

NATIONAL JUDICIAL ACADEMY BHOPAL

Training Program For SEBI Officers {SE -22}

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‘LAW OF PRECEDENTS AND STARE DECISES’

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JUDICIAL PRECEDENT.

- Salmond defines a precedent, ..'as a judicial decision which contains in itself a legal authoritative element which is described as *ratio decidendi*'.
- The rule deductible from the application of law to the facts and circumstances of a case constitutes the *ratio decidendi* of the case.
- 'The *ratio decidendi* is the underlying principle, namely the general reasons or the general grounds upon which a decision is based, on the test or abstract from the specific particularities of the case which gives rise to the decision. Krishnaya Kumar vs UOI (1990)4SCC 207 Constitution Bench .

ORIGIN OF CONCEPT OF PRECEDENT

- English common law . Comprises of principal or rules of action , for governance or property, deriving its authority from usage or customs of antiquity or from the decisions of the court.
- The English common law developed in thirteenth century. In the absence of any codified set of legal rules by the sovereign authority, as judge made source of law.
- The judges in the absence of legal rules, rationalised their decisions in terms of *ratio decidendi* of the past decisions decided by the superior courts.

BINDING PRECEDENTS

- In the civil law system in which the primary sources are enacted law, customs and general principals of law, the decisions of superior courts are not regarded as a source of law, but merely as optimum reference material, useful to serve as guidelines for deciding cases.
- The object of following binding precedents is to ensure broad consistency and uniformity in deciding questions of law.
- The principles laid down by prior decisions are also used by courts to justify and give credence to their decisions.
- After independence, the courts in India followed the same principles adopted by common law countries to decide cases.

ARTICLE 141 OF CONSTITUTION OF INDIA

- ARTICLE 141. LAW DECLARED BY SUPREME COURT TO BE BINDING ON ALL COURTS.
- The law declared by the Supreme Court shall be binding on all courts within the territory of India.
- Law declared by Supreme Court means the **ratio of the decision**, which in essence is the *ratio decidendi*, and not *obiter*.
- Obiter is any passing observation in a decision on a collateral or unconnected issue.
- Article 111 of the Bangladesh Constitution provides that the law declared by the Appellate Division shall be binding on the High Court Division, and the law declared by either division of the Supreme Court shall be binding on all courts subordinate to it.

'OBITER DICTA' 'other things said'

- 1. Passing observations and casual expressions on issues which do not arise in a case.
- 2. Observations which are not supported by reasons.
- 3. Observations which do not consider any arguments.
- 4. An observation wholly unrelated to the case.
- Exception : Where SC considers a specific collateral issue, in detail, though not relevant and evolves a legal principle supported by reasons and expressly states in the judgment to be the binding precedent, in spite of being a obiter dictum is binding under Art. 141, as law declared by SC. i.e; Afcons Infrastructure's case (2010)8SCC 24 ,on Section 89 CPC

ORDERS WHICH ARE NOT BINDING PRECEDENTS.

- 1. ORDERS DISMISSING A PETITION IN LIMINE WITHOUT GIVING ANY REASONS and/or ORDERS DIMISSING PETITIONS OR APPEALS AS BARRED BY LIMITATION OR FOR WANT OF JURISDICTION.
- 2. JUDGMENTS RENDERED ON THE BASIS OF A COMPROMISE SETTLEMENT, CONSENSUS OR ON CONCESSION OF PARTIES.
- 3. JUDGMENTS BASED ON WITHDRAWL OF PETITIONS OR DISSMISSING WITH LIBERTY TO FILE REVIEW IN THE COURT FROM WHICH THE DECISION ARISES.
- 4. DECISIONS RENDERED 'OFF THE CUFF' ,OR ' OUT OF THE BLUE', ON ISSUES WHICH DO NOT ARISE IN THE CASE>
- ORDERS ALLOWING SLP TO BE WITHDRAWN WITH LIBERTY TO FILE REVIEW PETIION BEFORE THE HIGH COURT.
- 5. NON SPEAKING ORDERS.

DECISIONS NOT TO BE READ AS STATUTES.

- Decisions are not to be read as EUCLID'S Theorems or Gospels.
- Technical and grammatical mistakes in any judgment should be ignored to find the dictum.
- A judgment should be read as a whole to ascertain the dictum.
- The decision should be read in the context in which it is rendered.
- A decision is an authority for what it decides and it is not everything said there or what logically follows from the various observations made therein to make it a precedent.
- A small difference in facts may lead to a different conclusion.

