR 2008 SC 946**
4. **U.P. State Electricity Board vs. Pooran Chandra Pandey, (2007) 11 SCC 92**
5. **Bharat Petroleum Corporation Ltd. vs. N.R. Vairamani, AIR 2004 SC 4778**
6. **Bhavnagar University vs. Palittana Sugar Mills Pvt. Ltd., (2003) 2 SCC 111**
7. **Ambika Quarry Works vs. State of Gujarat, (1987) 1 SCC 213**

7. **<u>Cautions & pre-conditions in applying Ratio of a case to other cases</u>**---
Ratio of a case can be extended to other identical situations, factual and legal, but not mechanically disregarding the rationale of that case. Unless and until the facts and circumstances in a cited case are in pari materia in all respects with the facts and circumstances of the case in hand, it will not be proper to treat an earlier case as a precedent to arrive at a definite conclusion. Hence a given case should be determined on facts and circumstances of that case only and facts arising in the cases cited should not be blindly treated as a precedent to determine the conclusions. A decision is an authority for the questions of law determined by it. While applying the ratio, the court may not pick out a word or a sentence from the judgment divorced from the context in which the said question arose for consideration. A judgment, as is well known, must be read in its entirety and the observations made therein should receive consideration in the light of the questions raised before it. A decision is binding not because of its conclusion but in regard to its ratio and the principle laid down therein. Construction of a judgment should be made in the light of the factual matrix involved

therein. What is more important is to see the issues involve therein and a context wherein the observations were made. Any observation made in a judgment, it is trite, should be read in isolation and out of context. A decision is an authority for what it decides and not what can logically be deduced therefrom. See---

1. **Bihar School Examination Board vs. Suresh Prasad Sinha, AIR 2010 SC 93**
2. **Bombay Dyeing & Manufacturing Co. Ltd. vs. Bombay Environmental Action Group, (2006) 3 SCC 434**
3. **Dhodha House vs. S.K. Maingi, (2006) 9 SCC 41**
4. **Ramesh Singh vs. State of A.P., (2004) 11 SCC 305**
5. **Mehboob Dawood Shaikh vs. State of Maharashtra, AIR 2004 SC 2890**
6. **P.S. Sathappan vs. Andhra Bank Ltd., AIR 2004 SC 5152 (Five Judge Bench)**
7. **Common Cause vs. Union of India, (2004) 5 SCC 222**
8. **Babu Khan vs. Nazim Khan, (2001) 5 SCC 375**
9. **Sukhwant Singh vs. State of Punjab, (1995) 3 SCC 367**
10. **Deena vs. Union of India, (1983) 4 SCC 645 (Three Judge Bench)**
11. **B. Shama Rao vs. Union Territory of Pondicherry, AIR 1967 SC 1480 (Five Judge Bench).**

8. **Kinds of precedents**--- Precedents are of two kinds---

(i) Binding

(ii) Persuasive

9(A). **Precedents of other High Courts have only persuasive value**--- A precedent which is not of own High Court has only persuasive value over the courts of other states.

9(B). **Declaration of law by High Court binding within its jurisdiction/state**--- The High Court occupies the status of the highest and most superior court in the State and so it becomes incumbent on all persons or authorities within its jurisdiction to respect its orders and abide by well known principles fundamental to the courts of justice that any disobedience or disregard to any order passed by the High Court will be on pain of committal for contempt. It must not be lost sight of that it is implicit in the power of supervision conferred on a superior court that all Tribunals subject to its supervision should conform to the law laid down by it otherwise there would be confusion in the administration of law and respect for law would irretrievably suffer.

Law declared by High Court is binding in that state on lower courts and tribunals too. See---

1. **Jagdish Narain Vs. Chief Controlling Revenue Authority, AIR 1994 All 371**
2. **M/s. East India Commercial Co. Ltd., Calcutta Vs. Collector of Customs, Calcutta, AIR 1962 SC 1893 (Three -Judge Bench)**

9(C). Every High Courts must give due deference to the enunciation of law made by another High Court : Every High Court must give due deference to the enunciation of law made by another High Court even though it is free to charter a divergent direction. However, this elasticity in consideration is not available where the litigants are the same, since Sections 10 and 11 CPC would come into play. Unless restraint is displayed, judicial bedlam and curial consternation would inexorably erupt since an unsuccessful litigant in one State would rush to another State in the endeavour to obtain an inconsistent or contradictory order. Anarchy would be loosed on the Indian Court system. See : **Neon Laboratories Ltd. Vs. Medical Technologies Ltd., (2016) 2 SCC 672** (para 7)

10(A).Declaration of law by Supreme Court binding upon all authorities & courts under Article 141 of the Constitution--- Judicial discipline to abide by declaration of law by the Supreme Court, cannot be forsaken, under any pretext by any authority or Court, be it even the highest Court in a State, oblivious to Article 141 of the Constitution of India, 1950. See---

1. **Union of India Vs Major General Shri Kant Sharma, (2015) 6 SCC 773**
2. **Suga Ram @ Chhuga Ram vs. State of Rajasthan, AIR 2006 SC 3258**
3. **State of Punjab vs. Bhag Singh, (2004) 1 SCC 547**
4. **S.I. Rooplal vs. Lt. Governor, Delhi, AIR 2000 SC 594 (Three Judge Bench)**
5. **Union of India vs. Kantilal Hemantram Pandya, AIR 1995 SC 1349 = (1995) 3 SCC 17.**

**10(B). Supreme Court as legal mentor of the nation--- ** When the Supreme Court, as the apex adjudicator declaring the law for the country and invested with constitutional credentials under Art. 141, clarifies a confused juridical situation, its substantial role is of legal mentor of the nation. Such is the spirit of the ruling in

Trustees of Port, Bombay, (1974) 4 SCC 710. See---- **Commissioner of Income Tax, Madras vs. R.M.Chidambaram Pillai, (1977) 2 SCR 111.**

11. <u>Law making power of the Supreme Court under Article 141 :</u> Law declared by the Supreme Court under Article 141 of the Constitution means the law made while interpreting the Statutes or the Constitution. Such judicial law making is part of judicial process. See : **Sahara India Real Estate Corporation Ltd. Vs. Securities & Exchange Board of India, AIR 2012 SC 3829 (Five-Judge Bench).**

11.1.Constitution and ordinary statutes are interpreted differently: Constitutional law and constitutional interpretation stand on different footing from interpretation of statutes. Constitutional law keeps evolving keeping in view, among other things, felt necessities of time. **See:Kantaru Rajeevaru Vs. Indian Young Lawyers Association,(2020) 2 SCC 1 (Five-Judge Bench)**

12. <u>Supreme Court not to enact laws under Article 141of the Constitution</u>--- The law declared by Supreme Court binds courts in India but it should always be remembered that the Supreme Court does not enact. The observations of the Supreme Court cannot be read as statutory enactments. See--- **Rajeshwar Prasad Mishra vs. State of W.B., AIR 1965 SC 1887 (Three Judge Bench)**

14(A). <u>Larger bench decision binding on smaller benches</u>--- In case of any conflict between the views expressed by larger and smaller benches, judicial discipline requires that the views expressed by larger bench should be preferred to those express by smaller bench. See—

1(a). Bharat Petroleum Corporation Ltd. Vs. Mumbai Shramik Sangha, (2001) 4 SCC 448 (Five-Judge bench).

1(b). Shashi Kala Vs. Ganga Lakshmamma, (2015) 9 SCC 150

1. Royal Orchid Hotels Limited & others Vs. G. Jayarama Reddy & others, (2011) 10 SCC 608

2 Siddharam Satlingappa Mhetre Vs. State of Maharashtra, 2011(1) SCJ 36

3. Official Liquidator vs. Dayanand, (2008) 10 SCC 1 (Three Judge Bench)

4. Kanya Junior High School vs. U.P. Basic Shiksha Parishad, Allahabad, (2006) 11 SCC 92

5. State of Punjab vs. Nestle India Ltd., (2004) 6 SCC 465

6. Lily Thomas vs. Union of India, (2000) 6 SCC 224

7. State of Haryana vs. Maruti Udyog Ltd., (2000) 7 SCC 348

8. G.M., Telecom vs. A. Srinivasa Rao, (1997) 8 SCC 767

9. **State of U.P. vs. Ram Chandra, AIR 1976 SC 2547**
10. **Union of India vs. K.S. Subramanian, AIR 1976 SC 2433**
11. **Parag Lal Behari vs. D.D.C., Gorakhpur, AIR 1985 All 34 (F.B.)**
12. **Thirumala Tirupati Devasthananams vs. Thallappaka Ananthacharyulu, (2003)8 SCC 134**

14(B).<u>Larger bench decision binding on smaller benches</u>--- Where a Two-Judge Bench had criticized law laid down by a Three-Judge Bench in relation to the meaning of imprisonment for life u/s 432, 433 & 433-A CrPC, it has been held by the Hon'ble Supreme Court that the said criticism by the Two-Judge Bench without referring the matter to a larger bench was unwarranted and the judicial discipline required that in the event of conflict or disagreement, the Two-Judge Bench should have referred the matter to larger bench for clarification of law. See : **Sahib Hussain Vs State of Rajasthan, (2013) 9 SCC 778.**

14(C).<u>Subsequent larger bench ruling impliedly overrules earlier ruling of smaller bench</u> : If a subsequent larger bench lays down law to the contrary, earlier ruling of smaller bench stands overruled. See : **Union of India Vs Nirala Yadav, (2014) 9 SCC 457.**

14(D). <u>When can Supreme Court take a different view by overruling its own previous decision</u> ? : The law laid down by the Supreme Court is binding upon all courts in the country under Article 141 and numerous cases all over the country are decided in accordance with the view taken by Supreme Court. Many people arrange their affairs and large number of transaction take place on the faith of the correctness of its view. It would create uncertainty, instability and confusion if the law propounded by this Court is held to be not the correct law. Although precedents have a value and the ratio decidendi of a case can no doubt be of assistance in the decision of future cases, yet the Supreme Court has to guard against the notion that because a principle has been formulated as the ratio decidendi of a given problem, it is therefore to be applied as a solvent of

other problems regardless of consequences, regardless of deflecting factors, inflexibly and automatically, in all its pristine generality. A view which has been accepted for a long period of time should not be disturbed unless the Court can say positively that it was wrong or unreasonable or that it is productive of public hardship or inconvenience. It is not necessary for the purposes of the instant case to overrule the majority decision in (1967) 3 SCR 399. It may be that the view expressed by the majority in that case appears to be preferable but that by itself would not show that, that decision was plainly erroneous and as such requires overruling. It also cannot be said that the aforesaid decision has given rise to public inconvenience and hardship. The legislature has in view of that decision made necessary amendments in many of the enactments so as to bar the jurisdiction of the civil courts in matters dealt with by those enactments. **See : Maganlal Vs. Municipal Corporation of Greater Bombay, AIR 1974 SC 2009 (Seven-Judge Bench)(Paras 43, 44, 46 & 47)**

14(E). **<u>An expression in a judgment against settled law to be ignored and not to be followed as precedent</u> :**A doubtful expression occurring in a judgment apparently by mistake or inadvertence ought to be read by assuming that the Court had intended to say only that which is correct according to the settled position of law and the apparent error should be ignored, far from making any capital out of it, giving way to the correct expression which ought to be implied or necessarily read in the context, also having regard to what has been said a little before and a little after. No learned Judge would consciously author a judgment which is self-inconsistent or incorporates passages repugnant to each other. See :

State of W.B. Vs. Kesoram Industries Ltd. & Others, AIR 2005 SC 1646 (Five-Judge Bench) (paras 356 & 357)

15. **Option for smaller bench disagreeing with larger bench**--- A bench of two judges of the Supreme Court should not disregard the decision of a bench of three judges. If the two judge bench is inclined to disagree with the decision of the three judge bench, then the case should be referred to larger bench. See--- **M/s. Ujagar Prints vs. Union of India, AIR 1987 SC 874**

16. **Conflict between decisions of larger and smaller benches**--- Where there is a conflict between the decisions of two benches of different strength, the decision of the larger bench would prevail. See--- **Commissioner of Income Tax, Bihar vs. Trilok Nath Mehrotra, (1998) 2 SCC 289**

