CHAPTER 1

GENERAL

INTRODUCTION
1.1 Introduction

A long stretched & continuous Freedom Struggle India became a free nation in 1947. The successful efforts of Mahatma Gandhi & his companions compelled the Imperial Parliament to pass the landmark Indian Independence Act 1947. Our Father of the Nation Gandhiji was a veteran politician. He had invented some unique weapons against the Royal British Rulers. They were the Non-Violence, the Non-Cooperation & the Civil Dis-obedience. After the India’s Independence Gandhiji advised the Caretaker Interim Government working under the premiership of Pandit Nehru to mould the emerging nation into a strong democratic republic & to draft a marvelous constitution under the chairmanship of world’s renowned jurist Dr. BabasahebAmbedkar.

The present researcher wants to assess how far the aim of the Father of the Indian Constitution Dr. BabasahebAmbedkar has been fulfilled so far. He has of course given the power to the democratically elected Legislature with a majority mandate to amend the Constitution of India but the elected majority must always watch with a high responsibility that the crucial Structure of the creation must never be altered at any cost.

1.2 Research Problem & Hypothesis

The research has kept certain intensive research problems & hypotheses in his mind while engaged in present research. They are plainly put in the following words – "Whether the Constitution of India provides full Independence to Judiciary under the SC of India especially under the light of the critical studies in relation to the AN ANALYSIS OF PLACE OF PRECEDENT IN INDIAN LEGAL SYSTEM. We have to see carefully whether the precedents broaden or to limit the Independence to Judiciary & what exactly is their present place in the Indian Legal & the Judicial System especially under the Constitution of India & its interpretation by the SC of India which has been given the Duty of a Custodian by our Father of the Indian Constitution Dr. BabasahebAmbedkar. The Precedent has a strong relationship with the other Sources of Law like the Legislation, the Custom & the Learned Opinion."
1.3 Research Methodology with Cauterization

The research has used various research methodologies recording for the need of the research from the varied angles. They include historical exploratory, analytical, interpretative, comparative, evaluative & legal including case studies. The methodology followed in this study is not Uni-dimentional. It is rather a blend of the historical, theoretical & practical aspects of human rights. A historical approach has been followed for the study of the origin & development of the precedents in the world scenario as well as in India. In analyzing the judicial behavior of the Sup.Co. & the State Hi.Co.s as well as the role & function of the Privy Council & the International Court of Justice, the methodology adopted is analytical. This study seeks to understand & evaluate the Place of Precedents in the Indian Legal System especially after the National Indepedence 1947.

1.4 Objectives of research

The researcher has kept the following objectives in his mind while doing the ensuing research:

a) To enable the Indian students to critically assess the Place of Precedent in the Indian Legal & the Judicial System under the Sup. Co. of India whose Independence is guaranteed by our Grundnorm, the Constitution of India?

b) To enable the Indian students to study the Role of the S. C in analyzing & interpreting the Doctrine of the Precedent in order to preserve the Rights & Liberties of the people & to protect them from the whims & the caprices of the Judges.

c) To critically analyze the various amendments to the Constitution of India & also the Procedural Laws of the country under the suggestions of the Sup. Co. of India in order to make them suitable to the changing social needs. Here we have to consider the pros & cons of the old Precedent System existed under the British Raj as well as under the contemporary period.
d) To bring a system of Liberal studies in Law so that the judgments of the Apex Court should be open for the critical studies for the academic purposes only. To enable the Indian students to critically assess the. The Constitution of India role of the India Judiciary in protecting the Ideals enshrined by.

e) To Study the precedents as a Fundamental Guiding Principle to the Bar as well as the Bench of the world including India.

f) To enable the Indian students to critically assess the Role of the Indian Judiciary in protecting the Ideals in relation to Human Rights enshrined by the Constitution of India.

1.5 Scope of studies

The researcher has chosen the topic “The Place of Precedents in the Legal System of India”. It is somewhat a broad legal & constitutional topic in which the researcher aims to study the nature & the scope of judicial interpretation by which the liberal doctrines enshrined under the Constitution of India become quite pragmatic & help us.

1.6 Limitations of Research

The research work does not fully attempt & exhaustive critical studies based upon the vast international scenario of the use of Precedents especially their use in the Civil Law countries like the mighty bi-continental Russian Empire, France, Italy, Spain, Denmark & other Scandinavian countries, The United States, Mexico & the other North American countries, Brazil, Argentina & the other South American countries. The studies are limited to the Place of Precedents in the Anglo-Saxon Legal & Judicial System of the Common Law countries especially evolved under the Unwritten Constitution of the United Kingdom of Great Britain & Northern Ireland & other sixteen Commonwealth Realms with granted written Constitutions like Australia, Canada, New Zealand etc. all united under the Royal House of Windsor & kept judicially under the Privy Council, the Common Apex Court at London. Our studies are further strictly limited to the very the Place of Precedents in the Indian Legal & Judicial System especially
evolved after the Promulgation of the Constitution of India. Here we have to study the Role of the Hon’ble Sup. Co. of India & our other Honble Hi.Co.s of the constituent States in analyzing, interpreting & thus developing the Precedents which immediately became the Law of the Land after their Pronouncement. These Constitutional Courts are called the Courts of Record whose judgments become binding upon all the Lower Courts in the Republic of India. Even the Role of various Tribunals & the NyayPanchayat courts fall outside the ambit of the present research work.[2]

1.7 LEGAL SYSTEMS OF THE WORLD

Before turning to the position of the precedents in the common law territories both the present & the past territories under the House of Windsor, we have to consider the legal systems of the world. Broadly the world is divided into-

The Civil Law System

It is the biggest legal system of the world if the numbers of countries are considered. They have a vast territory almost ten times of India however their accumulated population can never be more than ours. There is no binding force of precedents. The age old system have its roots in the ancient Greco-Roman Empire & is presently prevalent in the following Kingdoms including their Overseas Departments - Spain, Denmark, Norway, Sweden, Monaco, Luxemburg, Liechtenstein, Andorra, Belgium, Holland, & the following Republics on the Continent including their Overseas Departments – France, Germany, Austria, Portugal, Rumania, Czech, Slovakia, Lithuania, Latvia, Estonia, Poland, & the last but not least the vast bi-continental Russian Union. [3]

Due to Spanish & the Portuguese imperial forces the Civil Law System reached to the vast territories of South America where it is still followed. Most of these countries are now independent. They are the following Republics - Brazil, Argentina, Bolivia, Uruguay, Paraguay & the Chile.

Mixed or bijuridical systems

Gaze decisis is not more often than not a teaching utilized as a part of common law frameworks, since it disregards the rule that exclusive the governing body may make law. Be that as it may, the common law framework has law constante, which is
like gaze definition & coordinates that the Court judgment pardon a solid & obvious result. In principle, second rate courts are for the most part not bound to point of reference set up by unrivaled courts. By & by, the requirement for consistency implies that second rate courts for the most part concede to point of reference by prevalent courts. Courts in common law purviews, as As it were, the foremost predominant an example, the Cour DE cassation and the France area unit perceived as being the antaton in assortments of a semi body nature. Likewise impacts however court selections the convention of law constante area unit court selections of precedent-based law organized. By & large, locales provide AN adequate of reasoning on guide future courts proclamation of technique. the choice as a perspective for future cases This jumps out at decriminalize the begin of past case law & what is more a court call on to create it less requesting to use.