DECISIONS RENDERED ; **per incurium'**

- Per incurium means through inadvertence. (Through lack of care or due regard to the law or the precedents)
- A decision rendered in ignorance of or forgetfulness of some statutory provision, or some authority which is binding on the court rendering such decision.
- A decision which fails to notice any statutory provision or binding precedent.
- A lower court or a court of smaller bench may not take liberty to declare any precedent as per incurium. It may take a route under Section 113 of CPC in making a reference to High Court.

DECISIONS RENDERED '*SUB SILENTIO*'

- When a particular point of law involved in a decision of a case is not presented before the court and /or the necessary premise for the decision by that court was neither perceived nor present in the mind of the court and the decision is rendered without advertent to that point of law or the premise, such decision is said to pass sub silentio.
- Decisions rendered/passing *sub silentio* of a point of law, not presented, argued or discussed are not binding and need not be followed.

WHEN PRECEDENTS CEASE TO BE BINDING

- 1. When Supreme Court or larger Bench reverses such decision.
- 2. When a larger Bench declares that the decision was rendered erroneously, and is no longer binding and lays down a different view in variance with the earlier decision.
- 3. When the legislature enacts a statute governing the subject covered by the decision and the statutory provisions are inconsistent with or are contrary to the ratio of the decision.
- 4. When the decision is rendered per in curium.
- When the decision is a minority dissenting view.

PRECEDENTS IN CRIMINAL LAW.

- Criminal cases are decided by appreciating evidence, connecting facts with robust common sense, analytical thought, drawing inferences and awareness of hard facts of life. A small difference in facts results into different conclusions. Precedents may not be relied except on principles of law in technical offences and questions of rendering justice to victims in deciding criminal cases.
- Too much reliance upon precedents in criminal cases, and adopting cut paste approach in similar cases may result in dangerous situations, which may result in failure of justice.

STARE DECISES

- *Stare decises* is a legal principle of determining points in litigation according to decided cases . It means '**to stand by the precedents**'. It is a doctrine which protects justice dispensation from disturbing settled views and legal positions. It is a fundamental principle of judicial decision making.
- Civil society expects consistent and predictable rendering of justice by the judiciary. Citizens arrange their affairs and conduct themselves in accordance with settled law. Frequent changes affect matters relating to commerce ,business, and industry. Settled legal position ensures stability and efficiency in public life. Doctrine of stare decises saves the justice dispensation from chaos and confusion.

CONCLUSION

- Judges as public adjudicators need to have experience, maturity, judicial independence, freedom from prejudice and bias. They need a guiding hand to perform their functions. In the beginning the reliance on precedents steer them from troubled waters. With experience they learn to decide more cautiously with a rational and pragmatic approach.
- The Judges may not be left alone in the vastness of law to decide cases on principles of law which, may be complicated, without any assistance. The judgments of Higher Courts as precedents guide them and lead their path to discharge their duties of rendering just and fair decisions..

Ratio of precedent : Common issues faced in writing judgments?

- 1. Should a judge elaborately discuss the entire case law cited by the counsels as precedents to find out its ratio?
- 2. Should a judge cite the (overruled) precedents on which reliance is placed and then distinguish them with reference to the judgment which overruled the precedent?
- 3. Should the judge narrate the facts, issues and ratio of each of the case/s which are either relied or distinguished in deciding the issue raised and argued in court ?
- 4. Can a judge cut and paste the text/ or head note of the precedent from the available database or written arguments to rely, or to distinguish the precedent ?
- 5 Can a judge rely upon articles written on the subject and opinion of well known authors to rely or distinguish the precedent cited by the counsels.

The determination of binding nature of Judgement. : Judge strength will prevail.

The majority decision of the Bench of larger strength would prevail over the decision of the Bench of lesser strength, irrespective of the number of Judges constituting majority.

The numerical strength of the Judges taking a particular view is not relevant, but the Bench Strength is determinative of the binding nature of judgment.

M/s Trimurti Fragrances Pvt Ltd vs Govt of NCT of Delhi

Decided on Sep 19th 2022 by Constitution Bench presided by J Indira Banerjee and Four other Hon'ble Judges.