
**EVOLUTION OF LEGAL PRINCIPLES THROUGH JUDICIAL
PROCESS OF SUPREME COURT OF INDIA: BALANCING THE
DOCTRINE OF STARE DECISIS AND OVERRULING**

ABSTRACT

In order to have a sound judicial process there are two important doctrines under consideration one is *Stare decisis* and another is overruling. Depending on precedent and resorting to overruling are two established practices. Theoretically and practically these two doctrines are extremely opposite to each other yet essential for a living society. They cannot co-exist but at the same time *sine qua non* for a living, dynamic, vibrant and a democratic society.

Acceptance of one principle over another or rejection of another principle requires a careful consideration of the Supreme Court. If Court goes with *Stare Decisis* there is a possibility that law becomes static and process of evolution will get stultified. And if the Court adopts overruling without restriction the principle of precedent will get compromised. Hence, it is essential to maintain a balance between *Stare decisis* and overruling. This balance can only be achieved by 'interpretationism.'

Interpretationism signifies not only the process of interpretation but also the ideas that shape the judicial process for interpretation. Interpretationism is a philosophy which give reasons to a decision. The thesis by following interpretationism will not only specifically witness evolutive jurisprudence rather a transformative jurisprudence with a progressive society. An evolutive and transformative Jurisprudence of newer legal principles can be accomplished by a sound judicial system and a sound judicial system is accomplished by a sound judicial process of the Supreme Court.

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Precedent ensures stability, uniformity, equality, certainty, continuity and avoid arbitrariness of future decision making whereas overruling ensures flexibility, change and development. Both the terms have positive and negative values. Precedent inspite of positive applications may also have a negative application i.e., it can stultify the growth of a nation. On the other hand, overruling may end up in dynamism.

Therefore, it is to be noted that precedents are not sacrosanct but departure needs a special justification. Roscoe Pound has warned us by saying law must be stable yet it cannot stand still.

This thesis suggests, the Court now look forward to balance between maintaining a stable body of consistent jurisprudence and at the same time preserving a mechanism of error correction. The work not only studies the ancient rule of Interpretation or Maxwellian rule of Interpretation (two established rules) rather look beyond the established rules into the principles of equity, justice, and good conscience.

The present framework not only revolves around the Indian Judicial process but also of the countries comprising of Common legal system, Civil legal system, Mixed Legal system and to some extent Religious legal system. The work also studies the situation of judiciary in pronouncing law in SAARC Countries. As any change in the legal system of the world is likely to have impact upon the legal systems of India along with other countries. As always, a best practice should subsist for the good of entire humankind. The title of this thesis is **EVOLUTION OF LEGAL PRINCIPLES THROUGH JUDICIAL PROCESS OF SUPREME COURT OF INDIA: BALANCING THE DOCTRINE OF STARE DECISIS AND OVERRULING.**

The title of Chapter I is “Conceptual and Theoretical understanding of Interpretationism in decision making”. The chapter critically examines the concept and development of the philosophy of interpretationism with the help of philosophers and thinkers around the world from 18th century onward. Altogether, interpretationism is a result of sub-

conscious, conscious and presumptive process resulting action which is as old as civilization and still progressing.

The title of Chapter II is “Evolution and Approaches of Interpretation of Law in India”. The chapter has recorded the evolution and journey of law from ancient period to modern period. It gives special attention to the fact that the rules of interpretation which is most acceptable in today’s world is not only found by Maxwell in 1875 rather it has been found and developed during the Vedic period (200 BCE-500 CE) in the form of Mimamsa Sutra and Sankhya philosophy. The chapter also touches upon the different constitutional interpretation which are applied in day-to-day proceedings.

The title of Chapter III is “Precedent Under Common Law, Civil Law and Mixed Law System” The focus here is on the subtleties of interpretation in each legal system varying from Germany, France, and Japan to England, United States of America and Australia via India, Louisiana, and Hong Kong. The detailed study of legal systems further clarifies the existence and authority of interpretation in different part of the world and how the precedent and overruling is finding a place in the legal systems.

The title of Chapter IV is “The Doctrine of Stare Decisis and Overruling in the Evolution of Legal Principles in India: A Study From 1950-1990”. In this chapter the researcher has done a detailed analysis by studying the evolution of six legal principles with the help of case laws.

Further, Chapter V is in continuation with chapter 4 titled as “The Doctrine of Stare Decisis and Overruling in the Evolution of Legal Principles in India: A Study From 1991-2021.” This chapter also examines the evolution of six newer legal principles those which were established in the era of post Globalisation till 2021. The chapter also shows some significant shifts in orthodox or conservative thoughts while upholding the beam of principle- justice (social, economic and political) and the concept of welfare state. This phase witnesses a shift from classical conservatism of culture and law-making to a liberal, open, economic, globalised approach to the law with progressive, transformative constitutionalism.

Chapter VI is titled as “Stare Decisis and Overruling in SAARC Countries” which further examines the independence of judiciary and the principle of precedent and overruling in India, Pakistan, Bangladesh, Afghanistan, Sri Lanka, Maldives, Nepal, and Bhutan.

In Chapter VII the researcher has summed up the conclusion of the research work with a detailed description of each chapter.

Therefore, this research work is carried out with an objective to study the key role of interpretationism along with the process of reasoning and rationality. In order to have a balance between the two extreme principles *i.e.*, precedent, and overruling interpretation along with the equitable principles of justness, fairness and righteousness is the need of the hour which can result in scientific law-making.