

FACULTY OF JURIDICAL SCIENCES

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Lecture-10



Doctrine of Precedent (Article 141)

A decision that has already been taken by a higher court is binding to the lower court and at the same time stands as a precedent to the lower court judgment, which cannot be altered by a lower court. This principle is known as Stare decisis, which is derived from the Latin phrase stare decisis et non quieta movere, which means to stand by the decided matters. In India, it is commonly known as the concept of precedent.

As per Black's law dictionary stare decisis means to stand by decided cases, to uphold precedents, or to maintain former adjudications.

As explained by prof. A. Lakshminath, the doctrine of stare decisis helps to generate judicial accountability along with it, it also ensures fairness in adjudication and excludes arbitrariness, and helps in maintaining stability and certainty. Prof. further explained that stare decisis is both a social as well as a legal norm.

Historical Background

The desire for certainty and continuity in law gave rise to the doctrine of stare decisis. This doctrine was initially used in medieval England and America, where the common-law courts looked into the judgment of earlier cases as guidance also they had the power to reject those which they do not consider good or which they considered bad.

Initially, due to the lack of recording the decisions or judgment of cases in written form, the doctrine of stare decisis was not freely used, but after the concept of recording the judgment came, widespread use of this doctrine was witnessed.

It was in the 17th century for the first time in England, the decision of Exchequer courts was given a binding force. Later in 1883, the urgent need for recognizing the binding force of precedents was brought into notice in the case of *Mirehouse v. Rennel*. Further in 1873 and 1875 came up the Supreme Court Judicature Act, where the theory was stare decisis was established. In India the concept of precedent established after the Britishers came to India,

which lead down the hierarchy of courts and the concept of higher courts judgment binding the decision of the lower courts.

In 1935 the Government of India Act, explicitly mentioned that the decision of Federal Courts and Privy Council will be binding all the other Courts decision in British India. Hence, from the 18th century till date stare decisis is a characteristic feature of our legal system.

The doctrine of stare decisis under Article 141 of the Constitution of India

Article 141 of the Indian Constitution states that law declared by Supreme Court to be binding on all courts within the territory of India. Article 141 states that only the ratio decidendi of a case is binding not the obiter dicta and the mere facts of the cases. Therefore, while applying the decision of S.C. by other courts, what is required is to understand the true principle laid down by the previous decision.

Some basic concept of Article 141

All the courts in India are bound by law to follow the decision of the Supreme Court.

Firstly the judgment has to be read as a whole and at the same time, the observation from the judgment has to be determined in the light of the questions presented before the court.

- A judgment is used as a precedent only if it is based on deciding or resolving a question of law.
- Sometimes while deciding a case court is divided, during that situation the decision taken by the majority of judges will be later used as a precedent, not the decision taken by the minority of judges.
- Ex-parte decisions by S.C are also binding and can be used as precedents.
- S.C. is not bonded by its own decision.
- Procedural irregularity and immateriality do not invalidate the binding nature of a judgment.
- Special leave petitions are binding.

Types of precedents

Original and Declaratory precedents:

original precedents refer to those cases where there is a question of law that has not been decided before, and then in such a case the decision of the judge forms originally. An original precedent is a law for the future, which creates and applies new rules. Declaratory precedent means those cases where the application of an existing rule of law is used. In such cases, it is seen that the rule is applied because a law already existed on it.

Authoritative or Binding preceden:

it is also known as a mandatory precedent or as a binding authority. It means those decisions which the judges must follow whether they approve it or not. It denotes the higher court's decisions that are binding over the lower courts of that region.

Persuasive precedent:

these precedents are not as binding as the authoritative precedents. These precedents mean that while making any judgment the judge has to consider these precedents and has to give higher weightage to it. The main concept behind considering it is that it is relevant and can help in making a fair decision. These cases could be of could which are put at a similar level in the hierarchy of courts. Even lower court decisions can play a role in persuasive precedent.

Decisions that are not considered binding under Article 141 of Indian Constitution

There is some decision which is not considered as a precedent or which do not have a binding effect. Those are:

- The decision that is not expressed
- The decision not founded on reasons,
- The decision that does not proceed on consideration of the issue.

Obiter dicta of a case are not binding, hence it cannot be relied upon solely as a ground to hold any statutory rule invalid. it has a persuasive value.

Decision is rendered per incuriam is not binding. Per incuriam's literal meaning is resulting from ignorance. Hence any decision made on per incuriam, is not used as a precedent.

Decision is rendered sub-silentio, and then also it is not used as precedent. Sub-silentio means a situation when the point of law involved in the decision is not perceived by the court. It means when a point of law or particular question of law was not consciously determined.