



## **The Law of Precedent:**

(a) The law declared by the Supreme Court being binding on all courts in India, the decisions of the Supreme Court are binding on all courts, except, however, the Supreme Court itself which is free to review the same and depart from its earlier opinion if the situation so warrants. What is binding is, of course, the ratio of the decision and not every expression found therein.

(b) The decisions of the High Court are binding on the subordinate courts and authorities or Tribunals under its superintendence throughout the territories in relation to which it exercises jurisdiction. It does not extend beyond its territorial jurisdiction.

(c) The position in regard to the binding nature of the decisions of a High Court on different Benches of the same court may be summed up as follows :

(i) A single judge of a High Court is bound by the decision of another single judge or a Division Bench of the same High Court. It would be judicial impropriety to ignore that decision. Judicial comity demands that a binding decision to which his attention had been drawn should neither be ignored nor overlooked. If he does not find himself in agreement with the same, the proper procedure is to refer the binding decision and direct the papers to be placed before the Chief Justice to enable him to constitute a larger Bench to examine the question (see [Food Corporation of India v. Yadav Engineer and Contractor](#), ).

(ii) A Division Bench of a High Court should follow the decision of another Division Bench of equal strength or a Full Bench of the same High Court. If one Division Bench differs from another Division Bench of the same High Court, it should refer the case to a larger Bench.

(iii) Where there are conflicting decisions of courts of co-ordinate jurisdiction, the later decision is to be preferred if reached after full consideration of the earlier decisions.

(d) The decision of one High Court is neither binding precedent for another High Court nor for courts or Tribunals outside its own territorial jurisdiction. It is well settled that the decision of a High Court will have the force of binding precedent only in the State or territories on which the court has jurisdiction. In other States or outside the territorial jurisdiction of that High Court it may, at best, have only persuasive effect. By no amount of stretching of the doctrine of stare decisis, can judgments of one High Court be given the status of a binding precedent so far as other High Courts or Tribunal within their territorial jurisdiction are concerned. Any such attempt will go counter to the very doctrine of stare decisis and also the various decisions of the Supreme Court which have interpreted the scope and



ambit thereof. The fact that there is only one decision of any one High Court on a particular point or that a number of different High Courts have taken identical views in that regard is not at all relevant for that purpose. Whatever may be the conclusion, the decisions cannot have the force of binding precedent on other High Courts or on any subordinate courts or Tribunals within their jurisdiction. That status is reserved only for the decisions of the Supreme Court which are binding on all courts in the country by virtue of [article 141](#) of the Constitution.

Source : 1995 (2) Bom.C.R. 640  
(BOMBAY HIGH COURT)

Equivalent Citations :- 1994 (2) Mh.L.J. 1669 : 1994 Cri.L.J. 3105 :

Before :- A.M. Bhattacharjee : V.P. Tipnis : V.A. Mohta : J J

Kamleshkumar Ishwardas Patel..... Petitioner.

Versus

Union of India and others.....Respondents.

(C) Constitution of India, Art. 141---Conflict in decisions---Binding force of---  
When two decisions of same Court of equal strength are there, Court is not necessarily obliged to follow the later one, but will have to prefer the one considered better in point of law to the other.

No blanket proposition can be laid down either in favour of the earlier or the later decision and, as indicated hereinbefore, and as has also been indicated by the Supreme Court in *Atma Ram*, A.I.R. 1959 S.C. 519, the subordinate Court would have to prefer one to the other and not necessarily obliged, as a matter, of course, to follow either the former or the later in point of time, but must follow that one, which according to it, is better in point of law. As old may not always be the gold, the new is also not necessarily golden and ringing out the old and bringing in the new cannot always be an invariable straight-jacket formula in determining the binding nature of precedents of co-ordinate jurisdiction." The law as enunciated in that Special Bench decision, A.I.R. 1988 Cal. 1, has our unqualified concurrence. A.I.R. 1988 Cal. 1; A.I.R. 1991 All. 114 & (1968)70 Bom.L.R. 654 referred to.