



RAMA UNIVERSITY

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FACULTY OF JURIDICAL SCIENCES

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LECTURE: 3

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Lecture-36



Topic- 3

Lecture – 36: Precedent and its Definition

Precedent

Introduction precedent as a source of law. Precedent in the sense of employment of past decisions as guides in the moulding of future decisions is in no manner peculiar to common law systems, but has been found in almost all the developed systems of law. The chief merit of common law systems lies rather in a particular mode in which this device is employed, that is, that precedents are in certain circumstances binding, which means, that they have either to be followed or distinguished. These circumstances are mainly that the decisions of the higher courts bind lower, never vice versa, and that in the chant language of Jessel M R “the only thing in a judge s decision binding as an authority upon a subsequent judge is the principle upon which the case was decided”. Thus, if a judicial precedent speaks with authority and that the principle which it contains would be binding in future cases, precedent then becomes an important source of law, but not the sole source of law.

Definition:-

Salmond: -Precedent is, ‘in a loose sense, it includes merely reported case law which may be cited & followed by courts.’ .

Grey: - Judicial precedent covers everything said or done which furnished a rule for subsequent practice.

Bentham: -'precedents are judge made laws’.

Keeton: - Judicial precedent is a judicial decision to which authority has in some measure been attached.

Austin: -precedent is “judiciary s law”.

Doctrine of Precedent in England-

This doctrine is known as “the doctrine of Stare decisis “ it means “to stand by things decided “it implies that a judicial decision should be allowed to stand in its rightful place .when a judicial decision lays down a new principle ,it is binding on the subordinate courts.

The main base of this doctrine are:-

1. Every court is bound to follow the decisions of the superior courts.
2. Supreme court of India is not bound by its own decisions. However, a smaller bench is bound by the decision delivered by a larger bench.
3. The decisions of one particular high court are not binding on any other high court. They only have persuasive value in other high courts.

Authoritative and persuasive precedents-

The precedent is authoritative and binding. Authoritative precedents have binding force. The judge has to follow them irrespective of the fact whether he approves the m or not. In India a decision given by the supreme court becomes an authoritative precedent for the high courts and all subordinate courts below the high courts. Persuasive precedents only have persuasive value. The judge is not bound to follow them

Classification Court in England: -

- i. House of Lords
- ii. Privy Council
- iii. Court of appeal [Civil and Criminal]
- iv. High Court
- v. Divisional Courts
- vi. County and Magistrate Courts