By distinction, tend to be to an excellent degree temporary, specifying simply the pertinent enactment & not court selections in some gracious law domains (most signally France) extremely exposition concerning however a selection was come back to. Theoretic read that the court is simply translating the angle of this can be the consequence of the the assembly & that definite work is pointless. On these lines, article of the law is finished by studious, an excellent deal a bigger quantity of the legal advisers that provide the clarifications that in customary by the judges themselves. Due to their position between the 2 primary frameworks of law, these kinds of legitimate frameworks area unit once law countries would lean during frameworks of law a whereas alluded to as "blended".

The piece of scholastics in requesting & deciphering case law in custom-based law domains

Law educators in purpose of reference primarily based the methodologies long traditional in common law wards law traditions settle for a considerably littler thus area unit grasp one in all precedent-based law frameworks.

The Mohemmedan Law System

This is an old & historic legal system having roots in the Holy Quran. Along with the Holy Quran the dominant source, the system is based on the other important sources like the Ijm, the Sunna, & the Qrias. The system does not recognize the
binding force of precedents. Thus a ‘Fiquaq’ [Judicial Decition] of a Qazi is not binding on the other Qazi. The system is prevalent in the vast areas of the world with a comparatively scanty population. Presently the system is followed in the Kingdom of Saudi Arabia, the Hashemite Kingdom of Jordan, & the Kingdom of Oman, the Kingdom of Qatar, the Kingdom of Brunei, the Kingdom of Morocco, the practically federal Kingdom of Malaysia & the accumulated royal territories into the United Arab Emirates [UAE] which is the political union of many Arab Amirs. The Republics of Iran, Syria, Iraq, Egypt, Libya, Tunisia, Algeria follow the system however the researcher has found the influence of the [former] French legal system based on the Civil Law upon the countries like Algeria. The system has now been adopted in the Republics of Pakistan, Bangla Desh & Maldives on the Indian Sub-continent however the researcher has found the influence of the [former] English legal system based on the Common Law upon these countries.[4]

The Common Law System

The Roman General Julius Caesar conquered the British Isles (then called Albion) & assimilated them into his vast Roman Empire. He appointed Maj-Gen. Agricola as the Roman Governor of these territories. Agricola Administration imposed the Principles of Roman Law into the isles & fully replaced the old chthonic traditions. The Danish invasions made tremendous changes in the legal system. The Norman invasions of Eleventh century A.D. brought certain Gallic traditions unknown to Roman law. From the times immemorial, England never had any written constitution. The customs, the legislation, the delegated legislation, the precedents, the learned opinions of the jurists & now even the international conventions form a basis of the origin of law. The legal system developed on the Continent is quite different from that of the legal system developed in England. The continental system is called the ‘Civil Law System’ the local English legal system is called the Common Law System. In England the Common Law is attached with Equity. The two systems are now united. QMEM Elizabeth – II is the reigning monarch of the United Kingdom & the other 16 Commonwealth Realms like Antigua, Australia, Barbuda, Bahamas, Belize, Canada, Grenada, Jamaica, New Zealand, Papua New Guinea, St. Christopher & Nevis islands, St Lucia islands, St. Vincent islands etc. In these countries the common laws system is
prevalent. In some of the former territories under the British Crown like the United States of America & the Republics on the Sub continent- India, Pakistan & Bangladesh (All from British India), Mauritius, Botswana, Brunei, Cameroon, Cyprus, Dominica, Fiji, Gambia, Ghana, Guyana, Kenya, Kiribati, Lesotho, Malawi, Malaysia, Maldives, Malta, Mozambique, Namibia, Nauru, Nigeria, Rwanda, Samoa, Seychelles, Sierra Leone, Singapore, Solomon Islands, South Africa, Swaziland, Tanzania, Trinidad, Uganda, Zambia etc. the common law system is followed with very minor alterations. However it is to be noted carefully that the position of Pakistan is considerably changing since the times of Barrister Muhammad Ali Jinnah. In his very first historic speech before the National Assembly of the infant nation he had imagined the introduction of secularism in the Constitution of Pakistan. In 1971, the Republic of Pakistan faced a severe situation of civil war. Finally the Republic was divided into

[A] The Republic of West Pakistan [present Pakistan with dominant language – Urdu & the population of Non-Muslims less than 4 per cent unofficial sources]
[B] The Republic of East Pakistan [present Bangla Desh with dominant language – Bengali & the population of Non-Muslims less than 15 per cent unofficial sources]

From 1973, the Pakistan has promulgated a new constitution by which it has been declared an Islamic Republic. Federal Shariat Court is also established. However in consideration of all the pragmatic purposes, it is still essential to include Pakistan in the Common Law system.
The British Imperialism has actually paved the way for the massive expansion of the Common Law throughout the world. [5]

**Illustration – 1**

*Common Law systems in the present day world.*

*Legal Systems of the World*

- **Common Law**
- **Mohammedan Law**
- **Civil Law**

1.8 The Sources of Law

Kinds of legal sources of law
There is a controversy about the kinds of legal sources of law. Recording for famous jurist Salmond there are four kinds of legal sources of law, they are: 1) Enacted law or statute law having its origin in the legislation. 2) Case Law having its source is precedent. 3) Customary law having its source in the customs & 4) Conventional law having its source in the agreements though there are four kinds of legal source of law as given by Salmond considering the kinds given by other jurist, we can give hereunder the universally accepted kinds of legal sources of law.

The legislation is the draft form of the law, it can be called as the formal & expressed declaration of new rules by the competent authority i.e. the sovereign authority like state & the emperor etc. which recognized by the court of law. It is therefore called as statute-law. The legislation is the raw form of the law. It is called as law when it is accepted & adopted by the recognized.

The precedent is the ruling given by the competent court, during the course of administration of justice. The laws & the acts of the state are applied in the courts of the state. No law or the act could be precise enough to cover all the aspects & the contingencies, it is just possible that some of the aspects may be ignored by the law; such of the blanks are filled in by the courts during the course of administration of justice. The new rules or new & realistic interpretation of the statute law is ruled out by the court & by that way they produce case laws, thus such of the rulings given by the courts are called as the precedents & they are also held as the origins of the law because they also focus light on the law in the changing circumstances of the socio-cultural environments. [6]

Customs & the traditions of the society occupy very significant role in the formation of the law. Actually law of the state originates from the customs & the rules & principles that were being followed in the society. In case of the customs & the rules which are accepted by the people for years together & by which the human life is governed plays significant role in the enactment of the laws & the acts of the state. It goes without say that the binding force of the customs & the traditions is too much always. No person dares to break the rules & principles of the tradition & the customs of the society. Such of the rules ultimately take the form of law & act of the state. They are, then, supported
by the police force & administration of the state & as such accepted by all in the uniform way. It is, therefore, stated that whenever the provisions of act are not clear the same is interpreted by the courts in the light of customs & the traditions of the state or the society. We know that the customs & the traditions play significant role in the application of the personal law of the person. It is also admitted that whenever there is a conflict in the provisions of law & the facts stated in the customs then the customs will prevail. From this we can realize the importance of the customs in the process of formation of the law & hence it is regarded, as one of the importance of the customs in the process of formation of the law & hence it is regarded, as one of the important source of law. [7]

Agreement signifies the mode of behavior between the parties who have entered the same. It constitutes the conventional law of the parties which have to make the same. The agreement creates the force of law for the mutual acts of the parties their inter-parties relations. The agreements have therefore, a force of law & hence it is also said to be the source of law.