17(A). **Single Judge decision of High Court binding on another Single Judge**--- A single Judge's decision of High Court is binding on another single Judge of that High Court. Latter's decision in ignorance of the former does not constitute a binding precedent and can be treated as per incuriam. The judicial decorum and legal propriety demand that where a single judge or a division bench does not agree with the decision of a bench of coordinate jurisdiction, the matter should be referred to a larger bench. It is a subversion of judicial process not to follow this procedure. In our system of judicial review which is a part of our constitutional scheme, is the duty of judges of superior courts and tribunals to make the law more predictable. The question of law directly arising in the case should not be dealt with apologetic approaches. The law must be made more effective a guide to behaviour. It must be determined with reasons which carry convictions within the Courts, profession and public. Otherwise, the lawyers would be in a predicament and would not know how to advise their clients. Subordinate courts would find themselves in an embarrassing position to choose between the conflicting opinions. The general

public would be in dilemma to obey or not to obey such law and it ultimately falls into disrepute. If a Judge intends to differ with the decision of another judge, he has to make a reference to division bench. See---

1. **Government of W.B. vs. Tarun K. Roy, (2004) 1 SCC 347 (Three Judge Bench)**
2. **Sundarjas Kanyalal Bhathija vs. The Collector, Thane, Maharashtra, AIR 1990 SC 261**
3. **Irfan Ali Khan vs. Rajendra Singh, AIR 1990 All 78 (D.B.)**

17(B).<u>Single Judge is bound by the decision of a Division Bench</u> : Single judge is bound by the opinion of Division Bench. Merely because some other view may also be possible, cannot be basis to question settled legal position. Such approach is not only counterproductive but also against the public policy. See **: Farooq Mohammad Vs. State of M.P., AIR 2016 MP 10 (Full Bench).**

17(B-1).<u>Only a Bench of co-ordinate strength can question the decision of a Bench of the same quorum and refer the case to larger Bench and not a smaller Bench</u> : Only a Bench of co-ordinate strength can question the decision of a Bench of the same quorum and refer the case to larger Bench and not a smaller Bench. See :

(i) Shashi kala Vs. Ganga Lakshmamma, (2015) 9 SCC 150
(ii) Bharat Petroleum Corporation Ltd. Vs. Mumbai Shramik Sangha, (2001) 4 SCC 448 (Five-Judge Bench).
(iii) Central Board of Dawoodi Bohara Community Vs. State of Maharashtra, (2005) 2 SCC 673.

17(B-2). <u>Single Judge not agreeing with the view taken by the Division Bench can refer the question framed by him to a Full Bench for decision</u> : Single Judge not agreeing with the view taken by the Division Bench can refer the question framed by him to a Full Bench for decision. See : **Radhey Shyam Vs. State of UP, 1984 (10) ALR 418 (All)(Full Bench)=1984 (2) Crimes 50 (All)(Full Bench).**

18(A). <u>Co-ordinate Bench decision binding on Co-ordinate Bench</u>--- A judgment of prior Co-ordinate Bench is binding on later Co-ordinate Bench. If the Co-ordinate Bench is unable to agree with the existing ratio propounded by the

earlier Co-ordinate Bench, it is competent to refer the case to the Chief Justice for constitution of larger bench. See :

(i) Commissioner of Central Excise, Indore Vs. Grasim Industries Ltd., (2016) 6 SCC 391 (Three-Judge Bench).

(ii) Mohd. Arif Vs. Registrar, Supreme Court of India, (2014) 9 SCC 737 (Five-Judge Bench).

(ii) Dashrath Rupsingh Rathod Vs. State of Maharashtra, 2014 (86) ACC 882 (SC)

18(B-1).<u>Division Bench decision binding on Division Bench</u>--- Earlier decision of Division Bench (of High Court) is binding on a bench of coordinate strength. If the Division Bench hearing matters subsequently entertains any doubt about correctness of the earlier Division Bench decision, the only course open to it is to refer the matter to a larger bench. See---

1. **Royal Orchid Hotels Limited & others Vs. G. Jayarama Reddy & others, (2011) 10 SCC 608**
2. **Jayaswals Neco Limited vs. Commissioner of Central Excise, Nagpur, (2007) 13 SCC 807**
3. **Rajasthan Public Service Commission vs. Harish Kumar Purohit, (2003) 5 SCC 480**
4. **Lily Thomas vs. Union of India, (2000) 6 SCC 224**
5. **S.I. Rooplal vs. Lt. Governor, Delhi, AIR 2000 SC 594 (Three-Judge Bench)**
6. **State of Haryana vs. Maruti Udyog Ltd., (2000) 7 SCC 348**
7. **State of Tripura vs. Tripura Bar Association, (1998) 5 SCC 637 (Three Judge Bench)**
8. **Eknath Shankarrao Mukkawar vs. State of Maharashtra, AIR 1977 SC 1177 (Three-Judge Bench).**

18(B-2).<u>Division Bench deprecated for taking a different view from what was taken by previous Division Bench</u> ---Division Bench judgment of the same High Court is binding on subsequent Division Bench which can either follow it or refer such judgment to Chief Justice to constitute a Full bench in case it differs with it. Subsequent judgment even though it had reached right conclusion is liable to be set aside only because it had failed to follow earlier binding judgment and arrived at opposite conclusion. Manner in which subsequent Division Bench of the same High Court (Madras High Court) dealt with the matter has been strongly deprecated though in substance legal

conclusion of subsequent Division Bench was upheld by the Supreme Court itself. See : **P. Suseela Vs. University Grants Commission, (2015) 8 SCC 129.**

18(C). **Co-ordinate Bench decision binding on Co-ordinate Bench---** Decision of High Court would be binding precedent on Subsequent Benches of co-ordinate or lesser strength of High Court but is open for reconsideration by Full Bench of Three Judges. See : **Paresh Yadav Vs. State of UP, AIR 2015 All 10 (Full Bench).**

19. **Rationale behind Constitution of Division Benches**---It cannot be doubted that in order to promote consistency and certainty in the law laid down by a superior Court, the ideal condition would be that the entire Court should sit in all cases to decide questions of law, and for that reason the Supreme Court of the United States does so. But having regard to the volume of work demanding the attention of the Court, it has been found necessary in India as a general rule of practice and convenience that the Court should sit in Divisions, each Division being constituted of Judges whose number may be determined by the exigencies of judicial need, by the nature of the case including any statutory mandate relative thereto, and by such other considerations which the Chief Justice, in whom such authority devolves by convention, may find most appropriate. It is in order to guard against the possibility of inconsistent decisions on points of law by different Division Benches that the rule has been evolved in order to promote consistency and certainty in the development of the law and its contemporary status, that the statement of the law by a Division bench is considered binding on a Division Bench of the same or lesser number of Judges. This principle has been followed in India by several generations of Judges. See--- **Union of India vs. Raghubir Singh, AIR 1989 SC 1933 (Five Judge Bench)**

20. **Division Bench decision of Supreme Court binding on its Division Bench**--- A pronouncement of law by a Division Bench of the Supreme Court is binding on a Division Bench of the same or a smaller number of Judges, and

in order that such decision be binding, it is not necessary that it should be a decision rendered by the Full Court or a Constitution Bench of the Court. It was suggested by the Court that for the purpose of imparting certainty an endowing due authority; decisions of the Supreme Court in the future should be rendered by Division Benches of at least three Judges unless, for compelling reasons that is not conveniently possible. See---

1. **S.I. Rooplal vs. Lt. Governor, Delhi, AIR 2000 SC 594 (Three Judge Bench)**
2. **Union of India vs. Raghubir Singh, AIR 1989 SC 1933 (Five Judge Bench)**

21(A-1). <u>Mere reference against a previous decision to a larger Bench does not render it ineffective</u> : The pendency of a reference before a larger bench does not mean that all other cases involving the same issue would remain stayed till a decision was rendered in the reference. Till such time as the decisions cited at the Bar are not modified or altered in any way, they continue to hold the field. See…

(i) Ashok Sadarangani Vs. Union of India, AIR 2012 SC 1563.

(ii) Rajeev Kiran Vs. State of UP, 2012 (30) LCD 2609 (All-DB)

21(A-1).Two-Judge Bench cannot directly make reference to a Three-Judge Bench against a decision of Three-Judge Bench: Two-Judge Bench of the Supreme Court or High Court cannot directly make reference to Three-Judge Bench. The same must be first placed before a Three-Judge Bench of the High Court which alone may refer the matter to yet a larger Bench if found by it to be so warranted. This principle applies to both the Supreme Court as well as High Court. See: **Warad Murti Mishra Vs. State of M. P., (2020) 7 SCC 509**

21(B-2). Only a co-ordinate Bench can refer the matter to a larger Bench, and the smaller Bench: Only a co-ordinate Bench can refer the matter to a larger Bench, and the smaller Bench. A Two-Judge Bench cannot refer the matter once decided by a previous Two-Judge Bench to a Three-Judge Bench or larger Bench. See: **Jagdish Shyamrao Thorve Vs. Mohan Sitaram Dravid, (2020) 6 SCC 616**

21(B-2).<u>Reference when to be turned down by Supreme Court?</u>--- Where a Two-Judge Bench of the Supreme Court had made a reference for reconsideration of a earlier Seven-Judge Bench decision of the Supreme Court rendered in the case of Bangalore Water Supply & Sewerage Board vs. A. Rajappa, (1978) 2 SCC 213 (Seven Judge Bench), a Three-Judge Bench of the Supreme Court declined to reconsider the aforesaid earlier Seven-Judge Bench decision by observing that the Three-Judge Bench or the smaller judge bench was bound by the earlier larger bench (Seven-Judge Bench) decision of the Supreme Court. See--- **Coir Board Ernakulam Kerala State vs. Indira Devai P.S., (2000) 1 SCC 224 (Three-Judge Bench).**

21(C).<u>Reference in the event of difference of opinion between two judges should always be made to a larger coram and not to a third-judge</u> : In the event of a bench of two judges (Division Bench) being equally divided in its opinion, either on law or on facts, both in civil and criminal matters, reference should always be made to a larger coram and not to a third judge. In the absence of uniformity or clarity in existing law as regards judge strength required, it is for the High Court and the State Legislature to take further steps in that regard. See : **Pankajakshi Vs. Chandrika, (2016) 6 SCC 157 (Five-Judge Bench).**

22. <u>Reference in the event of taking contrary view by the bench of equal strength</u>--- Earlier decision of Division Bench (of High Court) is binding on a bench of coordinate strength. If the Division Bench hearing matters subsequently entertains any doubt about correctness of the earlier Division Bench decision, the only course open to it is to refer the matter to a larger bench. If the latter Division Bench wants to take a different view than the one

taken by the earlier Division Bench, the proper course for the latter Division Bench would be to refer the matter to a larger bench. See---

1. **Maharashtra University of Health Sciences vs. Paryani Mukesh Jawaharlal, (2007) 10 SCC 201**
2. **U.P. Gram Panchayat Adhikari Sangh vs. Daya Ram Saroj, (2007) 2 SCC 138**
3. **Rajasthan Public Service Commission vs. Harish Kumar Purohit, (2003) 5 SCC 480**
4. **State of Tripura vs. Tripura Bar Association, (1998) 5 SCC 637 (Three Judge Bench)**
5. **Jaisri Sahu vs. Rajdewan Dubey, AIR 1982 SC 83 (Four Judge Bench)**
6. **Commissioner of Sales Tax, J & K vs. Pine Chemicals Ltd., (1995) 1 SCC 58 (Three Judge Bench).**

23. **Latter bench decision binding on High Court when two conflicting decisions given by benches of equal strength of Supreme Court**--- Where there are conflicts between the two decisions of the Supreme Court given by judges of equal strength, the decision of latter bench would be binding. See---

1. **Gopal Krishna Indley vs. 5th ADJ, Kanpur, AIR 1981 All 300 (F.B.)**
2. **UPSRTC vs. State Transport Appellate (Tribunal), U.P., Lucknow, AIR 1977 All 1 (F.B.)**

24. **Procedure when Division Bench of High Court considers a full bench decision of the same High Court not to be in conformity with the precedents of the Supreme Court**--- Judicial discipline requires that a Division Bench should not examine de novo an issue that is concluded by a decision of the full bench of that High Court. The Division Bench should refer the matter to the full bench if the Division Bench considers that earlier decision of full bench of the same High Court does not take into account the relevant decisions of the Supreme Court. See--- **State of U.P. vs. C.L. Agrawal, (1997) 5 SCC 1 (Five-Judge Bench)**

25. **Law laid down by Supreme Court to apply to all pending proceedings**--- Where a Sessions Court allowed a revision before it by passing the decision of Supreme Court on the point involved with the observation that a

pronouncement as to the position of law in a judicial decision by the Supreme Court cannot be treated as a sort of legislation by the Parliament giving retrospective effect a to enjoin re-opening of all matters which have already become final and closed, the order of Sessions Court was held unjustified. There is nothing like any prospective operation alone of the law laid down by Supreme Court. The law laid down by that Court applies to all pending proceedings. If there would have been an earlier order of the High Court binding on Sessions Judge it would have been a different matter. He got rid of the effect of Supreme Court's judgment by observing that a decision by that Court cannot be treated as "a sort of legislation by Parliament" and thus overlooked the binding nature of the law declared by Supreme Court, mandating under Art. 141, every Court subordinate to that Court to accept it. See--- **Major General A.S. Gauraya vs. S.N. Thakur, AIR 1986 SC 1440**

