

ROLE OF PRECEDENT IN STATUTORY INTERPRATATION

*Sparsh Mehra**

The major source of law is Precedent which is following the doctrine of ‘Stare Decisis’. The meaning of this is that “the judges are obliged to stand by the precedents established by prior decisions”. The previous decisions are being followed by the Appellate Court. Statutory interpretation is passed by Parliament. There are four ways through which statutory interpretation is put. Literal rule is the first way through which statutory interpretation is put. Besides this it is very popular and easiest. In the case of Brock v DPP dispute was arose related to the types of dangerous dogs in dangerous dog’s act 1991 as pitbull was included in this act which had the characteristics of a normal dog. Golden rule is the second method. It is somewhat similar to the first rule itself. This rule can be applied in two was such as the wider application or narrow application. The third method is the mischief rule which gives the judge much more power over their decisions as the court will look at the actual issue ‘gap’ and try to ‘bridge’ that gap rather than just look at the words of the Act itself. The final, purposive approach is one step higher then the mischief rule.

I. INTRODUCTION

A proper judicial organ contains developed legal system. The most important function of the judicial organ is to decide and take care of the rights of the citizens.¹ In starting the courts use to work by customs and their own feeling of justice.² With the advancement of society, legislation turns into the fundamental source of law and the judges choose cases as indicated by it. Even at this stage some creative functions are performed by the judges.³

The judicial system has been developed in all nations so that justice must be given to everyone. It is critical and fundamental likewise that the Courts interpret the law in such a way, to the point that guarantees justice to the maximum level.⁴

Statue must be constructed to “to the intent of them who make it” and “duty of the judicature is to act upon the true intention of the Legislature- the mens or sententia legis.”⁵

* 3rd year student of the W.B. National University of Juridical Sciences (NUJS), Kolkata

¹ See. Judicial Process in India, (2010), <http://www.legalservicesindia.com/article/article/judicial-process-in-india-464-1.html> (last visited Mar 18, 2017).

² *Id.*

³ Krishna Iyer, V.R.; Justice at Cross Roads; Deep And Deep publications; Chapter: 8 Glasnost and Perestroika for Judicial India; p:128.

⁴ Rao, H.S.; Indian Justice System on the Verge of Collapse; www.expressindia.com.

⁵ SALMMOND: “Jurisprudence” 11th Edition, p. 152.

II. PREVIOUSLY DECIDED CASES

In every single legal framework, the judges take direction from the previous decisions on the point, and decide the case upon them. It is not sure that the authority would be same in every single legal system.⁶ The countries gain their knowledge regarding law through decisions of higher tribunals than from whatever else. Such choices are gathered and distributed in reports.⁷ These reports are thought to be exceptionally profitable from the lawful writing point of view. These choices are extremely productive in choosing instances of consequent instances of comparable nature. They are called legal points of reference or points of reference.⁸

III. NEED FOR INTERPRETATION

In his The Law-Making Process, Michael Zander gives has stated the three reasons why statutory interpretation is necessary:

1. Intricacy of statutes with respect to the way of the subject, various artists and the mixture of legal and technical language can bring about incongruity, obscure and questionable language.⁹
2. Anticipating the future occasion's prompts the utilization of uncertain terms. Statutes are interpreted by the judges. Case of indeterminate dialect incorporate words, for example, "sensible". For this situation the courts are in charge of figuring out what constitutes "sensible".¹⁰
3. "The multifaceted nature of language. Language, words and phrases are an imprecise form of communication. Words can have multiple definitions and meanings. Each party in court will utilize the definition and meaning of the language most advantageous to their particular need. It is up to the courts to decide the most correct use of the language employed."¹¹

General Rules of Interpretation, External Aids to Interpretation, and Internal Aids to

⁶ Abraham J. Henry; the Judiciary; The Supreme Court In Governmental Process; Brown And Benchmark Publications; 9th Ed. P: 77.

⁷ *Id.*

⁸ The judiciary in India is often called the most powerful among its tribe globally, (2016), <http://www.insightsonindia.com/2016/05/18/3-judiciary-india-often-called-powerful-among-tribe-globally-agree-justify/> (last visited Mar 18, 2017).

⁹ Norman J. Singer, Sutherland Statutory Construction, 6th Edition, Vol. 1A, §20.12 (West Group 2000).

