

FACULTY OF JURIDICAL SCIENCES

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Advantages of precedents

Precedent means to follow the same which has been done earlier. Hence the first step while considering the precedent is to look at the similarity, if there is any then the magnitude or degree of similarity that existed between the problems. After this, it has to be seen whether the same has been used before a precedent and has resolved the problem in this manner, the precedent works. Therefore, the advantages our legal system enjoys by adapting this doctrine are:

It is time saving avoids unnecessary litigations

- There is an orderly development of the law
- It brought greater certainty and consistency in the law, which is the most remarkable advantage. A good decision-making body needs to have consistency
- Avoid arbitrariness in judgments.
- It eliminates the element of ambiguity and enables the lower courts to follow the decision of the higher court unanimously.
- The presence of precedent decreases the probability of a judge making a mistake.
- It also serves the concept and interest of justice as giving the different decisions to similar situations might be considered unjust.

Disadvantages of precedents

Every good thing comes with its by-products which are bad or have a negative effect. Some of the negative effects of stare decisis doctrine are:

- Also practical law is based on experience, by considering precedent the scope of experience decreases which hampers the essence of practicing law.
- It is being criticized because of its limiting effect on the development of law.
- The first and foremost disadvantage of this doctrine and the precedent system is its rigidity.
- Another disadvantage is its complexity which sometimes makes the situation more uncertain.
- Many times judicial mistakes are being continued in the form of precedent.

Types of opinions

Dissenting Opinion

A dissenting opinion is an opinion written by a justice who voted in the minority. The dissenting opinion explains why the dissenting justice disagrees with the outcome and reasoning of the majority of the court. Since the dissenting opinion represents the minority position, the reasoning is not binding precedent. However, the dissenting opinion offers valuable insight into the deliberative process behind a case and articulates reasoning that future court cases could revisit.

Concurring Opinion

A concurring opinion agrees with the outcome of the majority opinion but not necessarily the reasoning found in the majority opinion. The concurring opinion gives a concurring justice an opportunity to further explain the legal reasoning of a case or to offer a completely different legal reasoning for the decision.[6]

Use of precedent in US

United States uses the common law system in its state courts and to a lesser extent in its lower courts. The defining principle of common law is the requirement that courts follow decisions of higher level courts within the same jurisdiction. It is from this legacy of stare decisis that a somewhat predictable, consistent body of law has emerged.[7]The court hierarchy is clearly defined The federal court system is based on a three-tiered structure, in which the United States District Courts are the trial-level courts; the United States Court of Appeals is the first level court of appeal; and the United States Supreme Court is the final arbiter of the law. The system consists of both the judge and the jury and their respective roles.

Common law refers to judge made laws which are otherwise called as case laws, these case laws can be based on constitutional provisions, statutory provisions or it can be pure decisional case laws. Thus case laws are properly recorded and are available even to a common researcher. The system of precedent is also very flexible, as the US Supreme Court

overruled many of its judgments. For example: between 1946 and 1992 almost 130 of its judgments were overruled. Hence the system provides for effective implementation of the common law with the principle of stare decisis and a flexible structure.

Good examples of precedents:

Vishakha and others vs. State of Rajasthan (air 1997 sc 3011)

It is regarded as one of the landmark cases in India because this case was the first of its kind to provide safety for women at their work places. The roots of the case are attached to Miss Bhanwari Devi who was a social worker and was brutally gang raped by upper caste men, as she opposed a child marriage. Though she filed a case she was unable to get justice. Bhanwari Devi's determination attracted many women and NGOs to file a public interest litigation (PIL) collectively under the platform of Vishakha for the violations of articles 14, 15, 19(1)(g) and 21. The judgment given by the bench of J.S. Verma, Sujata Manohar and B.N. Kripal laid down the Vishakha guidelines to protect women against sexual harassment at work place. Later in 2013 it was transformed into the Sexual Harassment of Women at Workplace Act, 2013, which enabled one of the biggest victories of women.

Peoples union for civil liberties vs. union of India 2001: right to food:

This case made India the first nation to protect right to food under its constitution. The case deals with providing food to the starving population through an effective PDS system. Outside the city of Jaipur the godowns of food corporation of India (FCI) were overflowing and were a rotting mess and villagers nearby were eating food on a rotational basis and also the government had 40 million tonnes above the buffer stock, which led the PUCL of Rajasthan to file a case and the judgment introduced various acts like mid-day meals, integrated child development system, Annapurna scheme and many more to protect the people below the poverty line and provide food to them at subsidized rates.

Conclusion

From the above discussion it can be inferred that precedents play a very important role in filling the lacunas in law and various statutes, it also increases the faith in judiciary and makes laws morally acceptable, it also brings certainty to law.

precedents are a very effective source of law as they are time efficient and also ensure equal justice, but a good system needs to be developed with efficient and clear hierarchy of court that properly defines the courts in various levels, India has adopted this system from common law but lacks in its implementation because of many subordinate courts and a large no. of cases registered, hence the hierarchy has to be more clear and proper record of all the cases. We have to categorize the different courts available under certain categories and specify exactly whose decision is binding on whom and maintain record of all the decisions that are declared as precedents.