26. **Retrospective application of new law on existing rights**--- The rule is clear that provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment. The rule is only applicable where it is doubtful from the language used whether or not, it was intended to have such operation. Where the language of a statute plainly gives it a retrospective operation, the rule has no application, for it is obviously competent for the Legislature, if it pleases, in its wisdom to make the provisions of an Act of parliament retrospective. It is not as if all efforts should be made so as not to give a statute a retrospective operation whatever its language is. The rule does not require of the Courts an "obdurate persistence" in refusing to give a statute retrospective operation. In order that the provisions of a statute dealing with substantive right may apply to pending proceedings the courts have insisted that the law must speak in language which expressly or by clear intendment, takes in even pending matters. See---

1. **K.S. Paripoornan vs. State of Kerala, (1994) 5 SCC 593 (Five Judge Bench)**

2. Gulab Chand vs. Kudilal, AIR 1958 SC 554 (Five Judge Bench)

27. **<u>Prospective overruling & its principles</u>**--- Tracing the history of prospective overruling & the introduction and development of this concept in Supreme Court decisions, it has been held by a Constitution Bench of the Supreme Court that in view of the powers conferred on Supreme Court by Art. 142 of the Constitution resorting to the principles of prospective overruling was not so necessary. However the said principle, drawn from American Jurisprudence, is now well enshrined in Indian jurisprudence. The principle of prospective overruling does not have the effect of validating an invalid law. Prospective overruling is only a recognition of the said principle. Prospective overruling is a part of the principles of constitutional canon of interpretation and can be resorted to by the Supreme Court while superseding the law declared by it earlier. Purpose of prospective declaration of law under Article 141 of the Constitution by Supreme Court is to avoid re-opening of settled issues and to prevent multiplicity of proceedings. By implication, all contrary actions taken prior to such declaration stand validated. Subordinate courts are thus bound to apply the law to future cases only. See---

1. Somaiya Organics (India) Ltd. vs. State of U.P., (2001) 5 SCC 519 (Five Judge Bench)
2. Babu Ram vs. C.C. Jacob, (1999) 3 SCC 362
3. Ashok Kumar Gupta vs. State of U.P., (1997) 5 SCC 201 (Three Judge Bench)
4. Golak Nath vs. State of Punjab, AIR 1967 SC 1643 (Eleven Judge Bench)

28(A). **<u>Prospective declaration of law & its effect?</u>**--- The prospective declaration of law is a device innovated by the Apex Court to avoid reopening of settled issues and to prevent multiplicity of proceedings. It is also a device adopted to avoid uncertainty and avoidable litigation. By the very object of prospective declaration of law, it is deemed that all actions taken contrary to the declaration of law prior to the date of declaration are validated. This is done in the larger public interest. Therefore, the subordinate forums which are legally bound to apply the declaration of law made by the Supreme Court, are also

duty-bound to apply such dictum to the cases which would arise in future only. In matters where decisions opposed to the said principle have been taken prior to such declaration of law, cannot be interfered with on the basis of such declaration of law. See---

1. **P.V. George vs. State of Kerala, (2007) 3 SCC 557**
2. **Baburam vs. C.C. Jacob, (1993) 3 SCC 362**

28(B). <u>Substantive right normally cannot be taken away by legislation retrospectively</u>: General rule is that in absence of specific mention that said legislation or legislative amendment concerned is retrospective, same is to be treated as prospective in nature, especially when said legislation is dealing with substantive rights. However, where a legislation deals merely with a matter of procedure, such legislation/amendment is normally presumed to be retrospective unless such construction is textually inadmissible. See : **District Collector, Vellore District Vs. K. Govindaraj, (2016) 4 SCC 763 (Three-Judge Bench).**

28(C). <u>Legislative amendment in relation to substantive rights, unless otherwise provided, cannot be applied retrospectively:</u> General rule is that in absence of specific mention that said legislation or legislative amendment concerned is retrospective, same is to be treated as prospective in nature, especially when said legislation is dealing with substantive rights. However, where a legislation deals merely with a matter of procedure, such legislation/amendment is normally presumed to be retrospective unless such construction is textually inadmissible. See : **District Collector, Vellore District Vs. K. Govindaraj, (2016) 4 SCC 763 (Three-Judge Bench).**

28(D). <u>Amendment in procedural law applies only prospectively</u> : General rule is that in absence of specific mention that said legislation or legislative amendment concerned is retrospective, same is to be treated as prospective in

nature, especially when said legislation is dealing with substantive rights. However, where a legislation deals merely with a matter of procedure, such legislation/amendment is normally presumed to be retrospective unless such construction is textually inadmissible. See : **District Collector, Vellore District Vs. K. Govindaraj, (2016) 4 SCC 763 (Three-Judge Bench).**

29. **Change in procedural law to apply retrospectively**--- No person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner prescribed for the time being by or for the Court in which the case is pending and if by an Act of Parliament the mode of procedure is altered he has no other right than to proceed according to the altered mode. In other words a change in the law of procedure operates retrospectively and unlike the law relating to vested right is not only prospective. See--- **Anant Gopal Sheorey vs. State of Bombay, AIR 1958 SC 915 (Three Judge Bench)**

30. **Change of law during pendency of proceeding & its retrospective application**--- When the law comes into force during the pendency of proceedings and is applied on the date of judgment to pre-existing facts for the purpose of giving the benefit of the said law which had come into force, to the party concerned in the pending proceedings, is not retroactivity. See--- **Ramji Purshottam vs. Laxmanbhai D. Kurlawala, (2004) 6 SCC 455**

31. **Effect of review judgment & its retrospective application**--- Law declared by Supreme Court under Article 141 of the Constitution is normally to be assumed to be the law from inception. Prospective overruling is only an exception to this normal rule. A decision of Supreme Court, unless indicated therein to be operative only prospectively, cannot be treated to be so, more so when it was a review judgment overruling the earlier judgment as in such a case only the review judgment was the effective judgment for all purposes and the earlier judgment stood erased. The review judgment thus erases the

previous judgment and operates as the law from inception. See--- **M.A. Murthy vs. State of Karnataka, (2003) 7 SCC 517**

32. **Every observation made in judgment not to be read as precedent**--- Every decision contains three basic postulates: (a) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (b) statements of the principles of law applicable to the legal problems disclosed by the facts; and (c) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. Observations of courts are neither to be read as Euclid's Theorems nor as provisions of the statute and that too taken out of their context. See---

1. **Oriental Insurance Co. Ltd. vs. Smt. Raj Kumari, AIR 2008 SC 403**
2. **Dr. Chanchal Goyal vs. State of Rajasthan, (2003) 3 SCC 485**
3. **Bihar School Examination Board vs. Suresh Prasad Sinha, AIR 2010 SC 93**

33. **Conclusion in judgment & its ratio distinguished**--- A decision of the Supreme Court is binding under Art. 141 of the Constitution not because of its conclusion but in regard to its ratio and the principle laid down therein. It is elementary that what is binding on the court in a subsequent case is not the conclusion arrived at in a previous decision but the ratio of that decision, for it is the ratio which binds as a precedent and not the conclusion. See---

1. **S.P.Gupta vs. President of India, AIR 1982 SC 149 (Seven-Judge Bench)**
2. **B. Shama Rao vs. Union Territory of Pondicherry, AIR 1967 SC 1480 (Five Judge Bench)**

34. **Mere direction without considering law not precedent**--- Mere direction of court without considering legal position is not a precedent. See--- **Visnu Dutt Sharma vs. Manju Sharma, AIR 2009 SC 2254**

35(A). <u>Rewriting overruled judgment amounts to judicial indiscipline</u> : If a judgment is overruled by the higher court, the judicial discipline requires that the Judge whose judgment is overruled must submit to the judgment. He cannot, in the same proceedings or in collateral proceedings between the same parties, rewrite the overruled judgment. See :

(i) Markio Tado Vs. Takam Sorang, (2013) 7 SCC 524 *(para 31)*

(ii) State of W.B. Vs. Shivananda Pathak, (1998) 5 SCC 513 *(para 28)*

35(B).<u>Citing overruled decision as precedent</u>--- Expressing anguish at the falling standards of professional conduct, the Supreme Court has expressed its anguish where overruled decision was cited and relied on as precedent by an advocate. See--- **State of Orissa vs. Nalinkanta Muduli, (2004) 7 SCC 19**

36. '<u>No longer good law' concept & reference by coordinate or smaller benches</u>--- If under the law declare by the Supreme Court earlier decision of a High Court, be it by a single Judge or a Division Bench or a Full Bench, stands overruled, the question of referring the matter to a larger Bench would not arise. In such case the single Judge, the Division Bench or the Full Bench, as the case may be, can without referring the matter to a larger Bench say that in view of the decision of the Supreme Court, the earlier decision of the High Court whether it is rendered by single Judge, Division Bench or Full Bench is no longer good law. Once the law is declared by the Supreme Court even the lower courts cannot take a different view relying on earlier decision of the High Court, to which it is subordinate. Where the Full Bench of the High Court was not disagreeing with the view of the earlier Full Bench of the same High Court on merits and the question which it was considering was whether the earlier Full Bench decision stands overruled by subsequent decision of the Supreme Court and found that the earlier Full Bench Decision was overruled by Supreme Court decision, the matter need not be referred to the larger Bench as the law declared by the Supreme Court is binding on all the Courts

in India. See--- **Shardulbhai Lakhmanbhai Pancholi vs. State of Gujarat, 1990 Cr.L.J. 1275 (Gujarat—F.B.)**

37. **An order/direction issued by the Supreme Court under Article 142 of the Constitution does not constitute a binding precedent** : Many a time, after declaring the law, this Court in the operative part of the judgment, gives some directions which may either relax the application of law or exempt the case on hand from the rigour of the law in view of the peculiar facts or in view of the uncertainty of law till then, to do complete justice. While doing so, normally it is not stated that such direction/order is in exercise of power under Article 142. It is not uncommon to find that courts have followed not the law declared, but the exemption/relaxation made while moulding the relief in exercise of power under Article 142. When the High Courts repeatedly follow a direction issued under Article 142, by treating it as the law declared by this Court, incongruously the exemption/relaxation granted under Article 142 becomes the law, though at variance with the law declared by this Court. The courts should therefore be careful to ascertain and follow the ratio decidendi, and not the relief given on the special facts, exercising power under Article 142. One solution to avoid such a situation is for this Court to clarify that a particular direction or portion of the order is in exercise of power under Article 142. Be that as it may. The Constitution has, by Art. 142, empowered the Supreme Court to make such orders as may be necessary for doing complete justice in any case or matter pending before it which authority the High Court does not enjoy and as such the similar order cannot be issued by a High Court. Directions issued by the Supreme Court in exercise of its power under Article 142 of the Constitution do not constitute a binding precedent. See---

1. **Indian Drugs & Pharmaceuticals Ltd. vs. Workmen, Indian Drugs & Pharmaceuticals Ltd., (2007) 1 SCC 408**
2. **Indian Bank vs. ABS Marine Products (P) Ltd., (2006) 5 SCC 72**

3. **State of UP Vs. Neeraj Avasthi, (2006) 1 SCC 667 (para 69).**

4. **State of Punjab vs. Surinder Kumar, AIR 1992 SC 1593 (Three Judge Bench)**

38. **"Law" & its meaning and purpose**--- Law is a dynamic science, the social utility of which consists in its ability to keep abreast of the emerging trends in social and scientific advance and its willingness to readjust its postulates in order to accommodate those trends. Life is not static. The purpose of law is to serve the needs of life. Therefore, law cannot be static. See--- **Deena vs. Union of India, (1983) 4 SCC 645 (Three Judge Bench)**

39. **Subordinate Courts to follow High Court rulings as required U/R. 6 of the G.R. (Civil)**--- Rule 6 of the G.R. (Civil) provides that "all subordinate courts shall follow the rulings of the High Court which are in force."