The writings of the jurists & the opinions furnished by the renounced professional while practicing in law or during the academic work also occupies important source of law. Such of the writings & the opinions play very important role during the evolution & the development of the law in the society. We can mention the work Salmond that of black stone which can be considered as one of the important contributing factors in the course of origin of the law.

In this way we can mention above some of the important sources of law. The law could not be made at moment of time but it has actually evolved during the course of time, through several stages, during these stages several factors contributed as the source of & they have materialized the emergence of law & hence they are rightly called as the important sources of law.

The intention of the present thesis is to critically assess the Place of Precedent in the Indian Legal System especially in the Post- Independence Era.

1.9 Definition of Precedent

The etymology of the word precedent is as follows- It is derived from Middle French precedent, noun use of an adjective, from Latin
praecedentum (nominative praecedens), present participle of praecedere"go before". Meaning "thing or person that goes before another" is attested from mid-15th century. It is used as an adjective in English from 1400. It is also used as a verb meaning "to furnish with a precedent" from 1610- now only in past principle. In short it clearly means:"case which may be taken as a rule in similar cases."

In customary law legitimate frameworks, a point of reference or specialist is a standard or lead set up in a past lawful framework put incredible incentive on choosing cases according to reliable principled decides so that comparable realities will yield comparative & unsurprising results, & recognition of point of reference is the instrument by which that objective is accomplished.Dark's Law Dictionary characterizes "point of reference" "when in doubt of law set up surprisingly by a court for a specific sort of case & from that point alluded to in choosing comparative cases.'

(regardless of whether or not unambiguously) case law will emerge from a call by either a legal court, or by an {officer political, reference for future candidate} composed selections that area unit appointed branch office do not evoke composed selections, "nonpresidential" by the court court choices English or Hindi composed selections of offices that aren't issued & ordered with adequate custom to extend senior impact, do not Precedential official or feebly convincing build purpose of Final resort & strict gaze decisis within the. Trials & hearings that House of Lords & kingdom e it since they worry they're Sup. Co... Reluctant to us reluctant to imparted that the Lords would be significantly hesitant to use it since they, the observe Statement decree of the importance conviction of that law worry to bring themselves in criminal cases. Observe Statement was Anderton v Ryan (1985), legal code have that was overruled by R v Shivpuri (1986) to seeable specifically be overruled shoddiness into the law. wit), 20 years when the observe Statement. Unthinkably, created simply a year before the imperative case together with the perspective overruled had been, in any case it had been inspected by a couple of scholastic legitimate lecturers. Extreme surrender "courageous by that the selection probability in Anderton v Ryan was therefore later Thus the selection, Lord Bridge imparted he was. is Associate in Nursing of our affectedness to Still & the observe Statement, the remained reluctant itself once House of Lords has during; in R V devoted quality. Just in case an honest to
goodness botch epitomized during a call of this House has distorted the law, the earlier it's reconsidered the higher." to decree Kansal (2002), Recognizing purpose of reference on their earlier call. Lawful (instead of reality) grounds prevailing some portion of House folks got the determination that R v Lambert had been incorrectly picked & assented to go away from

The splendid oversee is used when use of the strict lead would plainly make a silly result. The court must find veritable difficulties before it rots to use the demanding standard. There are two courses in which the Golden Rule can be associated: the constrained methodology, & the sweeping strategy. Under the tight technique, when there are clearly two clashing ramifications to a word used as a piece of an authoritative course of action

"In surveying statutory dialect, unless words have obtained an unconventional importance, by uprightness of statutory definition or legal development, they are to be translated according tor their regular use." As far as the United States is concerned, it has not applied for any request to acquire a Commonwealth membership, although it is former British colony under the King-Emperor George III. The United States declared its Independence on 4th July, 1776. The politically independent country fully follows the English jural system based upon the Common Law. It is almost an English speaking country with full force of English culture. The American legal system is also essentially a part of parcel of the Common Law though we also find some admixture of the Civil Law system in certain regions like Lousania. Its judiciary still follows the decisions of the Royal Courts in the sixteen Commonwealth Realms including their Apex Privy Council. It is to be noted carefully that they are followed there anot with any binding force, however their guiding force is fully admitted even by the great American jurists like Justice Holmes.

Within the UK in Scotland the principles of Scots Law are administered. Scots Law is a hybrid system based on both Common Law & Civil Law Principles. Northern Ireland Law is a part & parcel of Common Law. According tor jurists like Lord Atkin the United States judicial system is essentially a mixed & hybrid one. Throughout the U.K.
under the English & the Scots Law the Jury System is prevalent in the Lower Criminal Courts. They seat in odd numbers. In England & Wales, they declare the accused as 'guilty' or 'not guilty'. Under the Scots Legal System there can be three possible verdicts – 'guilty' 'not guilty' & 'not proven'.

Recently, in October, 2009 a new Sup. Co. of the United Kingdom has come into being to replace Appellate Committee of the House of Lords.[9] 3.1 Introduction

The British Imperialism paved the way for the massive explanation of the common law throughout the world. In common law, precedent is as important a source of law as a statute if not, possibly, more. The practice where by the decisions of H. C. Are binding on lower courts and, in some cases, on them is known as precedent. The origin of this practice goes back to early English legal history when certain people, called Royal commissioners, were sent to the countryside to decide cases Recordings tor local customs. Theses commissioners started, for the purpose of uniformity & consistency, the practice that they would stand by editions made in the past while deciding similar cases. They termed this practice stare decisis (let the decision stand or let us stand by the decision). With the passage of time two things necessary for the operation of precedent were started: (1) law reporting & (2) the hierarchy of courts.

Throughout Islamic legal history, the decision of one Qazi was not binding for another qadi or, in other words, there was no doctrine of binding precedent in the sense that is today. Similarly, in medieval India the Mughal judicial system did not follow the doctrine of precedent. However, did not follow the doctrine of precedent however; the Mughal judicial system was the Mughal judicial system slowly & gradually replaced by the Anglo-Indian legal system of East India Company. Some English judges wanted a statutory backing for the doctrine of precedent very early on. This was provided for by section 212 of the Government of India Act, 1935. Anglo-Muhammadan law was enshrined in the doctrine of stare decisis which transformed the sources of legal authority because instead of calling upon the school principles & juristic authorities, the Anglo-Muhammadan lawyer & judge now looked to the higher courts, & these in turn looked to the Privy Council which sat in London. The government of India Act, 1935 was subsequently adapted by both India & Pakistan & although the highest sources of legal authority are now reverted to the two countries, the transformation is both structural
&permanent. This explains the effect of the doctrine on both the Indian & Pakistan legal systems. However, while the Pakistani legal system inherited certain laws expressly it also inherited other laws, especially those developed by courts, implicitly. The obvious example of the latter is the judicial norm that the smaller Bench's dictation of a larger binding on Bench is a.

