

TOPIC : PRECEDENTS

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ABSTRACT

The doctrine of precedent, as it has evolved over the years in the common law system, has at its heart a form of reasoning, according to which decisions given by courts in particular cases are binding in subsequent cases which arise in which the material facts of the case are similar. In this paper, we have discussed what are material facts while determining a case and moreover, how is it related to the concept of precedents. We have further discussed the interrelation between ratio of a case and precedent. We have also discussed the types of precedents and moreover, the principles of precedents in relation to the common law system which exists in India. We have also discussed certain important cases while discussing the method to apply precedents in a court of law. This paper also talks about the importance of precedents and how essential it is for a lawyer to have knowledge of applying precedents. Lastly, this paper also talks about the various advantages of precedent while also bring to light certain disadvantages which are associated with it.

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INTRODUCTION

As Oxford dictionary says that a precedent is a previous instance or cases which is or may be taken as an example or rule for subsequent cases or by which more similar act or circumstances may be supported or justified. A precedent is both a form of argument and a form of justifications it is used as an argument by the lawyers to make their cases strong and force the judge to take the same decision which was previously taken in same type of cases whereas it is also a justification because it is used by the judges to justify their decision. A precedent is a judicial decision in which there is itself a principle this principle which takes the form of authoritative element is often termed as *ratio decidendi*. A common man most of the time only thinks that a precedent will only effect the future that is an argument from the precedent will always be backward looking that is looking onto the past decision to make the precedent for present case but an equally important aspect of precedent is that it is not only backward looking but also forward looking precedent force us to view today's decision as a precedent for future decision makers as today is not only yesterday's tomorrow but it is also tomorrow's yesterday.

Past as a reason for today's decision is used many times but not the every use of past is necessary a precedent sometimes it is also the use of experience that effects the decision from example when a small child touches the red iron for the first time he gains the experience of not doing it in the future, doctor knowing the type of disease from the symptoms is also an example of experiential reasoning in all these type of cases the present set of facts is somewhat similar to previous set of facts which helps the decision maker to make a decision but it is different from the reasoning of precedent as in the reasoning of experience the facts and conclusion of the past has no importance apart from what they teach us about present also if we believe that the current case should be decided differently from the previous one as previous decision was a wrong one we can do so but this is not the case in the precedent we have to follow it no matter how erroneous it is. If the precedent is taken as a ruler in directing the decision maker to take a decision it only depends on the result of the decisions not on the validity of reasoning supported by those decisions.

The doctrine of precedent or *stare decisis* is one of the most effective ways of solving a legal problem. It is certainly one of the most important doctrines in almost all legal systems and is used by lawyers to strengthen their case. *Stare decisis* is a Latin phrase which literally translates to "to stand by decided matters". Generally, under the doctrine of precedents, the decision of a higher court within the same provincial jurisdiction acts as binding authority on a lower court within the same jurisdiction. Therefore, if a higher court has given a decision in a particular case and a case with similar material facts comes before the lower court of the same provincial jurisdiction, then it has to follow the decision of the higher court irrespective of whether there is a flaw in the judgement or not. Therefore, we now need to understand the difference between what the material facts in the case are and what are immaterial.

A material fact is that fact in a particular case which would appear to a reasonable man as relevant to the decision which is being made as distinguished from an insignificant or trivial detail. Therefore, the material facts are those which are directly relevant to the judgement in that

particular case. The concealment of a material fact in a particular case can lead to a complete reversal of the decision while the concealment of an immaterial fact would not affect the final decision of the court. For example, a person used the electronic mail to complete a contract and the specific terms of the contract are in dispute. In such a case, the method of sending the contract is not a material fact. However, if the dispute was regarding the time at which the contract was completed, then the mode of delivery of the contract would become a material fact in such a situation. Therefore, what might not be material in a particular fact situation may become relevant to the decision of the case in another fact situation.