40. **C.L. No.18/Dated:Allahabad:19.8.1999 directing to cite the rulings of the Supreme Court & High Court**--- The aforesaid Circular reads as under--- "It has come to the notice of the court that the decisions/rulings cited at the bar in the cases before the subordinate to courts are not referred in the Judgments/orders given by the Judicial Officers, subordinate to the High Court. The court has taken a serious stock of this situation/ Under Rule 6 of General Rules (Civil), it is obligatory on the part of the judicial officers to follow the ruling of the High Court and of Apex Court. This alone is not sufficient for them to extract a sentence here and there from the Judgment referred to Bar and to build upon it. Enunciation of the reasons or the principal on which a question before the court is to be decided, must also bear the reference of the cases cited for and against by the parties on the subject and should not only refer facts but also refer the law cited on the point in issue from the side of the Bar. The judicial officers of the State of U.P. have been directed to ensure strict compliance to the effect that the laws laid down by the High Court and the Apex Court and referred by the Advocates should be followed and their reference should be made in the judgments."

41. **Non-mentioning of rulings in order & its effect**--- Where in an order passed by court under Order 1, rule 10 CPC, certain rulings cited by the counsel were not mentioned but the order passed was otherwise valid, it has been held that mere non-referring the rulings would not result in different view when the rulings though not referred but were taken into consideration in recording the findings. See--- **Jaswant Singh vs. Smt. Shobha Agarwal, 2002 (47) ALR 543 (All)**

42. **C.L. on mode of correctly quoting Rulings**--- As regards the mode of correctly quoting the Rulings in judgments and orders, the Allahabad High Court, vide C.L. No. 36/IV-h-35 dated 11.4.1956 & C.L. No. 105/IVh-35 dated 3.10.1956, has issued following directions to the judicial officers of the State of U.P.--- Judicial officers should give correct citations of reported cases in their judgments. The proper way to do this is to state the names of parties first followed by the citation within brackets as indicated below---**State of Bombay vs. United Motors, (1955) SCR 1069.**

43(A). **Non observance of rulings of the Supreme Court amounts to judicial impropriety by subordinate courts :** Quoting its earlier **Three-Judge Bench** decision rendered in the case of **Dwarikesh Sugar Industries Ltd. Vs. Prem Heavy Engineering Works (P) Ltd., (1997) 6 SCC 450,** the Hon'ble Supreme Court has ruled thus : *"It is unfortunate that acts of judicial impropriety are repeated in spite of clear judgments of this Court on the significance of Article 141 of the Constitution…when a position in law is well settled as a result of judicial pronouncement of this Court, it would amount to judicial impropriety to say the least, for the subordinate courts including the High Courts, to ignore the settled decision and then to pass a judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical order which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops." See :* **Markio Tado Vs. Takam Sorang, (2013) 7 SCC 524** *(paras 30 & 31)*

43(B).<u>Tendency of non-observance of precedents set by the Supreme Court deprecated by the Supreme Court</u> : When a position in law is well settled as a result of judicial pronouncement of the Supreme Court, it would amount to judicial impropriety to say the least, for the subordinate courts including High Courts to ignore the settled decisions and then to pass a judicial order which is clearly contrary to the settled legal position. Such judicial adventurism cannot be permitted and we strongly deprecate the tendency of the subordinate courts in not applying the settled principles and in passing whimsical orders which necessarily has the effect of granting wrongful and unwarranted relief to one of the parties. It is time that this tendency stops. The aforestated thoughts are not only meaningfully pregnant but also expressively penetrating. They clearly expound the role of a Judge, especially the effort of understanding and attitude of judging. A Judge is expected to abandon his personal notion or impression gathered from subjective experience. The process of adjudication lays emphasis on the wise scrutiny of materials sans emotions. A studied analysis of facts and evidence is a categorical imperative. Deviation from them is likely to increase the individual gravitational pull which has the potentiality to take justice to her coffin. See : **(i) Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P) Ltd. and another (1997) 6 SCC 450 (Three-Judge Bench) (para 32) and (ii) judgment dated 23.11.2017 by Three-Judge Bench of the Supreme Court in Civil Appeal No. 19662/2017 arising out of SLP (C) No. 23410/2017, Medical Council of India Vs. G.C.R.G. Memorial Trust & Others (paras 14 & 15)**

43(C).<u>Non-observance of precedents indicative of judicial indiscipline</u>--- Where despite several Supreme Court rulings to the effect that the name of the victim of the sexual offences should not be indicated in the judgment, the court (High Court) had disclosed the name of the victim of the sexual offence in its judgment, it has been held by the Supreme Court that non-observance of the precedents on the subject amounts to judicial indiscipline. See--- **State of Orissa vs. Sukru Gouda, AIR 2009 SC 1019.**

43(D). <u>Rewriting overruled judgment amounts to judicial indiscipline</u> : If a judgment is overruled by the higher court, the judicial discipline requires that the Judge whose judgment is overruled must submit to the judgment (of the higher court). He cannot, in the same proceedings or in collateral proceedings between the same parties, rewrite the overruled judgment. See :

(i) Markio Tado Vs. Takam Sorang, (2013) 7 SCC 524 *(para 31)*

(ii) State of W.B. Vs. Shivananda Pathak, (1998) 5 SCC 513 *(para 28)*

43(E) Only lawyer, not Judge, is expected to know law: There is a presumption in law that a lawyer knows the law but there is no absolute presumption that a Judge should know the law. A Judge is only called upon to balance the two sides of an argument presented before him. See: **Judgment dated 01.05.2014 passed by Hon'ble Justice Rajiv Narain Raina of Punjab and Haryana High Court in CR. No. 3791 / 2013 (O&M), Nirmal Singh & Others Vs. Tarsem Singh & Others**.

44. <u>Quoting High Court Rulings not necessary when clear Supreme Court Ruling available</u>--- Where there exist clear decisions of the Supreme Court, it is not necessary to make comments on the English decisions or the decisions of the High Courts in India for the simple reason that the law laid down by the Supreme Court is binding on all within the territory of India. See---- **Rishi Kesh Singh vs. State, AIR 1970 All 51 (Full Bench)(Nine-Judge Bench)**

45. <u>Duty of courts when binding precedent shown after the pronouncement of contrary judgment</u>--- In view of Art. 141 of the Constitution, the law

declared by the Supreme Court shall be binding on all courts within the territory of India. This Article cannot be read to mean that the binding duty of the court to follow the law, declared by the Supreme Court in India, is there only when the law declared by the Supreme Court was shown to it before delivery of judgment and that if the law declared by the Supreme Court, is brought to the notice of the court after the pronouncement of the judgment, then there is no duty of the court to correct the judgment so as to follow the law declared by the Supreme Court. It is a trite law that the Supreme Court does not make the law but it simply pronounces what the law is. So the law remains the same what it was before the pronouncement of the judgment and what the Supreme Court does is that it simply interprets the correct nature of the law. It means the decision contrary to the law, declared by the Supreme Court, would be a decision contrary to law. To prevent abuse of process of law, it is duty of all the courts to correct the decision which runs counter to the law, declared by the Supreme Court and it is to correct a mistake of the type inter alia inherent power u/s. 151 has been conferred on the courts by the law. See--- **Har Narain vs. Vinod Kumar, AIR 1987 All 319**

46. **Obiter of Supreme Court when binding**--- Even an obiter of the Supreme Court is binding on High Court. The only requirement is that the observation made by the Supreme Court was not a stray observation but it was the considered opinion of the Supreme Court. Well considered obiter dicta of the Supreme Court is taken as precedents and binding under Article 141 of the Constitution. The obiter dicta of the Supreme Court are entitled to considerable weight. See---

1. **Mahammed Saud vs. Shaikh Mahfooz, AIR 2009 Orissa 46 (F.B.)**
2. **Sarwan Singh Lamba vs. Union of India, (1995) 4 SCC 546**
3. **L. Deepa Chandra vs. Lala Raghuraj, AIR 1977 All 370 (F.B.)**
4. **Municipal Committee vs. Hazara Singh, AIR 1975 SC 1087**
5. **Chobey Sunder Lal vs. Sonu, AIR 1969 All 304 (F.B.)**
6. **Ram Manohar Lohia vs. State of U.P., AIR 1968 All 100 (D.B.)**

7. Commissioner of Income Tax, Hyderabad vs. M/s. Vazir Sultan, AIR 1959 SC 814 (Three Judge Bench)

47. **Obiter dicta of Supreme Court not binding on Supreme Court**--- An obiter dicta of Supreme Court may not be binding upon the Judges of Supreme Court but they are binding upon all subordinate courts under Article 141 of the Constitution. See--- **Bulbul Mondal vs. National Insurance Co. Ltd., AIR 2009 (NOC) (Calcutta—D.B.)**

48. **Obiter dicta, casual expressions & precedents sub-silentio**--- A decision ordinarily is a decision on the case before the court, while the principle underlying the decision would be binding as a precedent in a case which comes up for decision subsequently. Therefore, while applying the decision to a later case, the court dealing with it should carefully try to ascertain the principle laid down by the previous decision. A decision often takes its colour from the question involved in the case in which it is rendered. The scope and authority of a precedent should never be expanded unnecessarily beyond the needs of a given situation. The only thing binding as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding the principle is fraught with difficulty as without an investigation into the facts, it cannot be assumed whether a similar direction must or ought to be made as a measure of social justice. Precedents sub silentio and without argument are of no moment. Mere casual expressions carry no weight at all, nor every passing expression of a Judge, however eminent, can be treated as an ex cathedra statement having the weight of authority. See---

1. Divisional Controller, KSRTC vs. Mahadeva Shetty, (2003) 7 SCC 197

2. Municipal Corporation of Delhi vs. Gurnam Kaur, (1989) 1 SCC 101 (Three Judge Bench)

3. Chainbanu Khatun vs. State of W.B., AIR 2010 Calcutta 1 (D.B.)

49. **Obiter dicta of Privy Council whether binding on Indian courts**--While very observation of a superior court is entitled to the highest respect from the inferior

Courts in India and though the Privy Council itself had laid down that its obiter dicta are binding it is only dicta which purport to lay down some law, even though they may be obiter, which can be considered authority; and observations which the Privy Council may make not by way of stating the law should not be clothed with such authority. Even an obiter dictum of the privy council is entitled to utmost respect. See---

1. **District Board, Banaras vs. Churhu Rai, AIR 1956 All 680 (D.B.)**
2. **Sukumar Bose vs. Abani Kumar Haldar, AIR 1956 Calcutta 308 (D.B.)**

50(A-1).Meaning of ' per incuriam': Rule of per incuriam literally means judgment passed in ignorance of a relevant statute or binding precedent, or that it is not possible to reconcile the judgment with a previous binding ruling of a co-ordinate or larger Bench. Per incuriam rule is correctly and strictly applicable to the ratio decidendi and not to obiter dicta. See: Dr. Shah Faesal Vs. **Union of India, (2020) 4 SCC 1 (Five-Judge Bench).**

50(A-2).<u>Meaning of "per-incuriam" & "sub-silentio" & difference between the two</u>--- 'Incuria' literally menas 'carelessness'. In practice per incuriam appears to mean per ignoratium. The 'quotable in law' is avoided and ignored if it is rendered, 'in ignoratium of a statute or other binding authority'. Another exception to the rule of precedents is rule of sub-silentio. A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as precedent. Restraint in dissenting or overruling is for

sake of stability and uniformity but rigidly beyond reasonable limits is inimical to the growth of law. See---

1. **Mayu Ram vs. CBI, (2006) 5 SCC 752**
2. **State of U.P. vs. Synthetics & Chemicals Ltd., (1991) 4 SCC 139**

50(B) **General proposition of law laid down by Courts in their judgments not to be applied to services including seniority regulated by Act or Rule :** Cases in which recruitment & conditions of service including seniority are regulated by law enacted by Parliament or State Legislature or Rules framed under Article 309 of the Constitution, general propositions laid down in any judgments cannot be applied dehors relevant statutory provisions. **See : State of Haryana Vs. Vijay Singh, (2012) 8 SCC 633 (para 23)**

50(C) **Per incuriam decisions not to be followed :** Per incuriam decisions should not to be followed as they do not state the law correctly. See : **A. Srimannarayana Vs. Dasari Santakumri & Another, (2013) 9 SCCC 496**

51(A). Two statutes when can be said to be in pari materia ?--- Two statutes are said to be in pari material with each other when they deal with the same subject matter. Rationale behind this rule is based on the interpretative assumption that words employed in legislations are used in an identical sense. However, this assumption is rebuttable by the context of the statutes. Therefore, words used in a particular statute cannot be used to interpreted the same word in a different statute specially in light of the fact that the two statutes are not in pari materia with each other and have a wholly different scheme from one another. See :

1. **Royal Medical Trust Vs. Union of India, (2015) 10 SCC 19 (Three-Judge Bench)**
2. **Bangalore Turf Club Limited Vs. ESI Corporation, (2014) 9 SCC 657.**

51(B). Two Statutes when not in Pari materia --- Rule of construction of statutes in pari materia is to avoid contradiction between two statutes dealing with the same subject but this rule is not applicable when two statutes are not in pari materia. Unless and until the facts and circumstances in a cited case are in pari materia in all

respects with the facts and circumstances of the case in hand, it will not be proper to treat an earlier case as a precedent to arrive at a definite conclusion. Hence a given case should be determined on facts and circumstances of that case only and facts arising in the cases cited should not be blindly treated as a precedent to determine the conclusions. Kindly See---

(i) Ramesh Singh vs. State of A.P., (2004) 11 SCC 305.