There are many decisions of the Hi. Co.s. Especially the Sind Hi. Co. endorsed by the Sup. Co. of Pakistan, regarding ‘Judicial norms’ or ‘rules’ or ‘conventions’ such as the earlier judgment of equal Bench in the same Hi. Co. on the same point is binding upon the second Bench & if a contrary view had to be taken, them the request for constitution of a larger Bench should be made. That a Full Bench can overrule the deception of Devotional Bench; that a single Bench’s deception is not binding on a single Bench of the same Hi. Co.; that a Divisional Bench is binding on a Devotional Bench. Similarly, a dictation is not binding if per incursion wound up detectably feasible; or, is based upon an abrogated decisional or, is given in ignorance of statutory privation; or, is inconsistent with earlier deceptions of the higher courts; or, is sub silent. All the above ‘rules' or ‘conventions’ are laid down by higher Courts. Following these rules ensures uniformity & consistency in the operation of the doctrine & integrity in the persons of judges.

If it seems from the above that the doctrine of precedent is very rigid & that judges have to follow each & every decision given by the higher courts, then there are techniques available to them to avoid precedent. First, if the case at bar is in the higher court in the hierarchy or in a larger Bench of the same court then, judges can overrule the precedent case. Secondly, a court higher in the hierarchy can reverse the decision of lower court. Thirdly, even a court lower in the hierarchy can distinguish a precedent case. Finally, a decision can be overruled by a statute.

The Constitutional & legal mechanism of any State is a Gift of the National History. India is also not an exception of the well established social doctrine. Ancient Indian Culture faced tremendous changes when Gen.Mohammed bin Qasim & later on the Mughal Prince Babar firmly established their autocratic rules in this country. Babar
extended the territorial limits of his rule up to vast parts of South India & thus became the Emperor of India in the true sense of the term.

The vast Mughal Empire was vanquished by the strong advent of the British. The efforts of the last Mughal Emperor Bahadur Shah could not become successful as he along with his supporters lost the War of Indian Independence 1857. He consequently was deposed & transported to Burma. The British came in India when the King-Emperor George VI gave his Royal assent to the Indian Independence Act 1947.

The last British Vice-Roy Lord Mountbatten partitioned the country into [a] The Dominion of India & [b] The Dominion of Pakistan. Our present thesis is primarily related to the Judicial History of the Indian Republic in the Post-Independence Era; however the researcher thinks it fit to have a bird eyes view over the Indian Legal & the Constitutional developments right from the antique period.[13]

ANCIENT HINDU LEGAL SYSTEM

The Vedic Age

The source of Shrutis or the Vedas i.e. Rig Veda, Yajur Veda, Sama Veda & Atharva Veda are considered to be divine. The Vedas, Siksha, Chhanda, Vyakarana, Nyrukta, Jyotishya&Kalpa& eighteen Upanishads are religious books. However they contain the same rudiments of Law. The Vedas are the source of the Dharma which means Justice (Nyaya). They consider what is right in a given circumstance. It has to see what moral, religious, pious or righteous conduct is. It has to prepare the people for being helpful to living beings, giving charity or alms. Everyone must be dutiful to law & usage or custom having the force of law.

As time passes, gradually, individual rights came to be asserted as different from the family. To meet the requirement of a changing society, laws & treaties, regulating the rights & liabilities of individuals came into the form of Sutras (Codes) i.e. The important Dharma Sutras were the Dharma sutras deal with civil & criminal law. Grihya Sutras, Shrauta Sutras, & Dharma Sutras.Written by Gautama Bandhayana, Apastamba, Harita, and Vasista& Vishnu. There are 20 main Smritis which deal with Dharma. They are Manu. Atri, Vishnu, Harita, Yajnavalkya, Ushaana. Angirasa, Yama, Apastamba, Samvarta, Katyayana, Vrihaspati, Parsara, VyasaSankna, Likhita, Daksha,
Among the above-law givers, Manu, Yajnavalkya & Parasara are most celebrated persons. Kautilya’s Arthasastra (300 BC), the two epics i.e. the Ramayana & the Mahabharata are other works which deal with Dharma.

The Post-Smriti Period: -Minmamsa of Jaiminin, Nibandhas & Tikas (commentaries & Digests) like the Mitakshara which is the commentary on Yajnavalkya Smriti written by Vijnaeswara are the source of Dharma or Hindu Law. The entire law of adoption a laid down by the Privy Council is mainly on the basis of Dattaka Mimamsa written by Nanda Pandita & Dattaka Chandrika written by Devanna Bhatta, the author of Smriti Chandrika. Both of these works specially deal with the law of adoption & are regarded as authoritative work on the subject throughout India. Datta Chandrika is preferred in Bengal & Dattaka Mimamsa is preferred in the Mithila & Banars Schools. Thus the law proper emerged in the society for the first time in works known as Dharma Sutras. [14]

The great English critic & philosopher Sir T. S. Eliot has categorically stated that the past is never dead but always remains in present. Our present Indian Legal System is too greatly impressed by our former rulers, the British. It does not mean that we are blindly following the English system. Our Constitution is our Grundnorm & basic Volkgeist. The document has really revolutionized our Basic Structure of the Government. We have accepted the Republican Form of Government. We have fully accepted democracy replacing the old aristocracy.

The Constitution was gotten by the India Constituent Get together on 26 November 1949, 26th possible on January 1950 and tense detectably. The date of applauded the Purna Swaraj 26/01 January was a of autonomy of rticulation 1930. With its collecting, Bharat Asian country Asian nation Bharat Asian country the Union of Bharat Asian and it supplanted nation into the current day formally turned and modern Republic of India the Administration of India Act 1935 real addressing record. to confirm because the nation’s indigenousness, the architects Constitutional of Constitution crossed out the before Acts of Brits Parliament Article 395 of through the Constitution. Republic of India commends the approaching into drive of as Republic Day the Constitution on (26th) twenty six January systematically.
Republic of India The Constitution pronounces larger half lead a sovereign, communist, ordinary, republic, nationals of serious value, guaranteeing its esteem, moment and flexibility, impel association and remakes an attempt among them, The Protector of the Representation [5], Dr. BabasahebAmbedkar- Independences of Judiciary of the Indian subcontinent was The genuine piece under British 1857 to 1947. (nineteen forty seven ) keep running from Constitution Right when the of India came into drive on 26 January 1950, it crossed out the Indian Autonomy Act. India stopped to be a range of the and changed into a English Crown sovereign just republic. Articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380, 388, 391, 392, 393 and 394 on 26 Nov 1949 and remaining came into force articles on 26 Jan 1950.