In Daniels case (1938 4 All E.R. 258) the action taken against R. White and Sons Ltd who were the lemonade manufacturer was nothing but the straightforward application of Donoghue's ruling on the duty of care which is owed by the manufacturer towards customer. Even if a doubt has been raised that whether in the decision given in the case the word manufacturer include all types of manufacture of consumer goods or only the manufacture of only food and drink then according to Lord Macmillan it would have been wholly irrelevant to the present case which include lemonade. The rule that manufacturer of such a product owes a duty of care to the consumer to reasonable care was applied by the Lewis J. In this case it did not apply or it favoured the manufacturer because the plaintiff failed to prove that the manufacturer has failed to prove that the manufacturer in the present case has failed to take the duty of care or in fact broken his duty by taking reasonable care. In another case which is directly comparable with *M'Glone v. British Railway Board* (1966 S.C.(H.L)1) where there was one issue that whether railway authority has taken the reasonable care for safety of the pursuer who had been electrocuted while climbing a power line pylon on an electrified railway line there was a rule which required somebody to take reasonable care for somebody else, the court was supposed to decide that whether the reasonable care was taken regardless of the source of law. The court decided that the reasonable care has been taken. The application of rule may of course necessitate making a ruling to its proper interpretation for a given species of facts.

For a decision to be a precedent it is not always necessary that the facts of the previous case is exactly similar to the facts of the current case so first of all we must root out the realm of absolute identity we must characterise the facts and the relevance of the precedent depends upon how we characterise the facts which has arisen in the previous case in turn we must see what are relevant facts on the basis of which a decision is made and then we should make an analogy from our present case. so we can say that rule of relevance decide what can be a precedent for our present case but these rules are themselves not very static and its depends upon time and culture for example in many countries earlier a decision about black person cannot be set a precedent for the white person no matter how same the case may be but in today's world it is not relevant that whether the decision is about a black person or white person it will set the precedent for the future.

The doctrine of precedent states that the cases which have similar material facts must be decided in the same manner. It is obvious that all the facts of the case can never be the same but the

legally relevant facts may recur and it is on the basis of these material facts that this doctrine is given. In his book *learning the law*, Glanville Williams suggested a very helpful formula. For example, in a particular case having facts A, B, and C, the judge decides that A and C are the material facts and comes upon the conclusion X. the doctrine of precedent says that in all subsequent cases in which the material facts would be A and C, the decision would be X. However, if there is any additional material fact, suppose D, then the decision the first case would not be a direct authority and it is not necessary that the judge would base his decision upon that case.

The decision of a higher court which has different provincial jurisdiction only has persuasive value and is not binding on the lower courts. The degree of persuasiveness may vary due to certain factors such as nature of the other jurisdiction, level of the court which decided the precedent case and the date of the precedent case. It is assumed that the more recent the case, the more reliable it will be as an authority for a given case, although it is not necessarily the case.

The Black's law dictionary defines precedent as a "rule of law established for the first time by a court for a particular type of case and thereafter referred to in deciding similar cases." The general principle in the common law is that similar cases should be decided in a similar way so as to give similar and predictable outcomes and reducing chaos within the legal system. This is achieved through the principle of precedent.

There are precedents which have to be followed mandatorily while there are certain precedents which only have persuasive value. On this basis precedents can be classified as:

Types of precedent

- **Binding precedent**- A binding precedent is a precedent which has to be followed mandatorily and there is no scope for deviating from it. A binding precedent is a precedent which must be followed by all lower courts under common law legal systems. The advantages of these types of precedents are certainty and consistency. Moreover, judicial time is also saved. However, there are certain disadvantages such as complexity and rigidity. Moreover, if the precedent case is based on a flawed reasoning, it would create difficulty for all the subsequent cases of similar types and therefore, would lead to flawed judgements. The decisions of the Supreme court of India have binding authority over all the lower courts in India. The lower courts have no other option but to follow the judgements of the Supreme Court while giving their own decisions.
- **Verticality**- Generally, a common law system has trial courts, intermediate appellate courts and a Supreme Court. The inferior courts, which conduct the maximum number of proceedings, are bound to obey the precedent established by the appellate court for their jurisdiction, and all the Supreme Court precedent. This application of the doctrine of *stare decisis* from superior court to an inferior court is known as vertical *stare decisis*.
- **Horizontality**- The idea that a judge is bound by the decisions of the judges at similar or co-ordinate level is known as horizontal *stare decisis*. The courts at the same level such as the high courts in India are bound by their decisions. Though these precedents are not binding but have persuasive value. Therefore, the judges should consider decisions of similar courts while giving their judgements.