(ii) Babu Khan vs. Nazim Khan, (2001) 5 SCC 375.

51(C). <u>Pai materia principles not to be applied when two Acts of two States are different</u> ? : Decision of a High Court of a State on interpretation of provisions of a State Act holds the field in the State and the same cannot be relied upon to interpret the provisions of an Act of another State on the same subject matter when the two Acts are not in pari materia. See : **Shahabad Co-operative Sugar Mills Ltd. Vs. Special Secretary to Govt. of Haryana Corporation & Others, (2006) 12 SCC 404.**

52. <u>Conflict between two decisions of Supreme Court given by Judges of equal strength</u>--- Where there are conflicts between the two decisions of the Supreme Court given by Judges of equal strength, the decision of latter Bench would be binding. See---

1. Gopal Krishna vs. 5th ADJ, Kanpur, AIR 1981 All 300 (F.B.)

2. U.P.S.R.T.C. vs. State Road Transport Tribunal, U.P., Lucknow, AIR 1977 All 1 (F.B.)

53. <u>Per incuriam decision of Supreme Court also binding on inferior courts</u>---
It is only in cases of decision of concurrent courts that the doctrine of per incuriam can be applied. The law declared by the Supreme Court cannot be ignored on that basis. A failure to cite authority of the earlier decision of the Supreme Court before it is not sufficient to render its latter decision per incuriam. See--- **Gopal Krishna vs. 5th ADJ, Kanpur, AIR 1981 All 300 (F.B.)**

54. **Per incuriam decision of Supreme Court & caution in applying the same**--- A prior decision of the Supreme Court on identical facts and law binds the Court on the same points of law in a latter case. In exceptional instances, where by obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, the principle of per incuriam may apply. Unless it is a glaring case of obtrusive omission, it is not desirable to depend on the principle of judgment "per incuriam". It has to be shown that some part of the decision was based on a reasoning which was demonstrably wrong, for applying the principle of per incuriam. See--- **Furest Day Lawson Ltd. vs. Jindal Exports Ltd., (2001) 6 SCC 356**

55. **Per incuriam decision binding on later bench of coordinate jurisdiction**--- Even where earlier judgment may seem to be not correct, yet the same would be binding on later bench of coordinate jurisdiction. Fact that possible aspect of the matter was not considered or not raised before court or more aspects of the matter should have been gone into by the Court deciding the matter earlier would not be reason to term that the decision was rendered per incuriam. See--- **State of Bihar vs. Kalika Kuer, AIR 2003 SC 2443.**

56. **Per incuriam decision not to be treated as binding precedent**--- In view of the specific statutory bar the view, if any, expressed without analyzing the statutory provision cannot be treated as a binding precedent and at the most is to be considered as having been rendered per incuriam. A decision without reference to statutory prescription must be treated as rendered per incuriam having no precedential value. See---

1. **Mayu Ram vs. CBI, (2006) 5 SCC 752**
2. **N. Bhargavan Pillai vs. State of Kerala, AIR 2004 SC 2317**
3. **Nirmal Jeet Kaur vs. State of M.P., (2004) 7 SCC 558**

57. **Interim orders not laying down any principle of law not precedents**--- Interim orders not laying down any principle of law or ratio for the decision, are not binding, in as much as, only a judgment laying down certain ratio is to be followed as

a binding precedent. See--- **M/s. Khattar & Company Pvt. Ltd. vs. State of U.P., 2001 ALJ 2335 (All—D.B.)**

58. **Long standing precedents ordinarily not to be disturbed**--- Interpretation of law is not a mere mental exercise. Things which have been adjudged long ago should be allowed to rest in peace. A decision rendered long ago can be overruled only if the Supreme Court comes to the conclusion that it is manifestly wrong or unfair and not merely on the ground that another interpretation is possible and the court may arrive at a different conclusion. See---

1. Kunhamma vs. Akkali Purushothaman, (2007) 11 SCC 181

2. Kattite Valappil Pathumma vs. Taluk Land Board, (1997) 4 SCC 114

59. **Local Act & long standing precedent relating thereto**--- In the matter of interpretation of a local statute, the view taken by the High Court over a number of years should normally be adhered to and not disturbed. A different view could not only introduce an element of uncertainty and confusion, it would also have the effect of unsettling transactions which might have been entered into on the faith of those decisions. The doctrine of stare decisis can be aptly invoked in such a situation. See--

1. Ranbir Singh vs. Kartar Singh, AIR 2003 SC 1858

2. Jagdish Lal vs. parma Nand, AIR 2000 SC 1822

3. Raj Narain Pandey vs. Sant Prasad Tewari, (1973) 2 SCC 35

60. **Local law when not discussed by Supreme Court in some other identical law**--- No doubt the decision of the Supreme Court is binding upon every Court in the country but where the Supreme Court has not at all considered the provisions of the Act, it would be hazardous to hold that the Supreme Court construed the provisions of the Act in a particular manner due to the similarity of the facts involved before them. No doubt the like cases should be decided alike, but this principle is also not an absolute rule nor of universal application. It does admit exceptions. Where there is no discussion regarding applicability of the relevant local law on the subject, the rendered judgment cannot be treated as a declaration of law under Art.

141 of the Constitution due to similarity of the facts involved in the case wherein the local law is application. See---

1. **Bishambhar vs. Deputy Director of Consolidation, Ghazipur, 1982 ALJ 833 (All)**
2. **Smt. Bimla Devi vs. Chaturvedi, AIR 1953 All 613 (D.B.)**

61. **Supreme Court decision on one state legislation when can be applied to similar other state legislation**--- A ruling rendered by Supreme Court on a legislation of a particular state can be applied to similar legislation of another state if the provisions of the two enactments concerned are identical or similar. See---

1. **Royal Medical Trust Vs. Union of India, (2015) 10 SCC 19 (Three-Judge Bench)**
2. **Dharappa vs. Bijapur Coop. Milk Producers Societies Union Ltd., (2007) 9 SCC 109 = AIR 2007 SC 1848** *(para 17)***.**

62. **Distinction between precedent & resjudicata**--- Principles of precedent are different from the principles of resjudicata. A precedent operates to bind in similar situations in different case. Resjudicata operates to bind parties to proceedings for no other reason but that there should be an end to litigation. The rule of resjudicata and stare decisis are not always appropriate in interpreting a Constitution particularly when Art. 13(2) of the Constitution itself declares a law to be void the sanctity of a former judgment is for the matter then decided. See---

1. **Makhija Construction & Engg. (P) Ltd. vs. Indore Development Authority, (2005) 6 SCC 304**
2. **Bharat Sanchar Nigam Ltd. vs. Union of India, (2006) 3 SCC 1 (Three Judge Bench)**
3. **Golak Nath vs. State of Punjab, AIR 1967 SC 1643 (Eleven Judge Bench).**

63. **Overruling of decisions & its effect**--- Overruling of a decision takes place in a subsequent lis where the precedential value of the decision is called in question. No one can dispute that in our judicial system it is open to a court of superior jurisdiction or strength before which a decision of a bench of lower strength is cited as an authority to overrule it. This overruling would not operate to upset the binding nature

of the decision on the parties to an earlier lis in that lis, for whom the principle of resjudicata would continue to operate. Whenever a previous decision is overruled by a larger Bench the previous decision is completely wiped out and Article 141 will have no application to the decision which has already been overruled, and the Court would have to decide the cases according to law laid down by the latest decision of Supreme Court and not by the decision which has been expressly overruled. See---

1. **Bharat Sanchar Nigam Ltd. vs. Union of India, (2006) 3 SCC 1 (Three Judge Bench)**
2. **Ramdas Bhikaji Chaudhari vs. Sadanand, AIR 1980 SC 126**

64. **Views expressed by High Court when not specifically overruled or referred to by Supreme Court**--- Where the Supreme Court deliberately and with intention of settling the law, pronounces upon a question, such pronouncement is the law declared by the Supreme Court within the meaning of Art. 141 of the Constitution of India. In other words, the law declared by the Supreme Court is made the law of the land. Once the law has been so declared by the Supreme Court, it is no longer possible to hand on to views expressed earlier by High Court running contrary to the said law, on the simple ground that these views were not analysed, touched upon, referred to and overruled specifically by the Supreme Court, while declaring the law. This is of no consequence at all. See--- **M.L. Krishnamurthy vs. District Revenue Officer, Vellore, AIR 1990 Madras 87 (F.B.)**

65. **Overruling of earlier decisions when necessary by discarding the principles of stare-decisis**--- It is sufficient for invoking the rule of stare decisis that a certain decision was arrived at on a question or was argued, no matter on what reason the decision rests or what is the basis of the decision. In other words, an earlier decision may be overruled if the Court comes to the conclusion that it is manifestly wrong and not upon a mere suggestion that if the matter was res integra, the court on a later occasion could come to a different conclusion. It cannot be doubted that an unlimited and perpetual threat of litigation leads to disorder, sense of insecurity and uncertainty. May be, there may have been isolated cases of hardship

but there must be some reservation about limitation on the court's power in the public interest. Obvious considerations of public policy make it a first importance that the person aggrieved must take action requisite effectively to assert his right to that end. See—**G.C. Gupta vs. N.K. Pandey, AIR 1988 SC 654.**

66(A). <u>Meaning & effect of 'Proviso' added to a Section</u>---As a general rule, a Proviso is added to an enactment to qualify or create an exception to what is in the enactment, and stating a general rule. But Provisos are often added not as exceptions or qualifications to the main enactment but as saving clauses in which cases they will not be construed as controlled by the section. The saving clauses are seldom used to construe Acts. These clauses are introduced into Acts which repeal others, to safeguard rights which, but for the savings, would be lost. See--- **S.B.K. Oil Mills vs. Subhash Chandra, AIR 1961 SC 1596 (Five Judge Bench)**

66(B). <u>Meaning & effect of 'Proviso' added to a Section</u>---Proviso to a Section places conditions on operation of the main provision. See : **Dashrath Rupsingh Rathod Vs. State of Maharashtra, 2014 (86) ACC 882 (SC).**

66(C).<u>Proper manner of interpreting Proviso and main provision</u> : Except for instances dealt with in the Proviso, it should not be used for interpreting main provision/enactment, so as to exclude something by implication. See : **Casio India Company Private Limited Vs. State of Haryana, (2016) 6 SCC 209.**

67(A). <u>SOR & its use & interpretation</u>--- As regards the Statement of Objects and Reasons (SOR) appended to the Bill the law is well settled that the same cannot be used except for the limited purpose of understanding the background and the state of affairs leading to the legislation but it cannot be used as an aid to the construction of the statute. See—

1. **K.S. Paripoornan vs. State of Kerala, (1994) 5 SCC 593 (Five Judge Bench)**
2. **Central Bank of India vs. Their Workmen, AIR 1960 SC 12 (Five Judge Bench)**
3. **Bakhtawar Trust vs. M.D. Narayan, (2003) 5 SCC 298**

67(B). <u>Divergence of Act from SOR not to render the Act unconstitutional</u> : The objects and reasons of a statute are not voted upon by the legislature. If the

enactment is otherwise within the constitutionally permissible limits, the fact that there is a divergence between the objects appended to the Bill and the tenor of the Act, that cannot be a ground for declaring the law unconstitutional. See : **Keshavlal Khemchand & Sons Pvt. Ltd. Vs. Union of India, AIR 2015 Supreme Court 1168** *(para 74)*