¹⁰ *Supra* note 1

¹¹ Zander, Michael. The Law-Making Process. Cambridge University Press (United Kingdom), 2004, p. 129

Interpretation, Literal Rule, Mischief Rule, Golden Rule, Subsidiary Rules and Harmonious Construction are the absolute most imperative principles.¹²

IV. PRECEDENT

The term precedent in dictionary is defined as

“A previous instance or case which is, or may be taken as an example of rule for subsequent cases, or by which some similar act or circumstances may be supported or justified”.¹³

According to Gray,

“A precedent covers everything said or done, which furnishes a rule for subsequent practice”.¹⁴

According to Keeton,

“A judicial precedent is judicial to which authority has in some measure been attached”.¹⁵

According to Salmond,

“In loose sense it includes merely reported case law which may be cited & followed by courts whereas in strict sense, that case law which not only has a great binding authority but must also be followed.”¹⁶

When all is said in done in the judicial field, it implies the direction or power of past choices for future cases. Just such choices as set out some new control or guideline are called legal points of reference.¹⁷ The utilization of such legal choices is represented by various standards in various legitimate frameworks.¹⁸

Therefore it can be surmised that precedents are:

1. “Guidance or authority of past decisions for future cases.
2. Precedents must be reported, maybe cited and may probably be followed by courts.
3. Precedents must have *opinio-juris*.
4. These must be followed widely for a long time and must not violate any existing statute law.”

¹² *Id.*

¹³ General dictionary meaning.

¹⁴ The Nature and Sources of Law.

¹⁵ The Elementary Principles of Jurisprudence.

¹⁶ *Supra* note 1.

¹⁷ **Essay On Statutory Interpretation, Essay On Statutory Interpretation, <https://www.lawteacher.net/free-law-essays/constitutional-law/statutory-interpretation.php> (last visited Mar 18, 2017).**

¹⁸ 12th Edition; 1969 (Reprint 2010).

V. NATURE OF PRECEDENTS

They must be purely constitutive and not abrogative at all. This means that a judicial decision can make a law but cannot alter it. Where there is a settled rule of law, it is the duty of the judges to follow the same. They cannot substitute their opinions for the established rule of law. The function is limited to supplying the vacancies of the legal systems, filling up with new law the gaps that exist.¹⁹

VI. IMPORTANCE OF PRECEDENTS

A. Modern Legal System

Under the modern law Anglo – American law is judge made law which is called Common Law. It developed mainly through judicial decisions. Most of the branches of law, such as torts, have been created exclusively by judges.²⁰ The Constitutional Law of England, especially the freedom of the citizens, developed through judicial decisions.²¹

The precedents have their importance not only in the municipal law but in international law also. The International Court of Justice decisions play an important role in the formation of International law.²² These precedents of reference have been perceived by the International Court of Justice by Article 38(2) (d) of the Statute of the International Court of Justice.²³ On a further note, Article 59 of the same holds that the choices of the court just have influential worth for future cases and henceforth the International Court of Justice is not bound by its own particular choices in choosing comparative cases in future. It holds that the choice is just restricting the gatherings to the case.²⁴

¹⁹ *Supra* note 1.

²⁰ India Corruption Study, to improve governance, Voll.II (Corruption on Judiciary), as study conducted by the Centre of Media Studies, <http://www.cmsindia.org/cms/events/corruption.pdf>.

²¹ *Supra* note 8.

²² Federal Steam Navigation Co. Ltd v. Department of Trade and Industry, (1974) 2 All ER 97(HL).

²³ The Elementary Principles of Jurisprudence.

²⁴ See. Neerja Gurnani, Precedents as a source of law (2015),

<https://www.lawctopus.com/academike/precedents-as-a-source-of-law/> (last visited Mar 18, 2017).

VII. TYPES OF PRECEDENTS

A) PERSUASIVE PRECEDENTS

Persuasive precedent is precedent or other lawful written work that is identified with the current case however is not a coupling point of reference on the court under customary law lawful frameworks, for example, English law.²⁵ The persuasive authority may guide the judge to come up to a decision in the instant case.²⁶

B) LOWER COURTS

An opinion of a lower court might be considered as persuasive authority if the judge trusts they have applied the right legitimate rule as well as reasoning.²⁷

C) HIGHER COURTS IN OTHER CIRCUITS

A court may consider the decision of a higher court that is not authoritative. For instance, a district court in the United States First Circuit could consider a decision made by the United States Court of Appeals for the Ninth Circuit as persuasive authority.²⁸

D) HORIZONTAL COURTS

The rulings which are made in other courts that have an equivalent authority in the legal system may be considered by the court.²⁹

VIII. STATEMENTS MADE IN OBITER DICTA

²⁵ Persuasive Precedent Law and Legal Definition, <https://definitions.uslegal.com/p/persuasive-precedent/>.

²⁶ *Supra* note 8.

²⁷ TYPES OF PRECEDENT, <http://lawgovpol.com/types-precedent/> (last visited Mar 18, 2017).

²⁸ The Importance of Precedent, <https://biotech.law.lsu.edu/map/TheImportanceofPrecedent.html> (last visited Mar 18, 2017).