- Declaratory and creative precedent-** A declaratory precedent is merely a declaration of already existing law whereas a creative precedent is the one where there is no law it creates and applies a new law in a way it creates the precedent for the future because it has given a decision which is different from the past so it creates a new law. In most of the legal system declaratory precedent is far more than creative precedent because law is already settled in most of the cases however creative precedent though fewer in number is of more importance because it creates new law and it is source of new law, declaratory precedent is just as truly a source of law but it is not the source of new law but it must be understood that the legal authority of the both is same. Creative precedent is nothing but transformation of question of fact into question of law for example when the word cattle has been came for the first time it was question of fact to decide that whether cattle can be described as horse cow or anything else the statue has no authority to decide this but when the court has once decided that the word cattle do not include horse it is no more a question of fact land merely a question of law. In the respect of law creating aspect of the precedent question of law can be divided into two classes. One class admit answering on principles and the other class do not admit transferring the principles. The class which admit on answering principles are those which have the capability of forming of a general principle. The second class is one the answer to which is necessarily specific the first class is answered by the method of abstraction that is by way of eliminating irrelevant or immaterial elements form a particular case the result gives a general rule which is applicable to all those cases which are similar to them and not only to a single case. The second class of cases are those in which no such abstraction is done there is no process of elimination of immaterial elements are done therefore these type of do not create a general principle. The answer to these types of cases is based on solely on circumstances of the individual and concrete cases therefore the operation of precedent is limited to one only to these classes of questions.
- Authoritative and persuasive precedent-** An authoritative precedent is one which judges are forced to follow whether they believe it or not they do not have any discretion to say that the previous decision was bad so they will not follow it they simply have to apply that precedent in the present case whereas a persuasive precedent is one where judges are not forced to follow it they have no obligation to accept and apply it in the present case but they can take them into the consideration and have the discretion to decide that how much weight should be given to that precedent. In other words we can say that authoritative precedent are true source of law whereas persuasive precedent are just historical. The authoritative in most of the country are the decisions of the superior court. The various important classes of persuasive precedent are as following :-

 - 1) Decisions made by foreign court in India mainly American and British court
 - 2) Decisions made by the lower courts
 - 3) *Judicial dicta or obiter dicta* which can be defined as the other things said that is they are the comments or remark of the judge which are not necessary in reaching a decision.

Authoritative precedents are also of two kinds absolute and conditional. Absolute precedent are those which are absolutely binding and they should be followed no matter how erroneous or unreasonable it is, however in conditional precedent judges has the limited discretion of not

accepting or disregarding it. It is mainly binding in all normal cases but in some special case it is not binding.

Authoritative precedent in England can be attributed to the following kinds:-

- 1) All the courts are absolutely bound by the decisions of the superior courts. A court of first instance do not have the authority to question the decision of court of appeal nor the court of appeal should refuse to follow the decisions taken by the house of lords
- 2) The house of lords is also absolutely bounded by the decisions taken by them in the past. The law established by the House of Lords in the past cannot be changed every time as it can bring great uncertainty in law and order of the country therefore the House cannot reverse its own decision.
- 3) The court of appeal is also bound to follow the decisions they have taken in the past and also by the courts which are of co-ordinate authority.

In all other cases a court is conditionally bound by the decision taken by the inferior courts, decisions taken by the, decision taken by the co-ordinate courts or their own decisions. Therefore we can see that the same decision can be of absolute authority in one court or of conditional authority in another court.

In order to dishonour a conditionally authoritative precedent there must be two conditions which must be fulfilled. Firstly the decision which is cited as a precedent must be wrong in the opinion of court a decision can be wrong in two cases when it is against the law or when it is against the reason. A decision is contrary to the law when there is a established rule of law on the point in question and the precedent dishonour it or refuse to accept or express it so if the law is already a settled the court should simply follow it and declare it. A decision which is wrong as being contrary to law is a creative precedent when it should be merely declaratory. The second case in which the decision is contrary to reason. When there is no settled law the courts are in a position to make a new law but in doing so the courts should follow the reason and so far if they fail to do so their decision is wrong. To reject a decision it is not only enough that it is opposite to law or reason there is one second condition which must be fulfilled a precedent gains weight with the lapse of time older the decision greater is its authority as the longer the time has passed and the decision is unharmed or unreversed the greater the harm will caused in the way uncertainty and disappointed of reasonable expectation by its reversal. Therefore many times a precedent which is once be established by the court should be reversed merely if it is contrary to reason or law because it is always important that the that is certainty in law than to making it perfect, but the lapse of time also give one negative effect to the precedent which makes it weak. A moderate lapse of time may make the precedent strong and give it more weight but after a longer passes of time the opposite result may be produced. It may not be directly overruled but indirectly due to changing society and forgotten principles. Therefore without expressly denying it may become gradually inconsistent with judicial decisions and finally lost with time. To sum up we can say that a conditionally authoritative precedent can be reversed if it wrong and erroneous and it has not gain such weight due to the passes of time which can bring uncertainty in the judicial system.