POCSO Court to try both the cases where accused charged under SC/ST Act also : A perusal of Section 20 of the SC/ST (Prevention of Atrocities) Act, 1989 and Section 42-A of the Protection of Children from Sexual Offences Act, 2012 reveals that there is a direct conflict between the two non obstante clauses contained in these two different enactments. If Section 20 of the SC/ST Act is to be invoked in a case involving offences under both the Acts, the same would be triable by a Special Court constituted under Section 14 of the SC/ST Act and if provisions of Section 42-A of the POCSO Act are to be applied, such a case shall be tried by a Special Court constituted under Section 28 of the POCSO Act. Dealing with an issue identical to the case on hand, the Apex Court in Sarwan Singh Vs. Kasturi Lal, AIR 1977 SC 265 held thus : "When two or more laws operate in the same field and each contains a non obstante clause stating that its provisions will override those of any other law, stimulating and incisive problems of interpretation arise. Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration. For resolving such inter se conflicts, one other test may also be applied though the persuasive force of such a test is but one of the factors which combine to give a fair meaning to the language of the law. That test is that the later enactment must prevail over the earlier one. Bearing in mind the language of the two laws, their object and

purpose, and the fact that one of them is later in point of time and was enacted with the knowledge of the non-obstante clauses in the earlier. In KSL & Industries Limited Vs. Arihant Threads Limited & Others, AIR 2015 SC 498, the Apex Court held thus :In view of the non obstante clause contained in both the Acts, one of the important tests is the purpose of the two enactments. It is important to recognize and ensure that the purpose of both enactments is as far as possible fulfilled. A perusal of both the enactments would show that POCSO Act is a self contained legislation which was introduced with a view to protect the children from the offences of sexual assault, harassment, pornography and allied offences. It was introduced with number of safeguards to the children at every stage of the proceedings by incorporating a child friendly procedure. The legislature introduced the non obstante clause in Section 42-A of the POCSO Act with effect from 20.06.2012 giving an overriding effect to the provisions of the POCSO Act though the legislature was aware about the existence of non obstante clause in Section 20 of the SC/ST Act. Applying the test of chronology, the POCSO Act, 2012 came into force with effect from 20.06.2012 whereas SC/ST Act was in force from 30.01.1990. The POCSO Act being beneficial to all and later in point of time, it is to be held that the provisions of POCSO Act have to be followed for trying cases where the accused is charged for the offences under both the enactments." See : **State of A.P. Vs. Mangali Yadgiri, 2016 CrLJ 1415 (Hyderabad High Court)(AP)** *(paras 14, 15, 16, 17, 19 & 20).*

68(A). **POCSO Court to try both the cases where accused charged under SC/ST Act also :** A perusal of Section 20 of the SC/ST (Prevention of Atrocities) Act, 1989 and Section 42-A of the Protection of Children from

Sexual Offences Act, 2012 reveals that there is a direct conflict between the two non obstante clauses contained in these two different enactments. If Section 20 of the SC/ST Act is to be invoked in a case involving offences under both the Acts, the same would be triable by a Special Court constituted under Section 14 of the SC/ST Act and if provisions of Section 42-A of the POCSO Act are to be applied, such a case shall be tried by a Special Court constituted under Section 28 of the POCSO Act. Dealing with an issue identical to the case on hand, the Apex Court in Sarwan Singh Vs. Kasturi Lal, AIR 1977 SC 265 held thus : "When two or more laws operate in the same field and each contains a non obstante clause stating that its provisions will override those of any other law, stimulating and incisive problems of interpretation arise. Since statutory interpretation has no conventional protocol, cases of such conflict have to be decided in reference to the object and purpose of the laws under consideration. For resolving such inter se conflicts, one other test may also be applied though the persuasive force of such a test is but one of the factors which combine to give a fair meaning to the language of the law. That test is that the later enactment must prevail over the earlier one. Bearing in mind the language of the two laws, their object and purpose, and the fact that one of them is later in point of time and was enacted with the knowledge of the non-obstante clauses in the earlier. In KSL & Industries Limited Vs. Arihant Threads Limited & Others, AIR 2015 SC 498, the Apex Court held thus :In view of the non obstante clause contained in both the Acts, one of the important tests is the purpose of the two enactments. It is important to recognize and ensure that the purpose of both enactments is as far as possible fulfilled. A perusal of both the enactments would show that POCSO Act is a self

contained legislation which was introduced with a view to protect the children from the offences of sexual assault, harassment, pornography and allied offences. It was introduced with number of safeguards to the children at every stage of the proceedings by incorporating a child friendly procedure. The legislature introduced the non obstante clause in Section 42-A of the POCSO Act with effect from 20.06.2012 giving an overriding effect to the provisions of the POCSO Act though the legislature was aware about the existence of non obstante clause in Section 20 of the SC/ST Act. Applying the test of chronology, the POCSO Act, 2012 came into force with effect from 20.06.2012 whereas SC/ST Act was in force from 30.01.1990. The POCSO Act being beneficial to all and later in point of time, it is to be held that the provisions of POCSO Act have to be followed for trying cases where the accused is charged for the offences under both the enactments." See : **State of A.P. Vs. Mangali Yadgiri, 2016 CrLJ 1415 (Hyderabad High Court)(AP)** *(paras 14, 15, 16, 17, 19 & 20).*

68(B). **When rule contrary to Section of the Act** : A statutory rule cannot enlarge the meaning of the Section. If a rule goes beyond what the Section contemplates, the rule must yield to the statute. See : **Central Bank of India vs. Their Workmen, AIR 1960 SC 12 (Five Judge Bench).**

69. **Ordinance & its area of operation**--- In view of the provisions under Article 367, 123, 213 of the Constitution and Sec. 30 of the General Clauses Act, 1897, an ordinance operates in the field it occupies with same effect and force as an Act. See--

1. **Furest Day Lawson Ltd. vs. Jindal Exports Ltd., (2001) 6 SCC 356**
2. **A.K. Roy vs. Union of India, (1982) 1 SCC 271 (Five Judge Bench)**
3. **R.K. Garg vs. Union of India, (1981) 4 SCC 675 (Five Judge Bench)**
4. **T.V. Reddy vs. State of A.P., (1985) 3 SCC 198 (Five Judge Bench)**

70. **Long-standing precedents & the doctrine of stare decisis**--- The doctrine of stare decisis requires that a long-standing precedent should not be disturbed or unsettled without a strong cause. See---

1. Dr. Shah Faesal Vs. **Union of India, (2020) 4 SCC 1 (Five-Judge Bench).**
2. **Karnataka State Road Transport Corporation vs. Lakshmidevamma, (2001) 5 SCC 433 (Five Judge Bench)**
3. **C.T.O. vs. Ki-Hi-Tech Secure Print Ltd., (2000) 5 SCC 55**
4. **Union of India vs. Azadi Bachao Andolan, AIR 2004 SC 1107**

71. **Stare decisis principles when to be ignored?**--- A thing which is clearly excluded by statute, cannot be included by applying principles of stare decisis. See--- **Pyare Lal vs. Mani Ram, AIR 2000 SC 2802**

72. **Actions in contravention of High Court's decision before its reversal by Supreme Court to be effective**--- Till its reversal by Supreme Court, the decision of High Court remains effective. The Supreme Court's decision although would relate back but actions taken earlier in contravention of High Court's decision in the past would not be legal. See--- **Food Corporation of India vs. State of Haryana, (2000) 3 SCC 495 (Three Judge Bench)**

73. **Precedents & their application in criminal cases**--- A close similarity between one criminal case and another is not enough to warrant like treatment because a significant detail may alter the entire aspect. See--- **Parasa Raja Manikyala Rao vs. State of A.P., (2003) 12 SCC 306**

74(A-1). **Subsequent (earliest) view of the Supreme Court to be followed as precedent :** It is often encountered in High Courts that two or more mutually irreconcilable decisions of the Supreme Court are cited at the Bar. We think that the inviolable recourse is to apply the earliest view as the succeeding ones would fall in the category of per incuriam. See: **Sundeep Kumar Bafna Vs. State of Maharashtra, AIR 2014 SC 1745 (para 15)**

74(A-2).<u>Latter Bench decision of the Supreme Court binding on High Court when two conflicting decisions given by benches of equal strength of the Supreme Court</u>: Where there are conflicts between the two decisions of the Supreme Court given by judges of equal strength, the decision of latter (subsequent) bench would be binding. See: (i) Gopal Krishna Indley Vs. 5th ADJ, Kanpur, AIR 1981 All 300 (Full Bench) and (ii) UPSRTC Vs. State Transport Appellate (Tribunal), UP, Lucknow, AIR 1977 All 1 (Full Bench).

74(A-3).<u>Discretion of lower court to follow conflicting precedents given by benches of equal strength</u>--- When there is conflict between two decisions of equal benches of Supreme Court which cannot possibly be reconciled, courts must follow the judgment which appears to them to state law accurately and elaborately. More so when the later decision of the Supreme Court did not notice state amendment of statute in question and earlier decisions of the Supreme Court. See :

1. **Ganga Saran vs. Civil Judge, Hapur, AIR 1991 All 114 (F.B.)**
2. **Mudit Verma vs. Cooperative Tribunal, 2006 (63) ALR 208 (All)**

74(B).<u>Division Bench bound to refer the matter to a Three-Judge Bench when there were two previous divergent views by Three-Judge Benches</u> : Division Bench bound to refer the matter to a Three-Judge Bench when there were two previous divergent views by Three-Judge Benches**.** See : **Shashi Kala Vs. Ganga Lakshmamma, (2015) 9 SCC 150.**

75. **<u>Circular Orders contrary to law & precedents</u>**--- A Circular inconsistent with the provisions of standing statute cannot override the statute and cannot create liability. Executive instructions having no force of law cannot override statutory rules having force of law. See---

1. **Jhunjhunwala vs. State of U.P., (2006) 8 SCC 196**
2. **Mangal Dev vs. State Election Commission, 2005 (4) AWC 3127 (All—D.B.)**

76. **Judgment & mode of its construction**--- A judgment must be read in its entirety. It must be construed reasonably and if necessary, in the light of the constitutional and statutory provisions. See--- **Bharat Petroleum Corporation Ltd. vs. Maddula Ratnavalli, (2007) 6 SCC 81.**

77(A). **A prior judgment of the Constitution Bench being a judgment of a Co-ordinate Bench is binding on the subsequent Constitution Bench of Co-ordinate strength** --- A prior judgment of the Constitution Bench being a judgment of a Co-ordinate Bench is binding on the subsequent Constitution Bench of Co-ordinate strength. See : **Mohd. Arif Vs. Registrar, Supreme Court of India, (2014) 9 SCC 737 (Five-Judge Bench).**

77(B). **Constitution bench decisions of Supreme Court binding upon Supreme Court as well**--- By virtue of Art. 141 of the Constitution the Constitution Bench decision of the Supreme Court is binding on all courts including the Supreme Court till the same is overruled by a larger bench. Judicial discipline requires that the cardinal importance of total commitment to constitutional ideals must be adhered to by those who take oath to uphold it. High Courts or smaller benches of Supreme Court cannot ignore or by-pass the ratio of larger benches of Supreme Court including the Constitution benches. If the courts command others to act in accordance with the provisions of the Constitution and the rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law. Doctrine of stare decisis must be observed. See---

1. **Official Liquidator vs. Dayanand, (2008) 10 SCC 1 (Three Judge Bench)**
2. **N. Meera Rani vs. Govt. of Tamil Nadu, AIR 1989 SC 2027 (Three Judge Bench)**
3. **Dr. Basavaiah Vs. Dr. H.L. Ramesh, 2010(7) SCJ 151**

78(A). **Constitution bench decisions when to be overruled by Supreme Court**--- Enlightened litigating policy in the country must accept as final the pronouncements of the Supreme Court by a Constitution Bench unless the

subject be of such fundamental importance to national life or the reasoning is so plainly erroneous in the light of the later thought that it is wiser to be ultimately rights rather than to be consistently wrong. Stare decisis is not a ritual of convenience but a rule with limited exceptions. Pronouncements by Constitution Benches should not be treated so cavalierly as to be revised frequently. The decisions of the Supreme Court cannot be devalued to brief ephemerality. See--- **Ganga Sugar Corporation vs. State of U.P., AIR 1980 SC 286 (Five-Judge Bench).**

78(B). A Constitution Bench judgment cannot remain unchanged forever : It is not correct to say that the precedents are not to be treated as such and that it is excuse of perceptual shift of law. The binding nature of precedent should not be allowed to remain in status or allowed to be diluted. When a constitutional court faces such a challenge, namely, to be detained by a precedent or to go out of the same because of the normative changes that have occurred in the other arenas of law and the obtaining precedent does not cohesively fit into the same, the concept of cohesive adjustment has to be in accord with the growing legal interpretation and the analysis has to be different, more so, where the emerging concept recognizes a particular right to be planted in the compartment of a fundamental right, such as Articles 14 and 21 of the Constitution. In such a backdrop, when the constitutionality of a provision is assailed, the Court is compelled to have a keen scrutiny of the provision in the context of developed and progressive interpretation. A constitutional court cannot remain entrenched in a precedent, for the controversy relates to the lives of human beings who transcendentally grow. It can be announced with certitude that transformative constitutionalism asserts itself every moment and asserts itself to have its space. It is abhorrent to any kind of regressive approach. The whole thing can be viewed from another perspective. What might be acceptable at one point of time may melt into total insignificance at another point of time. However, it is worthy to note that the change perceived

should not be in a sphere of fancy or individual fascination, but should be founded on the solid bedrock of change that the society has perceived, the spheres in which the legislature has responded and the rights that have been accentuated by the constitutional courts. See— **Joseph Shine Vs. Union of India, (2019) 3 SCC 39(Five-Judge Bench) (Para-ZA)**

