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CALCIFIED PRECEDENTS AND ANACHRONISTIC STATUTES: UNSETTLING THE TWIN PILLARS OF JUDICIAL INERTIA IN INDIA

AUTHORED BY - SIDHANT RAJ

I. Introduction: The Mirage of Stare Decisis

Oliver Wendell Holmes Jr. once observed that it is revolting to have no better reason for a rule of law than that it was laid down in the time of Henry IV. His warning still cuts close to the bone in Indian constitutional practice. ¹For decades “stare decisis” has been treated as the steadying hand of the legal system. Yet when respect for precedent hardens into unthinking loyalty, continuity itself begins to calcify.

Indian constitutionalism now sits in an awkward place created by two overlapping habits of mind: the presumption of constitutionality and a quiet tolerance for outdated statutory provisions. The Supreme Court has spoken the language of transformative constitutionalism, expanding Part III rights to cover privacy, bodily autonomy and digital access. At the same time the machinery of judicial review continues to lean on doctrines and statutes that belong to an earlier era.

What we end up with is a protective Constitution enforced through a deferential judicial posture and executive control mechanisms that have scarcely been modernized. This paper argues that any serious questioning of “settled law” must tackle both problems at once. Courts need to loosen the grip of automatic legislative deference and develop clearer ways of retiring statutory provisions that no longer fit the constitutional order they claim to serve.

II. The Anatomy of Friction: Transformative Rights vs. Colonial Machinery

The Constitution was written as a disruptive document. It set out to rearrange social hierarchies and place firm limits on state power. Many of the statutes that still govern daily life, by contrast, were drafted to maximize administrative convenience and keep dissent in check.

¹ INDIA CONST. art 13.

That mismatch produces three recurring points of friction.

First, colonial-era surveillance powers sit uneasily beside the right to privacy. ²Section 5(2) of the Telegraph Act, 1885 and ³Section 69 of the Information Technology Act, 2000 still allow interception on the vague grounds of “public emergency” or “public safety.” After ⁴*K.S. Puttaswamy v. Union of India** (2017) privacy is an intrinsic part of Article 21, yet the statutory framework remains administrative, non-judicial and largely opaque. It is difficult to see how these provisions meet the least-restrictive-means requirement that proportionality now demands.

Second, older criminal provisions continue to collide with constitutional morality. Section 377 of the IPC and Section 497 were struck down in ⁵*Navtej Singh Johar* (2018) and ⁶*Joseph Shine* (2018). Even so, residual concepts of “public decency” under Section 292 IPC and their counterparts in the Bharatiya Nyaya Sanhita still risk chilling speech protected by Article 19(1)(a).

Third, preventive detention laws such as the National Security Act, 1980 keep alive frameworks that originated in imperial emergency powers. Article 22 may tolerate preventive detention, but the breadth of the statutory triggers often leaves Article 21’s procedural safeguards looking optional rather than obligatory.

III. The Doctrine of Presumption of Constitutionality: A Legal Anachronism

The chief obstacle to clearing away these provisions is the presumption of constitutionality. Courts begin with a strong bias in favour of the statute, assuming the legislature understands public needs and acts in good faith.

That starting point sits uncomfortably with the structured proportionality test adopted in *Puttaswamy* and reaffirmed in *Madhyamam Broadcasting Ltd. v. Union of India* (2023). Proportionality requires the State to demonstrate a legitimate aim, a rational connection, necessity and proper balancing. How can a court presume a law is constitutional while simultaneously insisting that the State carry a demanding four-part burden of justification?

² The Indian Telegraph Act, 1885, No. 13, Acts of Parliament, 1885 (India)

³ The Information Technology Act, 2000, No. 21, Acts of Parliament, 2000 (India)

⁴ *K.S. Puttaswamy v. Union of India*, (2017) 10 SCC 1 (India)

⁵ *Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1 (India)

⁶ *Joseph Shine v. Union of India*, (2019) 3 SCC 39 (India)

Older cases such as ⁷R.K. Garg v. Union of India (1981) granted the State wide latitude. When the same deference is applied to fundamental-rights challenges, the necessity and least-restrictive-means stages of proportionality tend to become formalities rather than genuine constraints.

The democratic premises of the presumption have also weakened. Important rights-affecting measures are frequently introduced by ordinance or rushed through as Money Bills, bypassing meaningful debate and upper-house scrutiny. When the legislative process itself is truncated or opaque—as the Electoral Bonds litigation illustrated—treating every statute as the product of careful deliberation looks less like restraint and more like abdication.

IV. The Fallacy of the “Blue Pencil”: Severability and “Reading Down” as Overreach

Faced with an overbroad or outdated provision, courts often reach for severability or reading-down. Both techniques, refined in ⁸R.M.D. Chamarbaugwalla v. Union of India* (1957), are meant to salvage as much of the statute as possible. In practice they frequently leave the underlying problem intact.

Law-enforcement agencies work from the printed text, not from the fine print of a judgment. After ⁹Shreya Singhal v. Union of India (2015) struck down Section 66A of the IT Act, police stations continued to register cases under the void provision for years simply because the official codes had not been updated. In other instances, such as the treatment of bail conditions under the PMLA in Vijay Madanlal Choudhary (2022), extensive judicial reconstruction ends up preserving broad executive power while shifting heavy burdens onto citizens. Judges become unappointed co-drafters without curing the statute’s basic defect.

V. Structural Reforms: Realigning Precedent with Modern Rights Adjudication

A more coherent approach would require several adjustments.

First, replace the blanket presumption with a variable one. High deference can remain

⁷ R.K. Garg v. Union of India, (1981) 4 SCC 675 (India)

⁸ R.M.D. Chamarbaugwalla v. Union of India, AIR 1957 SC 628 (India)

⁹ Shreya Singhal v. Union of India, (2015) 5 SCC 1 (India)

appropriate for complex economic or fiscal measures. Where a statute *prima facie* trenches on Articles 14, 19 or 21, or disproportionately affects vulnerable groups, the burden should shift at once to the State to satisfy the full proportionality test.

Second, when the social or technological premises of a provision have collapsed, courts should be prepared to declare a constitutional sunset rather than strain to read the text down. Invalidation *in toto*, coupled with a clear direction to the legislature to enact a compliant replacement within a fixed period, would force genuine legislative attention.

Third, the quality of the legislative process itself should affect the degree of deference. A law passed without committee scrutiny, public consultation or meaningful debate ought to start with a lighter presumption, or none at all.

Finally, the Ministry of Law and Justice should be required to issue prompt statutory realignment notifications whenever a major judgment alters the operative text of a statute. Without such updates, the gap between law on the books and law in action will persist.

VI. Conclusion

Law is not a museum of historical decrees. The presumption of constitutionality and the quiet acceptance of anachronistic statutes grew up in a different constitutional climate. In a system where rights are increasingly threatened by subtle administrative means, doctrines that begin by assuming the State can do little wrong weaken the very independence of judicial review.

Questioning settled law is not hostility to the legislature. It is an effort to keep statutory frameworks aligned with the Constitution's transformative ambitions. Loyalty to the Constitution sometimes requires the courage to leave behind precedents that no longer serve justice.