India, a country whose legal system is based on the common law, also recognizes the doctrine of precedent. There are several principles in India which govern this particular doctrine. Firstly, the decisions of high courts are binding on all the inferior courts to which they are subordinate. Decisions of other high courts are only of persuasive value to the subordinate courts. Therefore, they are not bound to follow the decisions of high courts to which they are not subordinate. The high court's bind only those lower courts which are within their territorial jurisdiction. Therefore, a district court in Delhi does not necessarily need to follow the judgement of any other high court other than the high court of Delhi.

Secondly, the smallest bench of the high court consists of a single judge, division bench consists of two judges and any bench which has more than two judges is called full bench. The decision of the larger bench of a high court is always binding on the smaller bench of the same high court. It is also binding on the coordinate bench. Therefore, a single judge bench is not only bound by the decision of a division bench or full bench but also by the decision of the coordinate single bench.

Thirdly, the decision of one high court only has persuasive value for any other high court across India. A high court has the authority to pass a judgement which is contradicting to the decision of any other high court. In case there is a conflict between the decisions of two high courts, the Supreme Court has the final authority to decide on the matter.

Fourthly, the decisions of the Supreme Court, which is the apex court in India, are binding on all the other courts in India. This is provided by Article 141 of the constitution of India, which states that the law declared by the Supreme Court shall be binding on all courts within the territory of India.

Super staredecisis

This is a term which is commonly used for any precedent which is seen as being resistant or immune from being overturned. It is irrespective of the fact whether it was decided correctly or not in the first place. This term was coined on the belief that there are some decisions which should never be overturned. It is a controversial term, which was first coined by Richard Posner and William Landes, which says that some decisions are *virtually* immune from being overturned or contradicted.

Justice and fairness

The doctrine of *stare decisis* clearly based on the idea of justice and fairness. This doctrine is based on the principle that when two individuals are in a similar situation, they should be treated similarly and should not be discriminated against. If A and B are in a similar fact situation, then the judgement passed by the courts should also be similar and therefore, this doctrine helps in treating each person at an equal footing and does not discriminate against them. Moreover, it restricts the biasness of a judge while deciding cases since they are bound by previous decisions

and therefore, cannot be biased against any party. The doctrine of *stare decisis* is thus, related to justice and fairness and this can further be appreciated by the observation of American philosopher William Frankena who says that "The paradigm case of injustice is that in which there are two similar individuals in similar circumstances and one of them is treated better or worse than the other."

Ratio decidendi and precedent

A precedent, in the words of Sir John Salmond, is a judicial decision which contains in itself a principle. This underlying principle, on which a decision is based and which forms the binding element, is referred to as the ratio decidendi of the case. The judgement is binding only between the concerned parties but the underlying principle behind the decision or the ratio decidendi has the authoritative force of law. Ratio decidendi is a Latin phrase whose literal meaning translates as "the rationale for the decision". It is the point in case which determines the decision or judgement of the particular case. The ratio of the case establishes the principle of the case which is subsequently binding on all the other case having similar facts. Therefore, if a particular case having certain fact situation establishes a principle X, then a subsequent case having similar material facts would also be bound by the given principle and its judgement would be based upon this underlying principle X which was given by the precedent case. However, if there is any additional material fact in the second instance, then the two cases can be differentiated and the judge would not be bound by the principle which was given in the first case. Not everything expressed by a judge while delivering a judgement has the force of law. Only the ratio of the case has the force of law since it is in the first place expressed by the judge and secondly it is necessary for the decision of the particular case.