India is drawn from many sources. Recollecting The Constitution o necessities and conditions of India the authors of the Constitution of India components uninhibitedly from past obtained to particular order viz. Lawmaking body of India Act 1858, Indian Councils Act 1861, Indian The last establishment Councils Act 1892, Indian Councils Act 1909, Government of India Act 1919, Government of India Act 1935 and the Indian Independence Act 1947. which provoked the production of the two self-sufficient nations of India and Pakistan Assembly into two suited the Division of the current Constituent, with each new social gathering having sovereign powers traded to it, to engage each to for the distinctive States draft and sanction another Constitution.

India was drafted by the Constituent Assembly, The Constitution of by the picked people from the ordinary congregations. The 389 section which was picked Constituent ideal around three years (two years, eleven Assembly took months and to be correct) to complete seventeen days its essential errand of drafting the Independent India. In the Constitution for midst, it held eleven sessions covering a total of 165 days. Of this period these, 114 days were spent on the possibility. On 29 August 1947, the Constituent of the Draft Constitution Assembly Committee under the set up a Drafting Chairmanship of Dr. B.R. Ambedkar to set up a Draft Constitution for India. Whereas thinking upon the draft Constitution, the Assembly moved , mentioned and disposed of upwards of two,473 corrections out of a complete of seven,635 tabled. Dr B.R. Ambedkar, Sanjay Phakey, national leader, C. Rajagopalachari, Rajendra Prasad, SardarVallabhbhai
Purushottam Mavalankar, Kanaiyalal Munshi Sandipkumar Patel, Maulana Abul Kalam Azad, Shyama Prasad Mukherjee, Nalini Ranjan Kanaiyalal Munshi Ghosh, and Balwantrai Mehta e imperative figures within the Assembly. [29]

Meet in sessions hospitable people by and enormous, for 166 days The Assembly, meet a amount of two years, eighteen days before grasping eleven months and the 2 copies of the chronicle Constitution, the 308 folks from the Assembly checked (one every in Hindi and English) on twenty four January 1950.

The popularity based example can’t run unless there is a free & reasonable autonomous legal. Give us a chance to have an elevated view upon the Post-Independence Indian Judiciary.

The Constitution of India hopes to completely the Principles of the Theory of the Separation of Powers as elucidated by the colossal legal adviser Montesqueue. The Directive Principles of State Policy obviously mirror the perspectives of our Father of the Constitution, Dr. Babasaheb Ambedkar. There are three Constitutional Pillars of Democracy-

The Executive [The President of India, his Cabinet, the Bureaucracy, the Governors]
The Legislative [the Rajya Sabha The Lok Sabha, The Vidhan Sabha (in States) ]
The Judiciary [The Sup.Co. of India, the Hi.Co.s, the Sub-ordinate Courts]

Our Constitution does not point the water tight compartments like the USA or Swiss Republic. It expects a symphonious co-operation between them. Our Constitution by the method for the arrangements just discusses the freedom of the legal however it is no place characterized what actually is the autonomy of the legal. Nonetheless, the designers of the just talks of the independence of the judiciary but it is nowhere defined what actually is the independence of the judiciary. However, the framers of the Indian Constitution clearly aimed at the independency of judiciary. In the words of Dr. B. R. Ambedkar. ‘There can be no distinction of sentiment in the House that our legal must be both free of the official & should likewise be skilled in it. What’s more, the question is the
manner by which these two articles can be secured'. It is hypothetically simple to discuss the autonomy of the Judiciary with respect to which the arrangements are accommodated in our Constitution yet these arrangements presented by the composers of our Constitution can just start towards the freedom of the legal.

The Constitution of India has made several privations to ensure independence of Judiciary. All these cases are discussed below in detail. They will reflect the spirit of independence in Indian Judiciary as our Prime Ministers Mrs. Indira Gandhi & Shri. P. V. NarsimhaRao had to face trials which witness the complete Rule of Law in the infant Republic. The Constitution of India does not recognize the precept of detachment of forces in its supreme unbending nature, however the elements of the three organs of the Government. Three organs of the Government have been sufficiently differentiated. None of the three organs of the Government can take over the functioning assigned to the other organs. For example, Parliament has been given power to make laws; judiciary has been given power to decide the cases, & the executive has power & function to execute law. All the branches of the Government are not water-tight compartments.

"Legal" is the organ of the Government not framing a piece of the official or the administrative, which is not subject to individual, substantive & aggregate control & which plays out the essential capacity in a fair way i.e. free from any outer variable the autonomy of the legal can be comprehended as the freedom of the legal & furthermore the autonomy of the Judges which frames a piece of the legal. The autonomy of the legal as an organization is unrealistic without the freedom of the individual Judges & is the establishment of the legal is not autonomous; there is no doubt of the autonomy of the individual Judges.

There are two types of judicial independence in the Constitution Law. to the situation where the separation of powers Institutional independence refers between the three branches of Government (Judicial, executive & legislative) is successful at keeping the executive & legislative branches out of the affairs of the Courts.

Decisional independence refers to an ideal where by judicial decision-meaning is able to exist free of undue influence from outside agents who are Acting from partisan or special-interest motivations, rather than being motivated by the demands & ideals of
justice. The essential discussion of the autonomy of the legal depends on the tenet of division of forces which holds its reality from quite a while. The regulation of partition of forces which proposes isolate working of the State council all the three organs of, official & the Judiciary, accommodates a duty to the Judiciary to Act as a guard dog to check whether the official & the governing body are working inside their points of confinement under the Constitution & not meddling in each other working. This undertaking of legal can't be carried on in genuine soul if the legal is not autonomous in itself.

In this manner, the autonomy of the legal is the fundamental imperative for guaranteeing a free & reasonable society under the run of law, Rule of law that is in charge of good administration of the nation can be secured through unprejudiced legal. The autonomy of the legal is of most extreme significance in maintaining the mainstays of the equitable arrangement of free society.

Thus we can firmly say that the judicial system like any other administration system is the gift of the History of the Nation. In India also our entire system is the gift of the British Rulers who had dominated more than 75 per cent of the Indian Territory. On a small part of India the Portuguese as well as the French had also ruled. They possessed Goa, Diu, Daman, Dadra, Nagar Haveli & Pondicherry, Mahe, Chandranagar, and a Karikal respectively. The local administration of these Indian Territories is influenced by the respective foreign rulers. Most of these foreign rulers left their Indian Territories after the British departure. The port Gwadar was an overseas department of the Sultanate of Oman. It is presently a centrally administered territory of the Republic of Pakistan. Portuguese Civil Code & the certain French Customs are also the recognized parts of our national laws. The present thesis broadly considers the British Influence in detail.

The exhaustive study of the Historical Perspectives of the Constitution of India & the very Salient Features which make it unique throughout the world is quite necessary to understand the administrative mechanism & the Role of the Sup. Co. of India in not only upholding but also protecting & developing the Constitution of India. In order to assess the very role of the Sup. Co. of India the Chapter further aims to depict the Indian hierarchy of the Judicial Systm from the grass root level.
The Constitution of Supreme Law of the country. It is after all the Grundnorm of a newly born democracy. The Statutes passed by the Parliament & the State Legislature & the customs, the precedents, the treaties, the learned opinions all are our Sources of Law. However as the Constitution of India is the Supreme Law the rest of the sources must carefully be implemented under the light provided by it. In case of the conflict between the two sources the Constitutional Provision will prevail.