²⁹ Horizontal Systems of Justice and Why They Matter, <https://reinventingtherules.com/2013/10/09/vertical-systems-of-justice-and-why-they-matter/> (last visited Mar 18, 2017).

“Courts may consider obiter dicta in opinions of higher courts. Dicta of a higher court, though not binding, will often be persuasive to lower courts. The obiter dicta are usually, as its translation “other things said”³⁰ but due to the high number of judges and several personal decisions, it is often hard to distinguish from the ratio denizing. For this reason, the obiter dicta may usually be taken into consideration.”³¹

IX. DISSENTING JUDGEMENT

While hearing a judgment one judge dissented from the decision, then the judge in the following case can choose to take after the dissenting judge's obiter and method of reasoning.

X. TREATISES, RESTATEMENTS, LAW REVIEW ARTICLES

The writings of eminent legal scholars in treatises, law reviews and restatements of the law can also be considered by the courts. The degree to which judges discover these sorts of writings will change broadly with components.³²

XI. COURTS IN OTHER COUNTRIES

An English court may refer to judgments from nations that share the English common law tradition. These include the countries under the commonwealth states (for example Canada, Australia, or New Zealand) and, to some extent, the United States of America. Whereas in the courts of America the consideration of foreign law or precedents may be considered as controversial.

“The Supreme Court splits on this issue. In *Atkins v. Virginia*, for example, the majority cited the fact that the European Union forbids death penalty as part of their reasoning, while Chief Justice Rehnquist denounced the Court’s decision to place weight on foreign laws. The House of Representatives passed a nonbinding resolution criticizing the citing of foreign law and reaffirming American independence”.³³

³⁰ *Supra* note 8

³¹ *Smith v. Allwright*, 321 U.S. 649, 665 (1944)

³² TYPES OF PRECEDENT, <http://lawgovpol.com/types-precedent/> (last visited Mar 18, 2017).

³³ *Atkins v. Virginia*

XII. BINDING PRECEDENTS

All the lower courts that are under common law legal systems has to follow a binding precedent. In English law it is normally made by the decision of a higher court, for example, the Supreme Court of the United Kingdom, which assumed control over the legal elements of the House of Lords in 2009.³⁴

“Binding precedent relies on the legal principle of stare decisis. A stare decisis means to stand by things decided. It ensures certainty and consistency in the application of law. Existing binding precedents from past cases are applied in principle to new situations by analogy”.³⁵

There are three components required for a point of precedent to work. First one is that an effective arrangement of law reporting must be accepted by the courts. There must be some balance legal certainty which results into bindness effect of the previous decisions.³⁶

XIII. CIRCUMSTANCES WHICH INCREASE THE AUTHORITY OF A PRECEDENT

1. The number of judges constituting the Bench and their distinction is a vital component in expanding the power of point of precedent.
2. More weight is carried by the unanimous decisions.
3. Affirmation, endorsement or taking after by different courts, particularly by a higher tribunal, adds to the quality of a point of precedent.
4. If an Act is passed typifying the law in a point of reference, the increases an additional power.

XIV. DECLARATORY THEORY

Under this theory the law is only discovered by Judges.³⁷ The laws are discovered and declared by judges. According to Coke C.J “judicial decisions are not a source of law but the

³⁴ *Supra* note 8

³⁵ TYPES OF PRECEDENT, <http://lawgovpol.com/types-precedent/> (last visited Mar 18, 2017).

³⁶ See. Judicial Process in India, (2010), <http://www.legalservicesindia.com/article/article/judicial-process-in-india-464-1.html> (last visited Mar 18, 2017).

best proof of law is". In the case of *Wilis v. Baddeley* it was stated that "there is no such thing as judge-made law".³⁸ Whereas in the case of *Rajeshwar Prasad v. State of West Bengal*³⁹ the same theory was stated by the Supreme Court of India. "This theory was criticised on a number of grounds".⁴⁰ In the case of *Bentham and Austin* it was stated that "legislative power is not with Courts and they cannot even claim it".⁴¹

XV. CONCLUSION

From this article about the legal value of precedents we can derive that these play a critical part in the lacunas in law and the different statutes. These likewise help in the maintaining of traditions so that they must be accepted by everyone. This accordingly builds their confidence in the legal which helps in lawful advancement. Precedents acquire assurance law. If the precedents are not followed by the courts then the issues are decided and determined by the judge.

³⁷ *Rajeshwar Prasad v. State of West Bengal*

³⁸ *Wilis v. Baddeley*

³⁹ AIR 1965 SC 1887

⁴⁰ *Supra* note 8

⁴¹ *Bentham and Austin case*