79. **Only Constitution bench to decide a case involving substantial question of interpretation of the Constitution**--- Only a bench of atleast five Judges should decide a case involving a substantial question of law as to the interpretation of the Constitution. See--- **University of Kerala, Council, Principals', Colleges, Kerala, 2009 (7) Supreme 569**

80. **Foreign precedents & their applicability in India**--- A foreign law should not be applied when the constitutionalism operating in the countries are different. Decision rendered in other jurisdictions merely have a persuasive and not a binding nature. The law in India has to be applied keeping in view the equality clause contained in Art. 14 of the Constitution of India. It is the heart and soul of our Constitution. The decisions of foreign courts (U.S. Supreme Court) have not been applied in the Indian context as the structure of the provisions under the two Constitutions and social conditions as well as other factors are widely different in both the countries. See---

1. **United India Insurance Company vs. Manubhai Dharmasinbhai Gajera, (2008) 10 SCC 404**
2. **Ashok Kumar Thakur vs. Union of India, (2008) 6 SCC 1 (Five Judge Bench)**
3. **Bhikaji Narayan Dhakras vs. State of M.P., AIR 1955 SC 781**
4. **A.S. Krishna vs. State of Madras, AIR 1957 SC 297**

81. **English court decisions versus Supreme Court decisions**--- The decisions of the English courts being merely of persuasive authority, decisions of such a court even if at variance with one of the Supreme Court, do not by themselves justify an application to reconsider an earlier decision of the Supreme Court. See--- **Manipur Administration vs. Thokechom Bira Singh, AIR 1965 SC 87 (Five-Judge Bench)**

82. **Mimansa rule of interpretation of statutes**--- The Mimansa rules of interpretation were our traditional principles of interpretation laid down by Jamini in the 5th century B.C. whose Sutras were explained by Shabar, Kumarila Bhatta, Prabhakar etc. the Mimansa rules of interpretation were used in our country for atleast 2500 years, whereas Maxwell's first edition was published only in 1875. These Mimansa principles are very rational and logical and they were regularly used by great Indian jurists like Vijaneshwara (author of Mittakshara), Jimulvahana (author of Dayabhaga) & Nanda Pandit etc. whenever they found any conflict between the various Smritis or any ambiguity or incongruity therein. There is no reason why these principles cannot be used on appropriate occasions even today. However, it is a mater of deep regret that these principles have rarely been used in our law courts. It is nowhere mentioned in our Constitution or any other law that only Maxwell's Principles of Interpretation can be used by the court. Any system of interpretation which helps us to solve a difficulty can be used. In certain situations Maxwell's principles would be more appropriate, while in other situations the Mimansa principles may be more suitable. See--- **Ispat Industries Ltd. vs. Commissioner of Customs, Mumbai, (2006) 12 SCC 583**

83. **Decisions rendered with the consent of parties not precedents**— When a direction or order is made by consent of the parties, the court does not adjudicate upon the rights of the parties nor lay down any principle and therefore a consent order cannot be treated as precedent. Decision made with the consent of parties and with the reservation that the same should not be treated as precedent, cannot be applied as precedent to other cases. See--- **Municipal Corporation of Delhi vs. Gurnam Kaur, AIR 1989 SC 38 (Three Judge Bench)**

84. **Direction of court not to treat the decision as precedent**--- Decision made with the consent of parties and with the reservation that the same should not be treated as precedent, cannot be applied as precedent to other cases. See---

1. **Nadia Distt. Primary School Council vs. Sristidhar Biswas, (2007) 12 SCC 779**
2. **Central Bank of India vs. Madan Chandra Brahma, (2007) 8 SCC 294**
3. **Union of India vs. All Gujarat Federation of Tax Consultants, (2006) 13 SCC 473 (Three Judge Bench)**
4. **Municipal Corporation of Delhi vs. Gurnam Kaur, (1989) 1 SCC 101 (Three Judge Bench)**

85. **Order dismissing SLP not precedent**--- When no reason is given but a special leave petition is dismissed simpliciter, it cannot be said that there has been a declaration of law by the Supreme Court under Art. 141 of the Constitution and the same cannot be treated as precedent. It is well settled that the dismissal of a Special Leave Petition in limine does not amount to a clear affirmation of the High Court's decision and it does not constitute any binding precedent. See---

1a. **Union of India Vs. M.V. Mohanan Nair, (2020) 5 SCC 421 (Three-Judge Bench)**

1. **Y. Satyanarayan Reddy vs. The Mandal Revenue Officer, A.P., 2009(6) Supreme 363 (Three Judge Bench)**
2. **Union of India vs. Ayub Ali, (2006) 7 SCC 511**
3. **Supreme Court Employees Welfare Association vs. Union of India, AIR 1990 SC 334.**

86. **Judgment in rem**--- Interpreting sections 40, 41, 42, 43 of the Evidence Act, the Supreme Court has held that a judgment in rem is one which declares, defines or otherwise determines the jural relationship of a person or thing to the world generally. See--- **Satrucharla Vijaya Rama Raju vs. Nimmaka Jaya Raju, (2006) 1 SCC 212 (Three Judge Bench)**

87. **Supreme Court to lean in favour of pre-dominant view of majority of the High Courts**--- Where the pre-dominant majority of the High Courts have taken a certain view of the interpretation of a certain provision, the Supreme

Court would lean in favour of the pre-dominant view. See--- **Virtual Soft Systems Ltd. vs. Commissioner of Income Tax, Delhi, (2007) 9 SCC 665.**

88(A). **Court should follow majority view and not the minority view of the Supreme Court :** The Court should follow the view expressed by the majority and not the minority. See : M/s Videocon Industries Ltd. Vs. State of Maharashtra, AIR 2016 SC 2843.

88(B). **Minority view when binding**?--- Where the majority of the Judges of the Supreme Court expressly chose not to examine a particular issue and decided the suit on certain other grounds, then the expression by the minority on such an issue can be said to have a binding force on the courts. See : **Prem Prakash Gupta vs. Union of India, AIR 1977 All 482.**

89(A). **Importance of law declared by minority & dissenting**--- Article 141 of the Constitution says that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. It is the law declared by the Supreme Court that binds the Court and not the judgments. This is made clearer on a consideration of Article 145(5) of the Constitution. The law declared as referred to in Article 141 is the law to be gathered from any judgment in a case decided by the Supreme Court, whether it is the judgment of a Judge forming the majority or of a Judge in a minority and dissenting. See--- **Mahendra Bhawanji Thakar vs. S.P. Pande, AIR 1964 Bombay 170 (D.B.)**

89(B). **Relevance of dissenting views expressed by judges in minority :** Unanimity obtained without sacrifice of conviction commends the decision to public confidence. Unanimity which is merely formal and which is recorded at the expense of strong conflicting views is not desirable in a court of last resort. A dissent in a court of last resort is an appeal to the brooding spirit of the law to the intelligence of a future day when a later decision may possibly correct the error into which the dissenting Judge believes the court to have

been betrayed. **See : ADM, Jabalpur Vs. Shivakant Shukla, AIR 1976 SC 1207 (Five-Judge Bench) (Para 221)**

90.1 **<u>Dissenting views & their impact as precedent</u>**---- Unanimity obtained without sacrifice of conviction commends the decision to public confidence. Unanimity which is merely formal and which is recorded at the expense of strong conflicting views is not desirable in a court of last resort. As observed by Chief Justice Hughes, Judges are not there simply to decide cases, but to decide them as they think they should be decided, and while it may be regrettable that they cannot always agree, it is better that their independence should be maintained and recognized than that unanimity should be secured through its sacrifice. A dissent in a court of last resort, to use his words, is an appeal to the brooding spirit of the law, to the intelligence of a future day, when a later decision may possibly correct the error into which the dissenting Judge believes the court to have been betrayed. See : **ADM, Jabalpur vs. Shivakant Shukla, AIR 1976 SC 1207 (Five Judge Bench).**

90.2 Dissenting views have little precedential value: It is settled law that dissenting opinions have little precedential value and there is no difference in operation between decisions rendered unanimously or those rendered by majority, albeit with the minority dissenting views**. See: Manoharan Vs. State, (2020)5 SCC 782 (Three-Judge Bench)**

91. **<u>Only law declared by the Supreme Court is binding under Article 141 of the Constitution and not the judgment</u>**--- It is the law declared by the Supreme Court that binds the courts under Article 141 of the Constitution and not the judgment. See--- **Mahendra Bhawanji Thakar vs. S.P. Pande, AIR 1964 Bombay 170 (D.B.)**

92. **<u>Privy Council decisions whether binding as precedent on Indian courts</u>**---- Sec. 212 of the Government of India Act, 1935, invested the Privy Council decisions with binding authority. Art. 225 of the Constitution lays down that

the law administered in any existing High Court remains the same as immediately before the commencement of the Constitution. Therefore, the law laid down by the Privy Council, which does not conflict with any decision of the Supreme Court would be binding on the Courts in India. See--- **Punjabai vs. Shamrao, AIR 1955 Nagpur 293 (D.B.)**

93. **Privy Council decisions having only persuasive value on Supreme Court**--- Though the Supreme Court is not bound to follow the decisions of the Privy Council too rigidly since the reasons constitutional and administrative, which sometimes weighed with the Privy Council need not weigh with the Supreme Court, yet some of those principles are useful as furnishing in many cases a sound basis for invoking the discretion of the Court in granting special leave. See--- **Pritam Singh vs. The State, AIR (37) 1950 SC 169 (Five-Judge Bench)**

94. **Supreme Court competent to overrule privy council**--- Under Art. 141 of the Constitution, Supreme Court authority can overrule authorities of privy council. See--- **Master Sewanath vs. Faqir Chand, AIR 1965 J & K 62 (F.B.)**

95. **Federal court decisions whether binding on Indian courts**--- A combined reading of Art. 141 and 374(2) of the Constitution leads only to one conclusion that the decisions of the Federal Court given prior to 26.1.1950 shall be binding on all courts within the Territory of India if the second part of sub-clause (2) of Art. 374 makes the decisions of the Federal Court of the same binding nature as if they had been passed by the Supreme Court and if the decisions of the Supreme Court shall be binding on all the courts within the territory of India then it necessarily follows that the decisions on points of law passed by the Federal Court will be binding on the High Courts. Thus the decisions of the Federal Court on points of law given prior to 26.1.1950 are

binding on all the courts within the Territory of India after 26.1.1950. See--- **T.M. Arumugam vs. State of Madras, AIR (38) 1951 Madras (D.B.)**

96. **Conflict between Privy Council & Federal Court**--- Where, before the coming into force of the Constitution of India, there was a conflict between the view of the Federal Court and the view of the Privy Council of a later date, the courts were bound, u/s. 212, Government of India Act, 1935, to follow the view of the Privy Council. The passing of the Constitution, however, cannot make the law declared by the Federal Court prevail against that declared by the Privy Council, as Art. 141 of the Constitution refers to the law declared by the Supreme Court and not to that declared by the Federal Court. See--- **Om Prakash Gupta vs. United Provinces, AIR (38) 1951 All 205 (D.B.)**

97. **Supreme Court decision laying down precedent binding even when the argument raised before the lower court was not raised before the Supreme Court**---- A decision rendered by the Supreme Court and laying down some law (upholding the constitutional validity of Sec. 3 of the earlier U.P. Public Moneys (Recovery of Dues) Act, 1972) would be binding as precedent on all inferior courts even if the contention raised before the inferior courts was not raised and considered before the Supreme Court. If the earlier Constitution Bench of the Supreme Court had not taken into account certain points considered in subsequent decision by a smaller bench of the Supreme Court, even then the law declared by earlier bench that is the Constitution Bench is still binding on High Courts. The binding effect of a decision does not depend upon whether a particular argument was considered therein or not provided that the point with reference to which an argument was subsequently advanced was actually decided. See---

1. **M/s. Chandra Prakash Agarwal & Co. vs. State of U.P., 1990 ALJ 459 (All—F.B.)**
2. **M/s. Agra Carpet Palace, Khamaria vs. State of U.P., 1988 ALJ 144 (D.B.)**
3. **Sadhu Ram Agarwal vs. Smt. Shanti Sharma, 1986 ALJ 705 (D.B.)**
4. **Somawanti vs. State of Punjab, AIR 1963 SC 151**