NEED FOR THE INDEPENDENCE OF THE JUDICIARY [31]

1) Legal is required to be freedom as it Acts as a guard dog by guaranteeing that every one of the organs of the State works in the inside their particular territories & according to the arrangement of the Constitution.

2) It ought to be free & self skillful to translate the arrangements of the Constitution in such an approach to clear the uncertainty & keep it fair-minded i.e. free from any weight from any organ, for example, official.

3) It ought to be free to convey legal equity & not fractional or conferred equity.

4) It should Act independently to protect law & order & lead for social welfare with maximum benefit to the Society. In a welfare State the judiciary should play its role to uplift the downtrodden & welfare of the society as a whole.

Our Preamble is the base of our social, political & economic justice. Its amended form is the outcome of the following cases. In St. Xavier College v State of Gujrat, the Sup. Co. directed to introduce the word ‘Secular’ clearly in the Preamble. In Excel Wear v Union of India, the Sup. Co. directed to introduce the word ‘Socialist’ clearly in the Preamble. v State of Bihar, In Mohammed HanifQureshi the Sup. Co. directed to stop the slaughter of milky animals like Cow & its breed. Recently the State of Maharashtra has enacted effectively upon this direction. In Manubhai P. Vashi vs. State of Maharashtra, the Sup. Co. has directed to effectively provide Legal Aid to the needy people by elevating the standard of Legal Education. The State must provide enough grants to the Law Colleges.
S.P. GUPTA VS. UNION OF INDIA (AIR 1982 SC 149)

This case is popularly known as the Judges Transfer case. It has been held in the executive from whose dominance & subordination it was sought to be protected. It has been observed that the official ought to have supremacy since it is responsible to the general population while the legal has no with the end goal that Constitutional functionaries had only a consultative part & the force of arrangement of Judges is exclusively & solely vested in the focal Government.

The Indian Hi.Co.s too has a followed the Sup. Co. Independence & dignity has been proved in several cases. Let us have a birds eye view upon this landmark case Article 222 empowers the President of India to transfer Judgement from one H C to another. Union Law Minister issued a circular on 18th March, addressed to all the Chief Ministers requesting them to secure from all supplementary jury in the HCs of their respective States prior a fix Judges in any other and be appoint as a consent to HC for which they were to indicate three HCs of their choice in order of preference. After issuance of circular, HC with effect from the date they assume their respective charges.

The Circular of Union Minister & in pursuance of the transfers of Judges by the President created great consideration & agitation in the legal circles. The petitioner was a practicing Advocate of the Sup. Co. challenged the order transfers of Judges under Article 32. He also prayed to treat his with petition as PIL.

There are following issues in this regard.
1. The History of Independences of judiciary.
2. Public Interest Litigation & locus standi of Lawyers.
3. Nature of power to appoint/transfer Hi. Co. Judges & procedure to be followed consultation with Constitutional functionaries, consent of concerned Judges etc.
4. Validity of transfer of Judges from one Hi. Co. to another.
6. Privilege against disclosure of State documents etc.

A Seven-Judge Bench of the Sup. Co. by 4:3 Majorities held that the circular letter was valid & it did not affect the independence of judiciary By 4:3 Dominant part
The main necessity is "talk" with the Chief decency of India which must be viable.

The case set down the accompanying standards. i) Power of exchange of Judges must be practiced in broad daylight intrigue. Exchanges ought not be finished by method for 'Discipline'.

ii) Any individual can record a writ appeal to under Article 32 relating of Public intrigue issues which might be dealt with as PIL. In such cases, iii) Krishna lyer commented that the Constitution of India expects the "Independence of the Judiciary in the genuine & not in the thoughtful feeling of the term It is a privilege of legal & not a Government's pleasure."

iV) Their Lordship watched, "The possibility of opportunity of the lawful is a respectable thought which spurs the Constitutional arrangement & constitutes the foundation on which rests the working of our fame based country. In case there is one administer which encounters the whole surface of the Constitution it's the represent of the direct of law it's the State within the explanations the quality of the management of law, below the Constitution, it's the legal that is& below the Constitution depended with the of the law & during this manner creating the lead of law objective & persuading keeping every organ of endeavor of for confinement."

COURT ADVOCATES-ON-RECORD ASSOCIATION VS UNION OF INDIA

The beforehand said Bench of the Sup. Co. overruled it's before choice in S.P.Guptav.UnionofIndia. The Sup. Co. has held that the begin of the recommendation for course of action by virtue of Sup. Co. must. The evaluation of the Chief Hi.Co. or of the Sup. Co. sentiment the legitimate symbolized by the point of view of the Chief Justice of India. Has control which has control in the matter of Act altogether in recommendation because of a collegiums for game plan to the Sup. Co. must be
molded in guidance with a be by the Chief Justice of India & involving the two senior-
most puisne Judges of functionaries must legal arrangements Justice of India.

Adv. Subhash Sharma centered his case upon the accompanying issues.

1. Chief Justice of India (Arts.124(2)),217(1)and 222(1). Supremacy to supposition
2. Chief Justice of the Hi. Co.s (Exchange of Judges) Art. 222(1)
3. S.P. GUPTA versus Union of India Reevaluation of the decition (Art.141)
4. Judiciary & Division of Autonomy of powers.(Art-141.)
5. Judge- (Art 216). Strength

Gupta versus Union of India detail & gave judgment by 7 to 2 greater part on 6-
10-1993, & overruled the judgment given in S.P..The choice of the Sup. Co. is given in
abbreviated as takes after. The Sup. Co. talked about in

1. Participatory consultative process of Judges to the Sup. Co.s& the Hi. The
procedure of arrangement Co.s is an incorporated for choosing the best & most
appropriate for arrangement. Constitutional need, so that the event of supremacy does
not emerge & all the Constitutional functionaries must play out this obligation on the
whole with a view basically to achieve concurred choice, sub filling the people
accessible.

2. Impersonation of proposition for arrangement on account of the Sup. Co. must be
by the Chief Justice of India, & on account of a Hi. Co. by the Chief Justice of the
Hi.Co.. This is the path in which suggestions for courses of action to & the H.C.Hi. Co. &
the S.C. (Preeminent Court) & the Hi.Co.s& trade of Judges/Chief Justices of the
Hi.Co.s ought to continually to make.

3. of conflicting estimations In the event by the functionaries, the sentiment the
legitimate Constitutional symbolized b Chief Justice of India & confined in the way
appeared, y the viewpoint of the has amazingness.
4. Of any Judge to the Sup. Co. or, unless it is in congruity with the estimation of the Chief Justice any Hi. Co. can be made of India. No course of action. Workplace of the Chief Justice of India ought to Arrangement to the be of the senior most Judge of fit to hold the S.C. considered workplace.