Civil law system

The doctrine of precedent or *stare decisis* is a doctrine which is unique to the common law system and therefore, is not used in countries which have civil law system. The civil law system is based on the idea that only the legislature has the power to make laws and nobody else can make law in the country. The doctrine of precedent violates this civil law principle and therefore, is not used in these countries having civil law systems. However, the civil law system has *jurisprudence constante*, which is not completely similar to the principle of *stare decisis* but can be compared to it. It dictates that the decisions of the court condone a cohesive and predictable result. *Jurisprudence constante* is the legal doctrine used in civil law systems according to which a long series of previous decisions which have applied a particular principle of law is very important and may be determinative in subsequent cases. The basic difference between *stare decisis* and *jurisprudence constante* is the fact that a single decision of the court is sufficient to provide the foundation for *stare decisis* while for the foundation of *jurisprudence constant*, a series of adjudicated cases are required.

Advantages of precedent

The doctrine of precedent is unique to the common law system. This legal tool has given certain advantages to the common law system over the civil law system. The most important aspect is

the fact that the precedents have convincingly provided certainty in law. Through a detailed study of precedents in a particular case, one can easily forecast the judgement of the case and therefore, the lawyers can prepare their case accordingly. Moreover, the precedents provide uniformity in the legal system. Through the use of precedents, it is seen that similar cases are treated in a similar way and therefore, two individuals in a similar situation would be treated in the same manner. Therefore, this provides a sense of justice, equality and fairness in the system and makes it easier for the common person to accept this system. One of the most overlooked advantages of precedents is their practicality. Judicial precedents are practical in nature. Precedents are established after deciding real fact situations unlike the law which is passed by the legislative body of any country. In most of the common law countries precedents are detailed. There are already a very large number of judicial precedents to refer to and therefore, it is convenient to decide a case on the basis of such judicial precedents. Many believe that precedents bring in rigidity into the legal system and therefore, restrict the scope of judicial reasoning by the judge. However, it should be duly noted that the judicial precedent is to some extent flexible. There are certain ways to avoid precedents and this makes the legal system flexible and enables change in the system. In India, cases decided by the Supreme Court cannot be overlooked but two high courts can give contradicting judgements on similar fact situation. Moreover, the doctrine of judicial precedent is based on the ratio decidendi of the case, which is the underlying principle on which the case has been decided. It is not based on the judgement. The judgement is binding only on the parties of the particular case while the ratio is binding on the subsequent cases which are similar to the precedent case. Moreover, the existence of precedents in the common law system helps in avoiding mistakes which the judge might have committed had he been left on his own without any judicial precedent to refer to. Precedents are a convenient time saving device since if a problem has already been answered then it is natural that it will lead to the same conclusion again. The making of law by deciding cases offers a good opportunity for the growth and legal development which cannot be provided by the legislature. The courts can lay down new principles or extend older principles far more quickly than the legislation which is made by the parliament which sometimes takes years to come into force.

Disadvantages of precedent

As already stated, the doctrine of *stare decisis* based on ratio decidendi. There are times when there is difficulty in deciding the ratio of a particular case. This may happen when there are a number of reasons which have been considered while arriving at the judgement in a particular case. In such situations, it becomes difficult to determine the ratio of the case. This doctrine of precedent is complex due to the large number of cases which have already been decided. Moreover, judges use precedents to reduce workload and therefore, applicability of judicial mind is reduced. Although the use of precedent is very convenient, it should not be allowed to degenerate into a task which is performed without any thought. There are situations in which the precedent case is based on a flawed reasoning. In such situations, the mistakes are perpetuated since all the subsequent cases which are on the lines of the precedent case would be bound by the flawed reasoning of the case. Although precedents play an important role in development of the law, it also to some extent limits its development since practical law is based on experience but the scope of further experience is restricted since judges' base their decision on what has already been decided in the past and therefore, this limits the development of judges.

Conclusion

It is inevitable to conclude that the doctrine of precedent or the doctrine of *stare decisis* is one of the most convenient and essential tools in the common law system to decide a particular case. If a lawyer can find a binding precedent to support his case, then there is no scope that he will not win the case. Therefore, it is of immense importance to find a judicial precedent and it is also essential to have the knowledge of applying that precedent to the particular case in hand. For applying the precedent, it is essential to determine the material facts of the case and to compare it with the material facts which existed in the precedent case. If both are similar, then the precedent can be applied directly. Therefore, the importance of precedents is immense in all the countries in which common law systems exist. The operation of the precedent is based on the presumption that the judicial decisions are always correct. It is based on the maxim *res judicata pro veritate accipitur*. A matter which is decided once formally is for all and therefore when a question comes before the court, the court should decide it in the way it is previously decided. Only this rule can bring consistency which is essential for the proper administration of justice.