5. Ram Manohar Lohia vs. State of U.P., AIR 1968 All 100 (D.B.)

98. **Supreme Court decision not to be ignored on the ground that relevant provision was not brought to the notice of the Supreme court**--- A decision rendered by the Supreme Court is binding under Art. 141 of the Constitution and the same cannot be ignored on the ground that the relevant provision was not brought to the notice of the Supreme Court. See--- **B.M. Lakhani vs. Municipal Committee, Malkapur, AIR 1970 SC 1002 (Three Judge Bench).**

99. **Law declared by Supreme Court under Article 141 of the Constitution binding on all even if the party was not served with any notice or was not a party to the proceeding**--- A law declared by Supreme Court under Article 141 of the Constitution is binding on all even if the party was not served with any notice or was not a party to the proceedings. See---- **M/s. Star Diamond Co. Ltd. vs. Union of India, AIR 1987 SC 179.**

100. **Supreme Court decision declaring law expressly or by necessary implication to be treated as precedent**--- When a question is answered expressly or by necessary implication by Supreme Court the answer cannot be ignored by referring to the decisions appealed against and holding that the real question that must be considered to have been answered was something else. What the judges expressly decided or what they must be considered to have decided by necessary implication by reference to the facts stated by the Judges themselves are what constitute precedents. See--- **Gopal Upadhyaya vs. Union of India, AIR 1987 SC 413**

101(A). **Legislative power of courts & its extent ? :** The courts in India have not violated the mandatory constitutional requirement; rather they have only issued certain directions to meet the exigencies. Some of them are admittedly legislative in nature, but the same have been issued only to fill up the existing vacuum, till the legislative enacts a particular law to deal with the situation. In

view of the same, it is permissible to issue directions if the law does not provide a solution of a problem, as an interim measure, till the proper law is enacted by the legislature. See : **Chairman Rajasthan State Road Transport Corporation & Others Vs. Smt. Santosh & Others, AIR 2013 SC 2150** *(para 15).*

101(B). **Distinction between legislative & judicial act**--- The distinction between a "legislative" act and a "judicial" act is well known, though in some specific instances the line which separates one category from the other may not be easily discernible. Adjudication of the rights of the parties according to law enacted by the legislature is a judicial function. In the performance of this function. In the performance of this function, the court interprets and gives effect to the intent and mandate of the legislature as embodies in the statute. On the other hand, it is for the legislature to lay down the law, prescribing norms of conduct which will govern parties and transactions and to require the court to-give effect to that law. See--- **I.N. Saksena vs. State of M.P., AIR 1976 SC 2250 (Four-Judge Bench).**

101(C). **High Court under Art. 226 cannot issue direction or advisory sermons to the Executive to make any law :** High Court under Art. 226 of the Constitution has no power even indirectly to require the executive to exercise its law-making power. It is neither legal nor proper for the High Court to issue directions or advisory sermons to the executive in respect of the sphere which is exclusively within the domain of the executive under the Constitution. Power under Art. 309 of the Constitution to frame rules is the legislative power and that power under the Constitution has to be exercised by the President or the Governor of a State, as the case may be. The courts cannot usurp the functions assigned to the executive under the Constitution and cannot even indirectly require the executive to exercise its law making power in any manner. The courts cannot assume to themselves the supervisory role over the rule-making power of the executive under Art. 309 of the

Constitution. The Legislative power can be exercised by only the legislature or its delegate and non-else. The courts must remain within their self-imposed limits. The practice of issuing directions to the Legislature to enact a legislation to meet a particular situation has been deprecated by the Supreme Court in the case of State of HP Vs Parent of a student of Medical College, AIR 1985 SC 910 (para 4). See :

(i) V.K. Naswa Vs Home Secretary, Union of India, (2012) 2 SCC 542 *(para 7).*
(ii) Mallikarjuna Rao Vs State of AP, AIR 1990 SC 1251
(iii) V.K. Sood Vs. Department of Civil Aviation, AIR 1993 SC 2285
(iv) Narinder Chand Hem Raj Vs. UT, HP, AIR 1971 SC 2399
(v) State of HP Vs Parent of a student of Medical College, AIR 1985 SC 910 (para 4)
(vi) Union of India Vs. Association for Democratic Reforms, AIR 2002 SC 2112.

102(A).<u>Legislature can render a judicial decision ineffective</u> : It is well-settled law that the Legislature can render a judicial decision ineffective by enacting a valid law on the subject within it's legislative field by removing the base on which the decision was rendered. See….

1. **Goa Foundation Vs. State of Goa, (2016) 6 SCC 602**
2. **Royal Medical Trust Vs. Union of India, (2015) 10 SCC 19 (Three-Judge Bench)**
3. **Goa Glass Fibre Limited Vs. State of Goa, (2010) 6 SCC 499** *(para 28).*

102(B).<u>Judicial decision when & how to be overruled by Legislature</u> ? While, in view of this distinction between legislative and judicial functions, the legislature cannot by a bare declaration, without more, directly overrule, reverse or override a judicial decision, it may, at any time in exercise of the plenary powers conferred on it by Articles 245 and 246 of the Constitution render a judicial decision ineffective by enacting a valid law on a topic within its legislative field fundamentally altering or changing with retrospective, curative or neutralizing effect the conditions on which such decision is based. See---

1. **Goa Foundation Vs. State of Goa, (2016) 6 SCC 602**
2. **Royal Medical Trust Vs. Union of India, (2015) 10 SCC 19 (Three-Judge Bench)**

3. I.N. Saksena vs. State of M.P., AIR 1976 SC 2250 (Four-Judge Bench).

102 (C). <u>Governor has power to render a judgement delivered by High Court ineffective by issuing an Ordinance</u>: The Governor has power to issue an Ordinance under Article 213(1) of the Constitution with a view to over-ride a judgement delivered by the High Court in its jurisdiction under Article 226 of the Constitution. It is true that the judgement delivered by the High Court under Article 226 of the Constitution must be respected but that is not to say that the legislature is incompetent to deal with the problems raised by the judgement of the High Court if the said problems and their proposed solutions are otherwise within their legislative competence. It would be erroneous to equate the judgment of the High Court under Article 226 with Article 226 itself and confer upon it all the attributes of the said constitutional provision. It is well settled that the legislature can render a judicial decision ineffective by enacting a valid law on the subject within its legislative field by removing the base on which the decision was rendered. See: (i) Goa Glass Fibre Limited Vs. State of Goa, (2010) 6 SCC 499 (para 28) and (ii) State of Orissa Vs. Bhupendra Kumar Bose, AIR 1962 SC 945 (Five-Judge Bench) (para 17)

102 (D). <u>Legislature can any time render a judicial decision of the Supreme Court ineffective by issuing an Ordinance under Article 213(1):</u> Where the Governor of Orissa had issued an Ordinance under Article 213(1) of the Constitution to amend the Orissa Forest Produce (Control of Trade) Act, 1981 and had thereby rendered a binding judicial decision of the Supreme Court ineffective by giving the amended provisions retrospective effect, it has been held by the Supreme Court that the Legislature may, at any time, in exercise of the plenary power

conferred on it by Articles 245 and 246 of the Constitution render a judicial decision ineffective by enacting a valid law. There is no prohibition against retrospective legislation. The power of the legislature to pass a law postulates the power to pass it prospectively as well as retrospectively. That of course is subject to the legislative competence and subject to other constitutional limitations. The rendering ineffective of judgements or orders of competent courts by changing their basis by legislative enactment is a well-known pattern of all validating acts. Such validating legislation which removes the causes of ineffectiveness or invalidity of action or proceedings cannot be considered as encroachment on judicial power. The legislature, however, cannot by a bare declaration, without more, directly overrule, reverse or set aside any judicial decision. See: (i) S.S. Bola Vs. B.D. Sardana, AIR 1997 SC 3127 (Three-Judge Bench) (para 155) and (ii) M/S Uttakal Contractors & Joinery (P) Ltd. Vs. State of Orissa, AIR 1987 SC 2310 (para 14)

102 (E). <u>Legislature can render a judicial decision ineffective</u>: It is well-settled law that the Legislature can render a judicial decision ineffective by enacting a valid law on the subject within its legislative field by removing the base on which the decision was rendered. See:

(i). Goa Foundation Vs. State of Goa, (2016) 6 SCC 602

(ii). Royal Medical Trust Vs. Union of India, (2015) 10 SCC 19 (Three-Judge Bench)

(iii).Goa Glass Fibre Limited Vs. State of Goa, (2010) 6 SCC 499 (para 28).

102 (F). <u>Judicial decision when & how to be overruled by Legislature</u>?: The legislative and judicial functions under the scheme of the Constitution are distinct. The legislature cannot by a bare declaration directly overrule, reverse or override a judicial decision. It may at any time in exercise of

the plenary powers conferred on it by Articles 245 and 246 of the Constitution render a judicial decision ineffective by enacting a valid law on a topic within its legislative field fundamentally altering or changing with retrospective, curative or neutralizing effect the conditions on which such decision is based. See:

(i). Goa Foundation Vs. State of Goa, (2016) 6 SCC 602

(ii). Royal Medical Trust Vs. Union of India, (2015) 10 SCC 19 (Three-Judge Bench)

(iii). I.N. Saksena Vs. State of M.P., AIR 1976 SC 2250 (Four-Judge Bench)

102 (G). <u>Legislative power of courts & its extent?:</u> The courts in India have not violated the mandatory constitutional requirements rather they have only issued certain directions to meet the exigencies. Some of them are admittedly legislative in nature but the same have been issued only to fill up the existing vacuum till the legislature enacts a particular law to deal with the situation. In view of the same, it is permissible for the courts (Supreme Court & the High Courts) to issue directions if the law does not provide a solution of a problem, as an interim measure, till the proper law is enacted by the legislature. See: Chairman, Rajasthan State Road Transport Corporation & Others Vs. Smt. Santosh & Others, AIR 2013 SC 2150 (para 15).

102 (H).<u>Distinction between legislative & judicial act</u>: The distinction between a "legislative" act and a "judicial" act is well known though in some specific instances the line which separates one category from the other may not be easily discernible. Adjudication of the rights of the parties according to law enacted by the legislature is a judicial function. In the performance of this function, the court interprets and gives effect to

the intent and mandate of the legislature as embodies in the statute. On the other hand, it is for the legislature to lay down the law prescribing norms of conduct which will govern the parties and transactions and to require the court to-give effect to that law. See: I.N. Saksena vs. State of M.P., AIR 1976 SC 2250 (Four-Judge Bench)

102 (I). <u>High Court under Article 226 cannot issue direction or advisory sermons to the Executive to make any law</u>: High Court under Article 226 of the Constitution has no power, even indirectly, to require the Executive to exercise its law-making power. It is neither legal nor proper for the High Court to issue directions or advisory sermons to the Executive in respect of the sphere which is exclusively within the domain of the Executive under the Constitution. Power under Article 309 of the Constitution to frame rules for regulation of any particular service is the legislative power and that power under the Constitution has to be exercised by the President or the Governor of a State, as the case may be. The courts cannot usurp the functions assigned to the Executive under the Constitution and cannot even indirectly require the Executive to exercise its law-making power in any manner. The courts cannot assume to themselves the supervisory role over the rule-making power of the Executive under Article 309 of the Constitution. The legislative power can be exercised by only the legislature or its delegate and none else. The courts must remain within their self-imposed limits. The practice of issuing directions to the legislature to enact a legislation to meet a particular situation has been deprecated by the Supreme Court in the case of State of H.P. Vs. Parent of a Student of Medical College, AIR 1985 SC 910 (para 4). See other cases also noted below:

(i) V.K. Naswa Vs. Home Secretary, Union of India, (2012) 2 SCC 542 *(para 7)*

(ii) Mallikarjuna Rao Vs. State of A.P., AIR 1990 SC 1251

(iii) V.K. Sood Vs. Department of Civil Aviation, AIR 1993 SC 2285

(iv) Narinder Chand Hem Raj Vs. U.T., H.P., AIR 1971 SC 2399

(v) Union of India Vs. Association for Democratic Reforms, AIR 2002 SC 2112

104. **Journal / Approved law report / News paper etc. & precedents** : Quoting precedents from unverified sources or from unapproved law report etc. has been regretted by the Supreme Court. See : **Union of India Vs. P.C Ramakrishnayya, (2010) 8 SCC 644**

105. Labour Court's decision not to be treated as Precedent : Labour Court is not a Court of record hence creates no precedents. See : **Rahimuddin & Others Vs. Gossini Fashions Ltd., 2012 (2) SLJ 487 (Delhi High Court).**

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