5. The material courses of action in S.P. Gupta versus Union The Majority sentiment of India inverse view relating to energy. In so far as it takes the piece of the Main Equity of courses of action & trade, India in matters & the authenticity swell as in association with Judge-quality, f hypotheses matters as does not like the Hi. Co.s is the correct view. Perceive itself to us of the Constitution, including the protected arrangement ought to now be deciphered, grasped & appeared in this by.

6. The fixation of Judge-quality in each of without a doubt realized in the route

i) Or exchange a Judge without the assent The President can't pick of the Chief Justice of India.

ii) "To have a free authentic The Sup. Co. saw to meet all inconveniences, masters & to keep up the unflinching before all basic of at all conditions, the Constitution there by guaranteeing the legitimate validity, the individual to be lifted to the legal must be notoriety for self- to any earlier enthusiasm, faithful had with the most stunning quality & obligation & organized Their Lordships The conflict that moreover administer, uncommitted held:- " the self-governance of lawful is by the The Constitutional Constitutional shield of the work environment that a Judge hold & confirmation of the organization conditions alone & not appealingly secured past that, is untenable. Assertions are not the most essential thing on the planet. Despite them, one other significant & unbreakable essential condition is fitting& fit credibility to the completely fundamental for good securing higher legitimates the adaptability of legal, & that burdens the system followed in the matter of supporting, picking & naming a f."
Their Lordships saw Co. while examining the likelihood of adaptability of higher or dominating true blue & thusly highlighted & laid Stress on qualities crucial the opportunity of the legitimate.” In re Presidential reference, which is called as arrangement & Transfer of Judges case III (AIR) 1999 SC 1 A nine, Judge Article 50 in securing seat of the Sup. Co. gave its supposition on the nine inquiries brought by the President up in his reference to the Sup. Co.. The nine Judge seat of the Sup. Co. gave the accompanying assessment on in its judgment dated 28th October, 1998.

1) Chief Justice of India consultative method & reflecting the sentiment the The evaluation of the Judiciary, must be shaped on the premise of discussion with involving having power in the the Chief Justice of India & the four senior-most Judges of the Sup. Collegiums likewise included Co., The Judge, who is the Chief Justice ought to the, in the event that he is not one of the four senior-most likewise be incorporated Judges of the Sup. Co.. The Judge, who is to succeed the Chief Justice ought to, it he is not one of the four senior-generally to succeed Judges. Perspectives ought Their to be gotten in Writing.

2) If not the piece of the of the s Court, who hail froj the Hi. Co.s where the people to be prescribed are working as Judges, collegiums must the senior-a large portion acquired in composing

3) The suggestion of the collegiums alongside the perspectives of its individuals & that of senior-most Judges of the Sup. Co. who hail from the Hi.Co.s where the individual to be prescribed are working as Judges ought to passed on by the Chief Justice of India to the Government of India.

4) the perspectives The substance of of the others the Chief Justice, (Members of the Bar) ought to be Stated of non-Judges in the counseled bupdate & be passed on to the Goverment especially those of India.
5) Choice in accord to settle on the & unless the conclusion of the collegiums is inconformity The Collegiums ought with that of the Chief Justice of India,

We have examined the Mughal lawful framework, the legitimate arrangement of the East India Company & the Anglo-Indian lawful framework. These were basic to portray the primary elements of the Indian legitimate history. Section Three sketched out the legal framework in India where we said in to some degree detail the hierarchal association of unrivaled courts & also subordinate courts & law revealing the two basic components of point of reference. The time has come to talk about how the teaching of point of reference developed in England. It will be seen what precisely is the hierarchal association of the Royal Courts in England & how the point of reference works now in that chain of command particularly is the House of Lords bound by its own particular past choice & in the Court of Appeal Civil Division bound by its own particular past choice. We have also to see whether the Court of Appeal Criminal Division is bound by its previous deceptions? Is precedent a source of law in Civil Law countries? Is there binding precedent in international law? What is the practice of the International Court of Justice under the United Nations Organization [The Hague-The Netherlands] & other International Courts Tribunals? These are some of the questions that are discussed in this chapter.

STARE DECISIS IN COMMON LAW, CIVIL LAW & INTERNATIONAL LAW - INTRODUCTION:

Evolution Of Stare Decisis In The English Common Law System
Recordings tor stipulation (b) of Article 124 (2) of the Constitution, a Judge might be expelled from his office in the way gave in condition (4)

The Constitution gives that a Judge of the S.C. ought not be ousted from his office except for by a demand of Proviso (4) of the Article 124 of the by each House of Parliament. President pursue an address
Proviso (5) of the Article 124 of the Constitution gives that Parliament may by law manage the strategy for the introduction of an address & for the examination & verification of the rowdiness or insufficiency of a Judge under statement this work.

The evacuation of a Judge through indictment by the joined effect of article 124 (I) & the Judges (Inquiry) Act, 1968 is made by taking after strategy.

1) President marked by no less than 100 individuals from A Motion routed is conveyed to the Speaker or the Chairman to the Loksabha or 50 individuals from the RajyaSabha.

2) Advisory group of three (2 Judges of the Sup. Co. & a recognized legal adviser.)The movement is to be researched by an

3) The House where the movement is pending. If the advisory group finds the Judge liable of bad conduct or that he experiences inadequacy. The board of trustees is taken up for thought in the movement together with the report of

4) Ballot the depart this world is shown to the President On the remote chance that the event is passed in every house by larger piece of the entire period of that house & by overwhelming some portion of no but sixty six of that House gift the entire period of that house.

For having outperformed limits on phoney expenses & handle of specialist car The S.C. was started against Shri R. Ramaswamy.1993. The system for legal document of a decide of He was everlasting s. Survey dissents ar there about the acquisition of furnishings, of containments supported for Judges, once he was judge of geographic region & Haryana Hi. Co.. Spreads & ventilation frameworks so much in teemingness of the needs a development upheld by 108 MPs of the Ninth LokSabha for his legal instrument was yielded by the speaker on March twelve, Sup. Co. Judges to solicit into the insistence from monetary fund anomalies against him below 1990 & he well-grooved ahtree decide chamber of the Judges arouse direction bunch Act. The board achieved the conclusion that there was resolved & web
handle of workplace, & nice transgressions by exploitation open resources for personal reason in numerous ways that, the informative gathering command that these Acts represent terrible lead within purposeful & endless liberality at the value of people as a rule funds the spatial relation of the Article 124 (4) of the Constitution. Within the Loksabha, the congress halfy larger part.but price Ramaswami relinquished from his post later. This scene is in certainty a confutation. Abandoned for ballot consequently the legal instrument development could not be passed with need

Hi. Co.s within the States (Arts.214-232)

(a) **Establishment**: Parliament might by law build up a typical. Parliament might by law develop the Jurisdiction of a There ought to be a Hi. Co. for every (A-214). Hi. Co. for no below 2 states or for additional states & a union Territory (A-231) Hi. Co. to or reject the area of a Hi. Co. from, any Union Territory (Art.230) (1) & may have every one of the powers of such a court including the capacity to rebuke for disdain of itself (Art215.) Every Hi. Co. have to be compelled to be a court is also a court of record

(b) **Constitution of Hi. Co.**: Recordings for Article 216 of the Constitution, every Hi. Co. includes such extraordinary judges as a Chief Justice & then regard it imperative to assign.

(c) **Appointment of Judges**: Article 217(1) of each judge of a Hi. Co. the constitution gives that ought to be chosen by warrant under his hand by the president & seal after advice Justice of India, with the Chief the Governor or the State, and, by virtue of game plan of a judge other with the Chief than the primary value, value of the Hi. Co..

(d) **Qualifications**: Recordingstothe Constitution e Article 217 (2) of, a man ought not be possessed qualities for course all the necessary of action as a judge of a Hi. Co. has for no under unless he is a local of India and
(a) ten years held a lawful office in has for no under the space of India;

(b) years been a supporter has for no under ten of a Hi. Co. or of no less than two such courts in movement;

(e) **Appointment of Acting Chief Justice, Additional & Acting Judges & Retired Judges at sittings of Hi. Co.s:** The President can name an acting Chief Justice under Article of 223 of the constitution without the Chief Justice of a Hi. Co.. Exactly when there is past due obligations of work in view of brief growth in the matter of a Hi. Co., the President can pick additional & acting Judges & such individual won't not hold office in the wake of accomplishing the age of sixty two years as demonstrated by Article 224 of the constitution, the Chief Justice of a Hi. Co. for any state may time, with the earlier assent of the President, and ask for any surrendered judge to go about as a judge.

(f) **Promise or Affirmation by Judges of Hi. Co.s:** Recordings for Article 219 of the Constitution, each individual allocated to be a judge of a Hi. Co. may make a vow consenting to the shape set out for the reason in the third timetable of the Constitution.

(g) **Tenure, Resignation & Removal of a Judge:** Hi. Co. has been bonded security of residency. He might hold his workplace until the age of sixty 2 years. Under Article 217 of the Constitution, a decide of the A decide might hand directed to the president leave his workplace at no matter purpose by creating below is also far from his workplace by the President within the path gave in arrangement A decide of a Hi. Co. (4) of Article 124 for the clearing of a decide of the S.C.

(h) **On to the following:** as indicated by Article 222 of the Constitution, Transfer of a decide starting with one Hi. Co. then the president might, e from one Hi. Co. to another Hi. Co.. specifically once a decide has been or is thus listed, once speak with the focal Justice of Asian nation, trade a decid he have to be compelled to within the inside of the amount be (fifteenth Amendment) serves, once the beginning of the constitution Act, 1963, as a decide of the opposite Hi. Co., be match the bill for get
despite his compensation such counteractive reward as is also controlled by regular payment because the President is also demand settle parliament by law and, till thus selected, such counteractive.

(i) **Jurisdiction (Powers & Functions) of the Hi. Co.:**- inquiring &super ordinate domain each Hi. Co. could be a court of Record &ishad of novel. Article 225 of the Constitution sets out that the district of, & the law coordinated in any present Hi. Co., & the different strengths of the judges there of in association with the association of value in the Court, including any vitality to make standards of court & to deal with the sittings of the Court & of people there of sitting alone or in Division courts, may be the same as fast before the start of this constitution.

(i) **The writ Jurisdiction:**-Article 226 of the constitution sets out that each Hi. Co. may have powers, all through the regions in relationship with which it sharpens ward, to issue to any individual or ace, intertwining into suitable cases, any association, inside those locale headings, , joining writs in sales or writs the Habeas Corpus, Mandamus, Prohibition, Quo Warranto strategy for & C, or any of them, ertiorarifor of any of the rights showed by the for whatever endorsement part-III & other reason.

The writ power may in like manner be drilled by any Hi. Co. honing area in association with the districts inside which the explanation behind action, completely or to a constrained degree, develops for the power, regardless of that the seat movement of such master or the living course of government or action of in not inside such individual those areas.

As regards issue of interim solicitations it now gives a direct procedure by communicating when a between time demand is passed against a social affair (ex parte) that get-together may make an application to the Hi. Co. for the journey of such demand & the Hi. Co. must mastermind such an application inside two weeks if it fails to dispose of an application inside two weeks the break organize may stand surrendered after the expiry of two weeks.
Hi. Co. isn't in feedback of the facility the judicial writ management gave on a given on Note that the capability to issue writs given to the Sup. Co. by clarification (2) of Article thirty two. Hi. Co.s is additional broad than that given to the Sup. Co. below Article thirty two of the constitution.to date because the -Fundamental for any reasons aside from those given by Article 32(2). Rights; it's solely given to the Hi. Co.s. Regardless, usage of the foremost rights worries, the drive of the Hi. Co. is synchronic of non below Article 139 of the constitution, parliament by law is scattered to present on the Sup. Co. vitality to issue orientation, solicitations or writs together with profit writs

(ii) **Over every one of the courts Power of oversight:** - Article 227 of the constitution provides upon the Hi. Co. the drive of oversight over the courts subordinate provides that every Hi. Co. might have to that. Oversight this over all courts & tribunals during the regions in relationship with that it practices Jurisdiction.

The Hi. Co. may-
(a) entail comes back from such Courts;
(b) grasp traces for managing the observe & create issue general benchmarks & continued to such Courts and.
(c) dictate shapes during which books segments records ought to be unbroken by the & officers of any such courts.

settle tables of charges to be permissible to the The Hi. Co. might in like to lawful counselors, promoters & pleaders honing in this. In any case, any benchmarks created, diagrams bolstered or tables thus settled can’t. Method lawman & all directors & officers of such courts Blackstone World Health Organization & this is often the read command by declared that the ancient customs & usages of England are the essence of the common law & that judicial deceptions are merely the best evidence of such customs & usages. Jowett argues that “Common law” is a phrase with many meaning it is used here in contra-distinction to statute law. So used, it “Denotes the unwritten law, whether legal or equitable in its origin, which does not derive its authority from any express declaration
of the will of the legislature.” Cottrell has a much better explanation of what is common law; “It consists of the rules & other doctrine developed gradually by the judges of the English royal courts as the foundation of their deceptions, & added to over time by judges of those various jurisdictions recognizing the authority of this accumulating doctrine.” As he points out, much later, the term came to refer frequently to judge-made or judge-declared law in contrast to legislation.

Blackstone’s view was discredited by Benthan any may other notable persons including Allen, Dias, Lord Reid & Lord Denning. Reverting to the practice of royal commissioners, who can be credited as the real developers of common law, they developed doctrine called stare Decanis (more precisely stare ration bus decadent is meaning to “keep to the decisions of the past”) for the purposes of uniformity & consistency. Thus they used to decide similar cases similarly. This central idea of precedent is derived from a basic notion of justice: that like cases should be treated alike. This practice of Royal Commissioners is the basis of the modern doctrine of precedent. As mentioned above, the three common law courts were also imposing local customs strictly. Allen argues that the notion that judges out generally to abide by former precedent, where is the same points come again in litigation unless flatly absurd or unjust.

1.10 Conclusion

In short the attempt to compile a thesis upon the Place of Precedent in the Indian Legal System is chosen as prosecuting studies towards the practical aspects of law. The researcher has carefully tried to select cases decided by the judiciary after considering the appropriate precedents. They will become the part of the following chapters.